

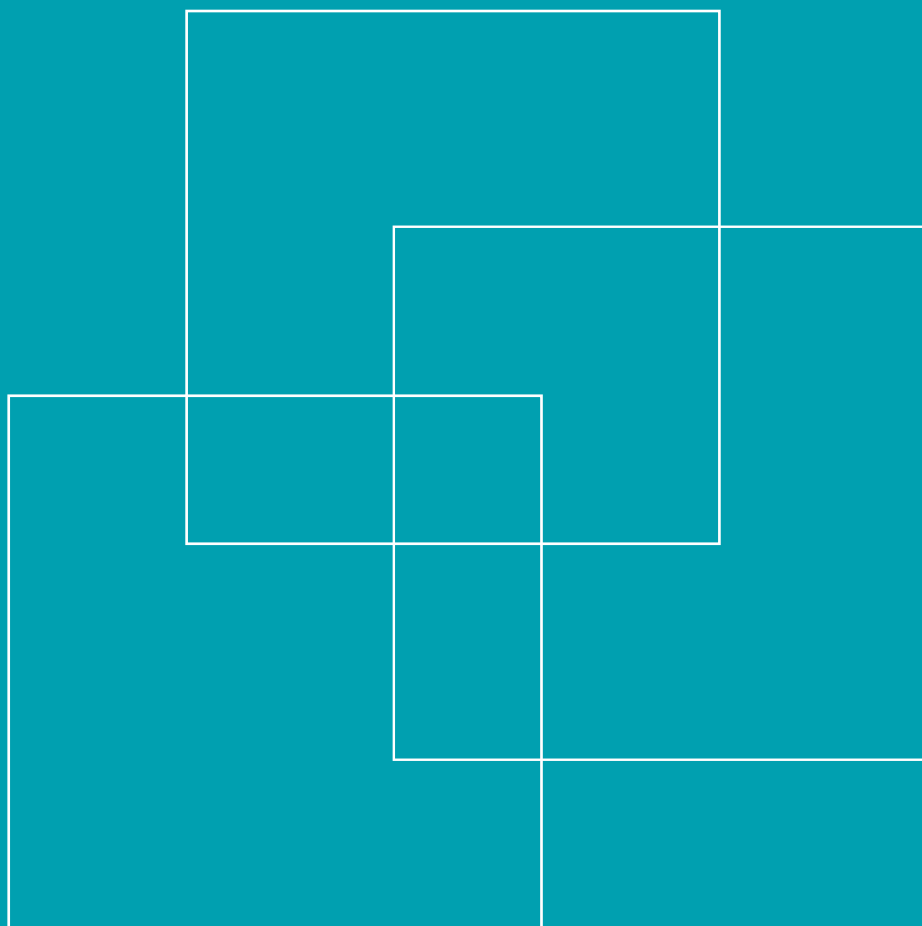


International
Labour
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International Labour Conference
Ninety-seventh Session, Geneva, 2008

Conference Committee on the Application of Standards

Extracts from the Record of Proceedings



CONFERENCE COMMITTEE ON THE APPLICATION OF STANDARDS

EXTRACTS FROM THE
RECORD OF PROCEEDINGS

INTERNATIONAL LABOUR CONFERENCE

NINETY-SEVENTH SESSION
GENEVA, 2008

CONFERENCE COMMITTEE ON THE APPLICATION OF STANDARDS

EXTRACTS FROM THE RECORD OF PROCEEDINGS

- GENERAL REPORT
- OBSERVATIONS OF THE COMMITTEE OF EXPERTS
ON THE APPLICATION OF CONVENTIONS AND
RECOMMENDATIONS – INDIVIDUAL CASES
- OBSERVATIONS AND INFORMATION
CONCERNING PARTICULAR COUNTRIES
- SPECIAL SITTING TO EXAMINE DEVELOPMENTS
CONCERNING THE QUESTION OF THE OBSERVANCE
BY THE GOVERNMENT OF MYANMAR OF THE
FORCED LABOUR CONVENTION, 1930 (No. 29)

INTERNATIONAL LABOUR OFFICE
GENEVA

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Foreword

The Conference Committee on the Application of Standards, a standing tripartite body of the International Labour Conference and an essential component of the ILO's supervisory system, examines each year the report published by the Committee of Experts on the Application of Conventions and Recommendations. Following the technical and independent scrutiny of government reports carried out by the Committee of Experts, the Conference Committee provides the opportunity for the representatives of governments, employers and workers to examine jointly the manner in which States fulfil their obligations deriving from Conventions and Recommendations. The Officers of the Committee also prepare a list of observations contained in the report of the Committee of Experts on which it would appear desirable to invite governments to provide information to the Conference Committee, which examines over 20 individual cases every year.

The report of the Conference Committee is submitted for discussion by the Conference in plenary, and is then published in the *Provisional Record*. Since 2007, with a view to improving the visibility of its work and in response to the wishes expressed by ILO constituents, it has been decided to produce a separate publication in a more attractive format bringing together the usual three parts of the work of the Conference Committee. This year, in order to facilitate the reading of the discussion on individual cases appearing in the second part of the report, it was decided to add the observations of the Committee of Experts concerning these cases at the beginning of this part. It is to be hoped that this new format will translate into a wider dissemination of the work of this key body of the international labour standards supervisory system.

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

**Report of the Committee on the
Application of Standards**

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PART ONE

GENERAL REPORT

A. Introduction

1. In accordance with article 7 of the Standing Orders, the Conference set up a Committee to consider and report on item III on the agenda: “Information and reports on the application of Conventions and Recommendations”. The Committee was composed of 227 members (122 Government members, 33 Employer members and 72 Worker members). It also included 14 Government deputy members, 54 Employer deputy members and 217 Worker deputy members. In addition, 29 international non-governmental organizations were represented by observers.¹
2. The Committee elected its Officers as follows:

Chairperson: Ms Noemí Rial (Government member, Argentina)
Vice-Chairpersons: Mr Edward E. Potter (Employer member, United States); and
Mr Luc Cortebееck (Worker member, Belgium)
Reporter: Mr Jinno Nkhambule (Government member, Swaziland)
3. The Committee held 15 sittings.
4. In accordance with its terms of reference, the Committee considered the following:
(i) information supplied under article 19 of the Constitution on the submission to the competent authorities of Conventions and Recommendations adopted by the Conference;
(ii) reports supplied under articles 22 and 35 of the Constitution on the application of ratified Conventions; and (iii) reports requested by the Governing Body under article 19 of the Constitution on the Labour Clauses (Public Contracts) Convention, 1949 (No. 94), and Recommendation No. 84.² The Committee was also called on by the Governing Body to hold a special sitting concerning the application by Myanmar of the Forced Labour Convention, 1930 (No. 29), in application of the resolution adopted by the Conference in 2000.³

Homage to Mr Janek Kuczkiewicz

5. The Committee set aside time to pay tribute to Mr Janek Kuczkiewicz, adviser to the Workers’ group, who had passed away in April 2008. In taking the floor, the representative

¹ For changes in the composition of the Committee, refer to reports of the Selection Committee, *Provisional Records* Nos 6-6H. For the list of international non-governmental organizations, see *Provisional Record* No. 5-1.

² Report III to the International Labour Conference – Part 1A: Report of the Committee of Experts on the Application of Conventions and Recommendations; Part 1A(2): Information document on ratifications and standards-related activities; Part 1B: General Survey on labour clauses in public contracts.

³ ILC, 88th Session (2000), *Provisional Records*, Nos 6-1 to 6-5.

of the Secretary-General, the Chairperson of the Committee of Experts, the Chairperson of the Committee on the Application of Standards, the Worker and Employer members, as well as individual members of the Committee, particularly from the Workers' group, all described the great loss and immense sadness that they felt at his passing. They described his devotion to social justice and progress, fundamental workers' rights, the trade union movement and the ILO. They recalled his perseverance and integrity in fighting for the cause of human rights, for example in Poland in the days of Solidarnosc, in combating Apartheid in South Africa and particularly his crucial contribution to the work of the Commission of Inquiry on Myanmar. They evoked his great courage in overcoming disability and weak health, his warm and open character to all his colleagues, whatever their beliefs, and his determination through his various hobbies to live life to the full. They sent their deeply felt condolences to his family and friends, and particularly to his daughter who was present at the sitting, and emphasized that he would always be remembered by all those who had been fortunate enough to come into contact with him.

Work of the Committee

6. In accordance with its usual practice, the Committee began its work with a discussion on general aspects of the application of Conventions and Recommendations and the discharge by member States of standards-related obligations under the ILO Constitution. In this part of the general discussion, reference was made to Part One of the report of the Committee of Experts on the Application of Conventions and Recommendations and to the Information document on ratifications and standards-related activities. During the first part of the general discussion, the Committee also considered its working methods with reference being made to a document submitted to the Committee for this purpose.⁴ A summary of this part of the general discussion is found under relevant headings in sections A and B of Part One of this report.
7. The second part of the general discussion dealt with the General Survey concerning the labour clauses in public contracts carried out by the Committee of Experts. It is summarized in section C of Part One of this report.
8. Following the general discussion, the Committee considered various cases concerning compliance with obligations to submit Conventions and Recommendations to the competent national authorities and to supply reports on the application of ratified Conventions. Details on these cases are contained in section D of Part One of this report.
9. The Committee held a special sitting to consider the application of the Forced Labour Convention, 1930 (No. 29), by Myanmar. A summary of the information submitted by the Government, the discussion and conclusion is contained in Part Three of this report.
10. During its second week the Committee considered 23 individual cases from the final list relating to the application of various Conventions. In addition, the Government of Colombia appeared voluntarily before the Committee. The subsequent discussions on the individual cases and on Colombia could be found in Part Two of the Committee's report. The examination of the individual cases was based principally on the observations contained in the Committee of Experts' report and the oral and written explanations provided by the governments concerned. As usual, the Committee also referred to its discussions in previous years, comments received from employers' and workers' organizations and, where appropriate, reports of other supervisory bodies of the ILO and other international organizations. Time restrictions once again required the Committee to

⁴ Work of the Committee on the Application of Standards, ILC, 97th Session, C.App/D.1.

select a limited number of individual cases among the Committee of Experts' observations. With reference to its examination of these cases, the Committee reiterated the importance it placed on the role of the tripartite dialogue in its work and trusted that the governments of all those countries selected would make every effort to take the measures necessary to fulfil the obligations they had undertaken by ratifying Conventions. A summary of the information submitted by Governments, the discussions, and conclusions of the examination of individual cases were contained in Part Two of this report.

11. With regard to the adoption of the list of individual cases to be discussed by the Committee in the second week, the representative of the Secretary-General announced that the Officers of the Committee had made available a provisional final version (document D.4/Add.1) of the preliminary list of individual cases, which had been sent on 12 May 2008 to all member States. The Employers' and Workers' groups of the Committee had reserved the right to complement this list with a maximum of two additional cases. The Committee intended to examine the cases of 23 member States, in addition to the Special Sitting concerning Myanmar (Convention No. 29). The Committee subsequently adopted a final list (document D.4/Add.1(Rev.)), which contained the same cases as in the provisional final list.
12. Following the adoption of the list by the Committee, the Worker members indicated that the list of individual cases was not exactly as they would have wished. The preparation of the list of cases was not purely opportunistic, nor the occasion to settle old scores, particularly at the political level. The criteria to be taken into account when the list of cases was prepared were: the types of Convention, geographical balance, the nature of the comments of the Committee of Experts, the existence of footnotes, the quality and clarity of replies provided by governments, the urgency of situations and the comments of workers' and employers' organizations. It was, however, necessary to emphasize that it would not be appropriate to formally include a list of criteria in the working methods, as this could lead to the implementation of procedures intended precisely to avoid using these criteria.
13. In 2007, the Worker members, with reference to the procedure for the communication of the preliminary list of individual cases before the Conference, had expressed concern at the possibility that certain countries might reach agreements to the detriment of the system. The difficulties faced, once again this year, in the preparation of the list of individual cases gave grounds for reflecting seriously on the perverse effects of working methods which were originally intended only to improve the work of the Conference Committee. The general climate was becoming increasingly tense, which was regrettable for the future of the Committee's work, especially for the credibility of the supervisory system for standards, the survival of the concept of freedom of association and, over and above that, of tripartism, the cornerstone of the ILO. There would now be a persistent concern in relation to the attitude of certain governments made aware of the inclusion of their name on the preliminary list. The Worker members had indicated that they had been informed of manoeuvres of intimidation and blackmail. In contrast, other governments preferred not to take part in the discussion, thereby endangering the functioning of the supervisory system which was founded on tripartite dialogue. Yet, to enter into dialogue involved discussion with the other members of the Conference Committee. It was a question of learning and, in the final instance, of improving the conditions of workers throughout the world.
14. Even more serious and intolerable was the veto used this year by certain Employers against the inclusion in the list of cases of one country that should have been there, based on the promises made in the record of proceedings of the Committee in 2007. This was the individual case of Colombia. In 2007, the Employer members had accepted that the case of Colombia "could be discussed again in the future if assassinations and impunity continued". Taking account of the current anti-trade union climate, accepting that the case

would not be discussed would have definitively undermined the trade union movement in Colombia. The case of Colombia had become, in the same way as Myanmar, one of the most controversial cases of the Conference Committee. The murders of trade unionists continued with total impunity. To be able to continue debating the situation in Colombia and bring the full severity of the facts to the attention of the entire world, an innovative solution had once again been found. After offering a high-level tripartite mission in 2005, after offering a tripartite agreement in 2006, and after insisting that a report was accepted in 2007, the Colombian Government had offered this year to appear voluntarily before the Committee to be heard in the framework of a “quasi” special sitting, through which it intended to preserve the initiative and control. As it was essential to provide Colombian workers with the help they needed, the Worker members had not lingered on legal or institutional arguments concerning the admissibility of this request. The case of Colombia had therefore been examined outside the context of the list. It was, nevertheless, necessary to be clear; the solution agreed to had been the result of an acceptable compromise. But naivety should be avoided. This acceptance had been exceptional and was justified by the will to find an honourable solution to a problem which, in practice, had not had its origins in the attitude of the Worker members. In no event should this solution, as agreed, constitute a precedent for the future. As the Chairperson had clearly stated, “This way of proceeding on Colombia should not create a precedent.” Furthermore, it went without saying that the report of the discussions concerning the case of Colombia would not only cover the entire debate, but would also clearly show the conclusions, in the same manner as any case which featured on the list. With regard to tripartite agreements reached outside the Conference, time should be allowed in future to evaluate the results of such agreements.

15. With regard to the follow-up of agreements reached during the Conference, the Worker members considered that it was appropriate to recall the case of Argentina, which was unfortunately not unique. It was essential to underline that, since the last session of the Conference, nothing had been done in Argentina in response to the conclusions formulated in June 2007 by the Conference Committee. The Government had clearly indicated that it would send a report providing comprehensive answers to all the questions concerning, in particular, the application of Convention No. 87, including the questions raised in preceding years with regard to trade union legislation. The observation made in 2008 by the Committee of Experts unfortunately showed that, although the Government had benefited from the Office’s technical assistance on several occasions and much time had elapsed, no progress had yet been made. With regard to the Philippines, the situation also remained very grave. The case had been examined in 2007 as a case of serious failure of application. Again this year, the observation of the Committee of Experts confirmed that the Government persisted in not taking into account the successive conclusions formulated by the Conference Committee for many years. The Conference Committee had requested the Government to accept a high-level ILO mission in order to reach a better understanding of all aspects of the case, but in vain. The Government had taken no steps to eradicate violence against trade unionists. Violence and the murder of trade unionists continued. In March 2008, a union official had been killed in the province of Cavite and a journalist had been killed in April this year. In total, more than 56 people had been killed under the present Government. The Government should be urged to make every effort so that the ILO could help in the application of Convention No. 87 in law and in practice. With regard to the situation in the Bolivarian Republic of Venezuela, it was a matter for regret that progress had not been sufficiently satisfactory since the 2007 session of the Conference. The Government had not respected any of the commitments made with regard to reforming the Organic Labour Act to bring it into conformity with Convention No. 87; neither had it improved the functioning of social dialogue. Moreover, it had not taken steps to eliminate the interference of the National Electoral Board in trade union elections.

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16. Preparing the list of individual cases required a choice to be made between cases which were always, by their nature, worrying and worthy of interest because they concerned the fundamental rights of workers. The Worker members said that they welcomed the limited number of footnotes proposed by the Committee of Experts, which left the Employer and Worker members more scope to choose the cases that worried them most, and also enabled the Conference Committee to make good use within the international community of the broad mandate that it enjoyed, with the help of the Committee of Experts and the ILO. The Worker members emphasized that they were committed to making every effort to take footnotes into account in preparing the list of cases, which should not exclude the possibility in future of a particular country being called upon in relation to the application of a Convention other than that mentioned in a footnote.
 17. This year, it had been difficult for the Worker members to decide whether Indonesia should be included on the list for Convention No. 105 or Convention No. 182. Convention No. 105 had been chosen. The decision to restrict to 25 the number of individual cases still caused lively discussions among the Worker members. A number of cases could have featured in the list. The Worker members said they would have liked to discuss the case of Cambodia for Convention No. 87 which had been discussed in 2007. Many acts of violence, brutality, intimidation and shootings against trade union leaders and members were still occurring. The Government had not responded to the observations made by either the Committee of Experts or the International Trade Union Confederation (ITUC). Measures should have been taken to carry out in-depth and independent investigations into the murders of Cambodian trade union leaders. Continued vigilance was required in monitoring the case and any progress made.
 18. They would also have liked to have discussed Costa Rica for Convention No. 98. The case of Costa Rica had been examined by the Committee on several occasions, namely in 2001, 2002, 2004 and 2006. A high-level mission had visited the country in 2006. In July 2007, the Government had formally requested ILO technical assistance and appeared to wish to resolve the problems of application of Convention No. 98 and to promote tripartite dialogue. Nevertheless, and in spite of the draft legislation that was being drawn up, the major risk in practice was that collective bargaining would be completely sidelined. A recent ruling by the Constitutional Court, indicating that the collective agreements concluded in certain public institutions were unconstitutional, appeared to be in contradiction with the efforts announced by the Government. The Constitutional Court appeared to have very restrictive case law in relation to labour legislation, to the detriment of freedom of association. A reform of the Constitution was being carried out in Costa Rica, which envisaged the creation of solidarity cooperatives to replace trade union organizations. The adoption of such a text, which was the antithesis of the letter and spirit of Convention No. 87, would have an impact on the future of the whole trade union movement in Central America. In view of the request made by the Committee of Experts, it was to be hoped that there would be some good news in 2009.
 19. Moreover, they would have liked to discuss the case of Japan for Convention No. 29. Voices had been raised among the Worker members because the delicate issue of the so-called “comfort women”, used as sex slaves, had not been included on the list of individual cases. Reference should be made to all the political actions currently being undertaken throughout the world to convince the Government of Japan of the need to accept its responsibility in relation to the system of comfort women, to offer a public apology and to grant appropriate compensation to them and their families. In this respect, reference should be made to the resolution adopted by the European Parliament on 13 December 2007 and the resolutions adopted this year by the House of Representatives in the United States, in Canada and the Netherlands and, in May 2008, by the United Nations Human Rights Council. The situation of the victims was urgent and this case would undoubtedly need to be raised next year so that the ILO could adopt a position on it.

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20. The case of Turkey had not been selected, despite the absence of real progress in bringing the legislation respecting trade union and workers' rights into conformity with ILO Conventions. Changes had been announced recently. These promised changes would have to be taken into account later. The case of Pakistan in relation to Convention No. 100 on equal remuneration could also have been discussed. The Committee of Experts noted in its observation that the worker protection policy reflected the will of the Government to promote equal remuneration for men and women. However, this will was not being given effect through tangible measures for the perfect application in law and practice of the principles set out in Convention No. 100. In view of the lack of full information from the Government of Pakistan, there was no indication of the manner in which it intended to ensure, in practice, the application, supervision and enforcement of the principle of equal remuneration for men and women workers for work of equal value. The issue of equality between men and women was a fundamental right without which a society could not operate in a dignified manner. The situation relating to the application of Convention No. 100 in Pakistan required continued attention. In particular, attention also needed to be drawn to the situation in the country in view of the refusal of the Government, despite reiterated promises, to make every effort to comply with its international obligations in relation to Conventions Nos 87 and 98.
21. The Employer members observed that they would usually have simply accepted the list of cases as being selected from the numerous possibilities according to criteria which were not mathematical. However, on this occasion they noted that the Worker members had mentioned at least three cases which had not even featured on the preliminary list. This was unfortunate and reflected a problem with the Conference Committee's methods of work.
22. They noted that the Worker members had referred to the fundamental importance of tripartism and freedom of association. However, the day that the Worker members did not treat with equal importance the rights of employers' organizations to freedom of association was a day of shame in the ILO. During the cold war, the Worker members had opposed double standards for a certain group of countries. Now, they were creating their own special double standards for one particular country. Every one of the 23 cases on the list was a Worker case. The only case that the Employer members had sought to include was that of the Bolivarian Republic of Venezuela, where for 15 years the freedom of association rights of the Venezuelan Chambers of Commerce and Manufacturing Associations (FEDECAMARAS) had not been recognized. There was no more important case for the Employer members. Normally, the discussion of cases led to progress. In the case of the Bolivarian Republic of Venezuela, however, there had been a deterioration. It involved government interference in the affairs of FEDECAMARAS, including the arrest and exile of its former President, Mr Carlos Fernández; the destruction of FEDECAMARAS headquarters; the failure to consult FEDECAMARAS on more than 450 decrees; violations of fundamental civil liberties; and the confiscation of enterprise leaders' private property. In addition, freedom of movement was severely restricted, as 15 FEDECAMARAS leaders were prohibited from leaving the country. The case involved a country that was resisting the ILO's supervisory machinery.
23. The failure of the Worker members to accept the inclusion of the case of the Bolivarian Republic of Venezuela on the list was based on hypocrisy. Each case rested on its merits; to say that a particular case would not be accepted unless another on the list was included was unethical. Not to accept even a single Employer case for discussion had consequences. The success of the supervisory system depended on the cooperation of the Employer and Worker members. Freedom of association and tripartism were the cornerstones of the ILO. By not accepting the case of the Bolivarian Republic of Venezuela, the Worker members had rejected the bedrock of the ILO. Their decision undermined the ILO's values and had consequences for the Conference Committee. There was no principle that could justify the

position of the Worker members other than a destructive double standard. The Employer members warned that there would be no list of cases in the future that did not feature the Bolivarian Republic of Venezuela and this situation would continue until such time as that country met its international obligations to comply with Convention No. 87.

Working methods of the Committee

24. The Chairperson announced, in accordance with Part V(E) of document D.1, the time limits for speeches made before the Committee. These time limits were established in consultation with the Vice-Chairpersons and it was the Chairperson's intention to strictly enforce them in the interest of the work of the Committee. Finally, the Chairperson called on the members of the Committee to make every effort so that sessions started on time and the working schedule was respected.
25. The Employer members recalled that since the June 2007 Conference, there had been two meetings of the Tripartite Working Group on the Working Methods of the Conference Committee that had continued the work begun in June 2006 to update the processes and practices of the Committee, as reflected in document D.1. These improvements included the following: (i) governments were given a preliminary list of cases two weeks prior to the Conference; (ii) the Worker and Employer members were going to hold a separate briefing for governments to explain the criteria for the selection of the final list of cases; (iii) governments were expected to register in order to present their cases by Friday evening of the first week of the Conference; after this deadline, the Office had the authority to set the schedule for the discussion of those governments that had not registered with all work of the Committee to be completed by the following Friday; (iv) in response to requests of governments concerning time management, each member of the Committee was to respect the Chairperson's announced speech time limits; (v) the Committee could discuss the substance of cases on the list in cases where governments were registered and present at the Conference but failed to be present before this Committee; and (vi) there were explicit expectations of decorum for the Committee.
26. While welcoming these improvements in the methods of work, the Employer members considered that there was still some room for progress. First, it was clear that this Committee or the Conference needed to make some accommodation every three years due to the scheduled elections of the members of the Governing Body. As was the case this year, the elections led to losing an entire day of work. This could have a catastrophic impact on the workload of this Committee and ultimately on the quality of its report. Thus, in its methods of work, the Committee should be allowed to proceed with its work during the Governing Body elections. Otherwise, fewer cases should be examined in years when elections were taking place.
27. Second, although the list of cases had not been adopted yet, it was clear that there was a need for greater diversification of cases. As in previous years, about half of this year's cases would address freedom of association. A substantially larger number of cases should address forced labour, child labour and discrimination because, by placing emphasis on freedom of association, the Committee risked missing over half of the world's workers who were not covered through the ratification of Convention No. 87. The exercise of freedom of association and collective bargaining was dependent on the maintenance of fundamental civil liberties and democracy, in particular, the right to freedom and security of the person, freedom of opinion and expression, freedom of assembly, the right to a fair trial by an independent and impartial tribunal and protection for private property. These were the root causes of forced labour, child labour and discrimination on a large scale. These concerned the poorest of the poor. Information from this year's Conference report on rural employment indicated that the size of the informal economy was over 90 per cent of the labour force in sub-Saharan Africa, 75 per cent in Latin America, 50 per cent in East

Asia and over 90 per cent in some countries in South Asia. Moreover, the majority of these workers were mainly women and young persons among the poorest in society facing a total lack of legal protection and a gap in application of labour standards leading in many cases to lower wages, lower productivity, longer working hours, hazardous conditions and the abuse of workers. Report III (1A) contained an exceptionally large number of detailed observations on forced labour, child labour and discrimination that cried out for discussion. This was not to minimize freedom of association or the relevant cases on the list, but to highlight that there were very serious problems affecting women and children that freedom of association was not equipped to solve. A way to facilitate diversification included: setting an absolute maximum of freedom of association cases; setting out a schedule to ensure that all categories of conventions were discussed at least every four years; fixing the distribution of cases among the four regions; and no longer discussing cases for a period of time in circumstances when countries continued to show progress in implementing their international obligations in law and in practice. Finally, the Employer members pointed out that this year marked the 50th anniversary of Convention No. 111, the 60th anniversary of the Universal Declaration of Human Rights and Convention No. 87, and finally, the 10th anniversary of the 1998 Declaration on Fundamental Principles and Rights at Work.

28. The Worker members emphasized the fact that the informal tripartite consultations which had taken place in the past within the Tripartite Working Group on the Working Methods of the Conference Committee on the Application of Standards had resolved various problems and had resulted in an open and transparent mechanism. It was therefore important to pursue consultations within this forum. Regarding the preliminary list of individual cases for discussion, there were both advantages and shortcomings. It allowed governments to gain awareness of their deficiencies and take the appropriate remedial steps, including the signing of tripartite agreements. The communication preceding this list should not, however, be uniquely considered as a tool that allowed governments to prepare their “defence”. It should allow for in-depth work that would anchor standards in daily practice, not something improvised just before the Conference. In the future, the results obtained from the last minute conclusion of tripartite agreements should be evaluated.
29. The Government member of Germany, also speaking on behalf of the Government members of the Industrialized Market Economy Countries (IMEC), expressed appreciation for the Tripartite Working Group’s efforts to facilitate productive discussions and make the effective use of the Committee’s limited time. She further welcomed the recommendations that had been introduced to date, in particular the early communication to governments of a preliminary list of cases as well as the guidelines for improving time management in the Committee. Moreover, the process of selecting cases was becoming more efficient and transparent. In spite of these positive developments further improvements were necessary, especially with respect to time management. Last year, she noted, the Committee lost many hours simply to the failure of meetings to start on time. As the entire second week would be devoted to the examination of individual cases, she expressed the hope that evening sittings would be kept to an absolute minimum this year, and preferably avoided altogether. To this end, she strongly encouraged all Committee members to respect the designated time limits for interventions and, more importantly, to make it possible to start meetings promptly. Notwithstanding these positive developments, she voiced concern with the fact that, during last year’s Committee, there had been cases where Governments either attempted to influence the final listing of cases, or failed to take part in the discussion concerning their respective countries. As IMEC considered that such behaviour undermined the integrity and credibility of the Committee’s work, she supported without reservation the excellent recommendations that were made by the Tripartite Working Group at its last meeting in March 2008, set out in document D.1, regarding the refusal of Governments to participate in the work of the Committee and concerning the respect for parliamentary rules of decorum. As there were further improvements to be made to the Committee’s methods of work, IMEC expressed full support for the continuation of the

Tripartite Working Group. This would ensure ongoing, open and transparent discussion of these important issues without sacrificing the limited time available to the Committee.

- 30.** The Government member of Italy expressed support for all the points contained in the statement by the IMEC group. He recognized the efforts made by the Conference Committee to improve its working methods through the Tripartite Working Group. He emphasized the importance for the smooth functioning of the Conference Committee of the agreements reached on transparency and governance and all the changes made to enhance the efficiency, effectiveness and objectivity of the Committee. He referred, in particular, to the changes intended to improve time management in the Committee's work, the advanced publication of a provisional list of individual cases and the information meeting for Governments on the way in which the selection criteria had been applied to those cases. He expressed the hope that the selection process would be increasingly transparent and participatory.
- 31.** The Government member of Zimbabwe outlined the history of the ongoing review of the working methods of the Conference Committee since 2004, recalling that it had been the manner in which some developing countries had been treated in the Committee that had motivated calls for the review from the Non-Aligned Movement. The review process, which was supported by many Governments and some social partners, should result in the adoption of measures to prevent abuse of the Conference Committee by any government, directly or indirectly, in the pursuit of political agendas against targeted developing countries. He therefore called for reforms which did not penalize those governments which felt they were being victimized for matters which fell outside the purview of labour administration. The working methods of the Conference Committee should be universal, non-selective and transparent, and should not be targeted to deal with particular countries or groups of countries which, because of other considerations, were deemed not to be cooperative at a given time. Coercing governments to behave or to respond in a prescribed manner defeated the essence of social dialogue and ultimately the achievement of social justice. He pointed out that, for the Conference Committee to remain both focused and dynamic, it should refrain from adopting working methods which were deemed to be punitive to member States and which also went against the informal nature of appearances by governments before the Committee.
- 32.** The Government member of Kuwait, also speaking on behalf of the Government members of the Council of Ministers of Labour and Social Affairs of the Gulf Cooperation Council, comprising Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates and Yemen, welcomed the serious effort by the Conference Committee to review its methods of work and to seek an appropriate formula to ensure the balanced participation by the tripartite constituents. She called for the inclusion of Government representatives in reviewing the criteria for the selection of individual cases, in collaboration with Employer and Worker members. In this respect, it was necessary for Government representatives to attend the meetings in which the individual cases were selected, as observers. She also reiterated the need for the list of individual cases to be submitted well in advance of the start of the Conference Committee, which would allow the countries on the list to prepare their responses and provide the necessary information, so that their names could be removed from the list. She reaffirmed the importance of the request made by the Gulf Cooperation Council and other countries that the attendance of the regional standards specialists should be ensured during the deliberations of the Conference Committee so that they were fully aware of the issues raised.

B. General questions relating to international labour standards

General aspects of the supervisory procedure

33. First of all, the representative of the Secretary-General provided information on the state of international labour standards and the overall responsibility of this Committee for considering the extent to which such standards were implemented. She pointed out that the Standing Orders of the International Labour Conference did not specify how the Committee was to perform its work and had thus given it a dynamic mandate with considerable discretion to adapt its action to the changing needs of the international environment. With this overall objective in mind, the Committee had had to adapt its methods of work over the years. The Committee had thus been able to review its methods of work in a pragmatic manner, as and when important issues arose, notably at the initiative of its members, on the basis of tripartite dialogue and consensus. The achievements of the Tripartite Working Group on the Working Methods of the Conference Committee were further proof of this. To enhance the clarity and efficacy of the supervisory system, the Tripartite Working Group had held five tripartite meetings since its establishment in June 2006 during the course of which it successfully dealt with all the issues referred to it. These issues, which were summarized in Document D.1, included proposals to improve time management, to include early scheduling of cases, and to adhere to the schedule of meetings. The early publication of a preliminary list of cases and the early decision on a final list also constituted improvements in the procedures of the Committee. An information session for governments by the Employer and Worker Vice-Chairpersons to explain the criteria used for the selection of cases had also been proposed. In addition, the Office would be able to schedule cases when the governments themselves had not registered by the deadline. These recommendations should continue to enhance the functioning of the Committee on the Application of Standards. In addition, two new measures were being proposed this year by the Tripartite Working Group in relation to cases in which governments had failed, despite repeated invitations by the Committee, to take part in the discussion concerning their countries and concerning respect of parliamentary rules of decorum. These new measures were set forth in document D.1. Finally, the speaker pointed out that at its last meeting in March 2008, a consensus had emerged on the continued functioning of the Tripartite Working Group. It was felt that the Tripartite Working Group had addressed a number of important issues which had enabled the Conference Committee to work more efficiently and effectively, in particular due to increased transparency.
34. Turning to the issue of the functioning of the supervisory system, the representative of the Secretary-General pointed out that the submission of reports under articles 19 and 22 of the ILO Constitution had become a matter of great concern over recent years both for the Committee of Experts and this Committee. This year was unfortunately no exception to the regular decrease of the total number of reports submitted. This was despite the strengthened follow-up, undertaken by the Committee of Experts and this Committee, with the assistance of the Office, of cases of serious failure by member States to fulfil reporting and other standards-related obligations. The overall philosophy of this follow-up lay in two core considerations: on the one hand, compliance with the reporting obligations was of paramount importance for the efficient functioning of the supervisory system and, on the other hand, non-compliance was due to difficulties encountered at the national level. The Office had also taken action on the conclusions of the Conference Committee, by undertaking nine missions to countries where such a follow-up was recommended. Finally, the Office had also given effect to the request made by this Committee for greater visibility of the results of its work. It had published the proceedings of this Committee as a separate publication and would integrate any further improvements to it proposed by the Committee.

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35. The representative of the Secretary-General then went on to describe the work of the supervisory system at the heart of the Decent Work Agenda. She recalled that the Governing Body had been discussing since November 2005, actions to implement a standards strategy with a view to enhancing the impact of the ILO standards system. This strategy contained four interrelated components: enhancing the impact of the ILO's standards policy, its supervisory system, a better integration of international labour standards into technical cooperation activities, and an effective communication strategy on standards. The main common theme of the four components of the strategy related to the efficient use of resources with a view to obtaining the greatest possible impact. In November 2007, the Governing Body adopted an interim plan of action aimed at: (1) raising the coherence and impact of the body of international labour standards as a crucial component of the Decent Work Strategy; (2) enhancing the standards system integration, coherence and relevance; and (3) building a new tripartite consensus on the ILO standards system as a whole. The Governing Body also approved the launch of a ratification campaign, supplementing the existing one, on the eight fundamental Conventions and extending it to include the four priority Conventions: the Labour Inspection Convention, 1947 (No. 81), and the Labour Inspection (Agriculture) Convention, 1969 (No. 129); the Employment Policy Convention, 1964 (No. 122); and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). This new campaign will also include the four recently adopted Conventions: the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185); the Maritime Labour Convention, 2006; the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187); and the Work in Fishing Convention, 2007 (No. 188).
36. Concerning the issue of extending social protection, the speaker underlined that most people entered the informal economy not by choice but out of a need to survive. Especially in circumstances of high unemployment, underemployment and poverty, the informal economy provided many with jobs and income generation outlets because of the relative ease of entry and low requirements for education, skills, technology and capital, but the jobs thus created often failed to meet the criteria of decent work. In many countries, both developing and industrialized, there were linkages between changes in the organization of work and the growth of the informal economy. Workers and economic units were increasingly engaged in flexible work arrangements, including outsourcing and subcontracting; some were found at the periphery of the core enterprise or at the lowest end of the production chain, and had decent work deficits. Workers in the informal economy had little or no social protection and received little or no social security, either from their employer or from the government. Beyond traditional social security coverage, workers in the informal economy were without benefits in areas such as education, skill-building, training, health care and childcare, which were particularly important for women workers. To promote decent work, it was necessary to eliminate the negative aspects of informality while at the same time ensuring that opportunities for livelihood and entrepreneurship were not destroyed, and promoting the protection and incorporation of workers and economic units in the informal economy into the mainstream economy. For the above reasons, the International Labour Standards Department had decided, with the ILO International Institute for Labour Studies, to launch next year a research project to better understand the policies that facilitated the integration of standards in the informal economy.
37. In conclusion, the speaker pointed out that this year marked the 50th anniversary of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), which was the most comprehensive, dedicated instrument on discrimination in the world of work. She invited those member States, which had not yet done so, to ratify and implement this fundamental Convention. This year also marked the 60th anniversary of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). This core Convention's impact had crossed the workplace frontier and enabled democracies to

flourish. Yet, regrettably, with 148 ratifications, Convention No. 87 remained the least ratified of the fundamental Conventions. This had created a protection void for more than 55 per cent of the world's workers, given the significant working population in non-ratifying States. She therefore called upon all member States, which had not yet done so, to ratify and implement Convention No. 87.

38. The Committee welcomed Justice Robyn Layton, Chairperson of the Committee of Experts. She indicated that it was the last occasion on which she had the privilege of addressing the Conference Committee, as her term as Chairperson of the Committee of Experts had come to an end. The Committee's new Chairperson was Professor Janice Bellace, a highly respected Professor from Wharton University in Pennsylvania in the United States. She also paid tribute to Judge Sô of Senegal a long-standing member of the Committee of Experts whose term had come to an end.
39. The speaker also stated that in the context of the Committee of Experts' last session, as in previous years, a special sitting with the two Vice-Chairpersons of the Conference Committee had taken place. Like the previous year, an interactive format was followed to discuss matters of mutual interest. The two Vice-Chairpersons had provided information on the recent changes in the Conference Committee's working methods in order to improve the transparency and effectiveness of its work. The Workers' Vice-Chairperson raised the possibility of the Committee of Experts reproducing certain comments the following year, being a non-reporting year when, for example, an important issue was not able to be taken up during the Conference Committee session due, for instance, to time constraints. Furthermore, the inclusion of trends and highlights in the General Report was discussed, as well as ways to improve the distinction between reporting by the Committee of Experts of the assertions made by the social partners and setting out the bases for the Experts' conclusions on compliance. The discussion gave members of Committee of Experts a better appreciation of some of the complex issues and concerns arising in the Conference Committee. Likewise, it was hoped that the special sitting provided the Vice-Chairpersons with a more detailed and specific understanding of the difficulties experienced by the Committee of Experts in its work.
40. The Chairperson of the Committee of Experts then pointed to areas of progress and concern in the reporting process. She indicated that there were some encouraging signs of improvement in the 45 member States who had been the subject of persistent and serious failure to report in the past. Such lack of reporting was also associated with failure to comply with other standards-related obligations. As a result of the concerted efforts of the Office to identify the reasons for non-compliance and to provide targeted assistance to these member States, some headway had been made as set out in footnotes 4 and 5 of the General Report. However, the Committee of Experts had expressed its deep dismay that the total number of reports received from member States decreased even further in 2007 to 65.04 per cent from 66.4 per cent the year before. The situation concerning reports from non-metropolitan territories was even worse, with the reporting rate dropping to a meagre 35.86 per cent from 66.71 per cent the year before. The reasons for non-reporting were overwhelmingly matters of an institutional nature, such as lack of resources and inadequate coordination, rather than more deeply rooted particular national circumstances. These reasons for non-compliance were therefore, in theory, soluble but they required the will and commitment of the member States in combination with appropriate targeted assistance from the Office. The Committee of Experts therefore highlighted the need for the Office to further address the problems of non-reporting through targeted measures such as incorporating reporting assistance into the broader technical cooperation programmes. The Chairperson of the Committee of Experts then pointed to the continuing problem of late reception of reports from governments, although there had been a marginal improvement from the previous year, namely 34.2 per cent instead of 28.8 per cent. Another concern was the lack of response by governments to the observations and direct requests made by the

Committee of Experts. Of the 49 governments to whom the Office had sent follow-up letters requesting further information in reply to comments, only eight had responded, which was a decrease from last year.

41. The speaker also explained that the Committee of Experts had agreed on a number of matters based on the work of its Subcommittee on Working Methods. The importance of suggesting measures to assist governments to follow up on particular comments made by the Committee was recognized and it was decided to revisit the matter at the Committee of Expert's upcoming session. The Committee of Experts also provided guidance to the secretariat for the initial preparation of its work, including concerning a more consistent implementation of the existing criteria so as to more clearly distinguish observations from direct requests, and concerning ways to assist member States in responding to lengthy comments of the Committee of Experts. The Committee of Experts also agreed to insert a new section in its General Report highlighting cases which are examples of "good practices", to enable governments to emulate these in advancing social progress, and to serve as a model for other countries in the implementation of ratified Conventions. It also decided to resume publication of a section identifying highlights and major trends on topical issues arising from the Committee of Experts' examination of reports, when such issues emerged. With regard to the request from the Worker members regarding the reproduction of certain previous comments in a non-reporting year, Committee members expressed concern about the impact of such a request on governments and whether such a request would need to come from the Conference Committee as a whole. Further, if such a request was made, the Committee of Experts was concerned as to how the request could be considered by it and, importantly, whether it would include a process whereby a government could submit any additional elements. Finally, the Committee of Experts took note of the Governing Body's request that the Office review existing report forms and designated three of its members to contribute their expertise on Conventions for which they were responsible, in order to assist the Office's review.
42. The Employer members and the Worker members, as well as all Government members who spoke, welcomed the presence of the Chairperson of the Committee of Experts in the general discussion of the Conference Committee.
43. The Employer members pointed out that the participation of the Chairperson of the Committee of Experts in the work of the Committee reflected the essential fact-finding role of the Committee of Experts in relation to the work of the Conference Committee. Without the help of the Committee of Experts, this Committee could not function. It should be noted with concern that only 16 of the 20 Experts were currently appointed. Given the significant workload of the Committee of Experts, the Employer members encouraged the Director-General to propose as a matter of urgency to the Governing Body a number of candidates for the vacancies so they could be appointed without delay to ensure the effective and efficient operation of the Committee of Experts. The Experts should come from a diverse professional background given the various economic and legal considerations which had a bearing on the work of the Committee of Experts.
44. The Employer members once again expressed appreciation of the Experts' invitation to exchange views with them during the December 2007 Session of the Committee of Experts, as well as of the continued use of the format of dialogue on issues rather than statements of position. They also recognized and continued to appreciate the work of the Director of the Standards Department and her staff who served as the secretariat to this Committee. They were especially appreciative of the new bound report of this Committee's 2007 report, which they had been asking for some time. It was in keeping with the stature of this Committee, which had been the only standing committee of the ILO Conference since 1926, as reflected in article 7 of the Standing Orders of the Conference. One immediate way in which the quality of this report could be improved would be to

either reproduce the observations of the Committee of Experts that served as the basis for the Committee's discussion or at a minimum, cross reference the discussion to the appropriate page in Report III (1A) of the Committee of Experts.

45. While expressing appreciation at the clarity of the report of the Committee of Experts on the status of the reform of its working methods and the information provided by its Chairperson in this regard, the Employer members also expressed caution as to the issue of highlighting "good practices". More information was needed as to what was meant as a "good practice" and what was the relationship of "good practices" to the standards set out in a particular Convention. The word "good" implied something above the minimum standard of a Convention, possibly an ideal practice. It was possible that by highlighting "good practices" the highlighted practice might deter implementation of Conventions by other Members. As in previous years, the Employer members had a number of suggestions which included: the expansion of the country profiles in Report III (Part 2) to provide a longitudinal picture of Conventions ratified; references to the years of the Experts' observations and this Committee's consideration of them; years in which a special or continued failure paragraph was adopted; and current Committee on Freedom of Association cases involving the country. The Employer members considered the number of footnotes – seven this year – to be a reasonable number. However, in view of the importance of both double and single footnotes, the Employer members proposed that they be rendered more visible by placing them under a heading in a distinct paragraph or in a "box" rather than reducing them to a footnote accessible only to those who had specialized knowledge of this Committee. They reiterated their request that the section of the Committee of Experts' report on collaboration with other international organizations be shifted to the Information document on ratifications and standards-related activities, as being a closer reflection of the materials contained in that report. Furthermore, the Employer members questioned the purpose of the first 26 pages of this year's Information document as well as their relevance to the mandate of the Committee of Experts which had been to pronounce itself on the facts with respect to the application of ratified Conventions.
46. Finally, certain comments were to be made with regard to the application of specific Conventions. With regard to the general observation made by the Committee of Experts on the Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27), requesting information on the manner in which the Convention was applied in relation to modern methods of cargo handling (page 685), the Employer members, although not opposing this request in substance, inquired whether it was covered by the mandate of the Committee of Experts or whether it was the Governing Body, through the LILS Committee, which had the competence to define the scope of article 22 reporting through its approval of report forms. Moreover, while placing emphasis on the eradication of forced labour as a priority, the Employer members also expressed concern at the observation made by the Committee of Experts with regard to the application by Guatemala of the Forced Labour Convention, 1930 (No. 29) (page 211). The Employer members stated that the Committee of Experts reiterated a view already expressed in last year's General Survey on forced labour with regard to the obligation to do overtime outside normal daily working hours, which could be considered, according to the Committee of Experts, as forced labour where a worker might face dismissal. The Employer members considered that, irrespective of the factual context of the Guatemala case, this interpretation marginalized the Convention's central purpose of eradicating forced labour. While agreeing that overtime should be in line with national legislation and collective bargaining agreements, the Employer members could not see why something which was permitted in a collective bargaining context was not permitted in an individual worker context. In their view, where a worker understood and voluntarily accepted that, in case employment was accepted, overtime would be required and, where the issue was not a survival wage, such subsequent overtime was not forced labour even if it exceeded the normal hours of work. Overtime was a regular condition of employment. The Employer

members therefore requested the Committee of Experts to reconsider this view of forced labour and overtime.

47. While recognizing the excellent work accomplished by the Committee of Experts, the Worker members considered it imperative that the composition of this supervisory body be such as to allow it to fully accomplish its mission. Indeed, the strength of the supervisory system of the ILO lay within the synergy between the Committee of Experts, endowed with a juridical competence and independence which were internationally renowned, and the Conference Committee on the Application of Standards. Hence, it was necessary for the International Labour Standards Department and the Committee of Experts to command all the human and financial resources necessary for the promotion of standards-related and supervisory activities exercised by the ILO. Indeed, the report of the Committee of Experts was not a text destined to be read only by the elite, but also a tool for all interested parties, be they workers, employers or persons working in the field. In this regard, the Worker members welcomed the decision of the Committee of Experts to focus on measures to be taken to help governments with the follow-up to the Experts' comments, as well as the decision to incorporate, starting next year, a new section highlighting certain good practices which could serve as examples for other countries. Moreover, the insertion of another section, dedicated to highlights and major trends concerning current events, also deserved to be commended, as this would give a social dimension to globalization at a time when only economic and financial criteria seemed to be privileged. Finally, the Committee of Experts had looked at the possibility of reproducing, in the report for the current year, the comments featured in the reports of the preceding years following a request to that effect from the Worker members. The Worker members referred to the opinion of the Committee of Experts, according to which such a demand should emanate from the whole of the Conference Committee. They indicated that they would like to return to study this issue at a later stage with the legal assistance of the Office.
48. Moreover, employers' and workers' organizations had a role to play in communicating information that was useful for evaluating the application of standards and governments should include the social partners in the supervisory process. This year, the number of comments received by the social partners had increased slightly. It was important that these comments arrived on time, featured up to date information targeting the real problems, and provided added value. In addition, workers' organizations would be made aware of the logic behind reporting cycles, which would permit account to be taken of serious allegations of non-respect of Conventions. In addition, Governments should not only supply information on legislation, but also on the practical application of Conventions by providing, in particular, labour inspection reports and judicial decisions. Cases of progress by the Committee of Experts should be based on an evaluation of the legal and factual analysis of the national situation. Account should also be taken of the fact that social progress, in a globalized world marked by the policies of international financial institutions, required States to adopt a proactive attitude and to seek to continue to achieve the best application possible of ILO instruments in order to advance workers' rights.
49. The Government member of Germany, speaking on behalf of the IMEC countries, expressed IMEC's appreciation of the continued efforts of the Committee of Experts to enhance the quality and impact of its report through its improved presentation and structure. Nevertheless, the speaker pointed out that the Committee's observations were not always easy to understand, and encouraged it to continue to find ways to clarify the language in order to better capture significant situations. She expressed appreciation for the Committee of Experts' decision to insert a new section highlighting cases of "good practices" in their General Report. As the Experts themselves had noted, this information would provide a model for other countries to assist them in the implementation of ratified Conventions; it would also provide an important opportunity for dialogue within the Conference Committee. IMEC remained concerned that, despite an ever-increasing

workload, the Committee of Experts was still operating at less than full capacity as it had, almost continually, for the past decade. Given that currently, there were only 16 out of 20 Experts appointed, she again appealed to the Director-General to fill all vacancies on the Committee of Experts without further delay. She thanked the Office for the support provided to the supervisory bodies and called upon the Director-General to continue to ensure that the essential work of the Standards Department ranked among his top priorities.

- 50.** The Government member of Cuba indicated that paragraph 8 of the General Report of the Committee of Experts, in which some results were noted of the work undertaken in recent years by the Committee of Experts to study its working methods, was interesting to read. She doubted that it would be possible to reproduce comments of the Committee of Experts in its report the following year (i.e. a non-reporting year). In any event, governments should be consulted on this matter. It was satisfying to note how the Committee of Experts had applied more consistent criteria in order to distinguish the observations from the direct requests. It would also be most useful if the Committee reflected on the possibility of achieving greater rationalization in the use of observations and direct requests. Moreover, it was important that the Committee of Experts be able to evaluate the application of Conventions in law and practice using verifiable information from reliable sources, in particular reports from governments that were the basis of the work of the Committee of Experts. It was encouraging that an approach had been developed in order to identify cases of progress and that the Committee of Experts had expressed satisfaction or interest with the measures adopted by some countries. The Government of Cuba once again appeared in the list of cases of progress in relation to the Maternity Protection Convention, 2000 (No. 183), and the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152). The speaker concluded by stating that a constructive approach in the analysis and evaluation by the Committee of Experts had produced encouraging effects in continuing efforts, in cooperation with Cuban employers' and workers' organizations, to improve legislation and practice linked to compliance with the Conventions.
- 51.** The Worker member of Pakistan expressed appreciation of the work carried out by the Office and recalled the essential role of the Conference Committee, which was the heart of the International Labour Conference and was dedicated to defending the rights of the working class. He further recalled the essential principles underlying the ILO in its quest for social justice, freedom of association and the fact that labour was not a commodity. In view of the 60th anniversary of the adoption of Convention No. 87, it was right to call upon those countries that had not yet not done so to ratify the Convention, particularly in the case of States of chief industrial importance. As the 90th anniversary of the ILO would be celebrated next year, it was of particular importance for the countries concerned to set a good example that could be followed by developing countries, where the working classes continued to be confronted by multiple challenges. These included high rates of inflation, the harsh conditions imposed by the international financial institutions, the deregulation of markets and the obligation to establish export processing zones in which the fundamental rights of workers were denied. He called on the members of the Committee to remember the 1.3 billion workers throughout the world who had to survive on less than \$2 a day. He also emphasized the importance for governments which ratified Conventions to ensure that they were fully applied. This could only be achieved through tripartite consultation involving employers' and workers' organizations, as well as through discussion involving balanced delegations to the International Labour Conference. The strategic objectives of the Decent Work Agenda could only be achieved if the four fundamental rights of workers were fully enforced, with the participation of labour inspection systems. He called upon the ILO to strengthen the resources of the International Labour Standards Department so that it could provide an appropriate level of technical assistance to help constituents apply Conventions at the national level. He also expected the Office to help workers' organizations play an effective role in promoting and protecting the basic rights of workers. Finally, he called on those governments whose cases could not be discussed by

the Conference Committee due to lack of time to make every effort to give effect to the Conventions they had ratified.

- 52.** The Government member of Italy thanked the Committee of Experts and its Subcommittee for their efforts to increase the impact of its report by making it more readable and welcomed the decision to introduce a new section highlighting “good practices”. He expressed the hope that dialogue between the Committee of Experts and the Conference Committee on the Application of Standards would continue, as the smooth functioning of the two committees was essential to the success of the ILO’s supervisory system. With regard to the improvement of the ILO’s standards activities, his Government welcomed all the elements of the action plan proposed by the Office and supported the standards strategy approved by the Governing Body. The application of this strategy was fundamental to achieving decent work for all. In conclusion, he emphasized the importance of the universal ratification and effective application of Convention No. 87, which was celebrating the 60th anniversary of its adoption, for the promotion of democracy and decent working conditions.
- 53.** The Government member of Kuwait, also speaking on behalf of the Government members of the Gulf Cooperation Council, reaffirmed the will of the members of the Gulf Cooperation Council to collaborate in the achievement of decent work and the improved implementation of international labour standards. She observed that there had been an increase in the number of ratifications of the ILO’s fundamental Conventions by the Gulf countries since the adoption of the ILO Declaration on Fundamental Principles and Rights at Work in 1998. Of the 39 ratifications of the fundamental Conventions by the Gulf countries, 20 had been registered since 1998. Some of the countries of the Gulf Cooperation Council had now ratified all of the fundamental Conventions and she emphasized that these countries were prepared to develop their legislation in accordance with the principles set out in international labour Conventions, with a view to achieving economic, political and social development.
- 54.** The Government member of Norway, also speaking on behalf of the Government of Iceland, said that the two Governments fully supported the statement made by the Government member of Germany on behalf of the IMEC group. She then underlined the importance of the ILO’s standards system for the world of work, particularly in a globalized world where labour and capital moved across borders. The Decent Work Agenda was important in the way it focused on and promoted the obvious human right to a decent workplace and an income to live on, while the core Conventions were universally recognized and had been ratified by most ILO member States. Nevertheless, the Committee’s work demonstrated that, in many countries, those Conventions were far from being implemented. Furthermore, to a great extent the same countries appeared before the Committee year after year. Despite comprehensive assessments, repeated discussions and frequent calls for improvements, together with a sophisticated system of analysis and technical assistance to address the most serious problems of application, a number of countries seemed to make little, if any, progress in applying ratified Conventions. While she recognized that a number of countries might face difficulties in fulfilling their obligations through a lack of developed mechanisms and resources, the lack of political will to comply with ILO Conventions on fundamental rights at work also played a part. That was a matter of regret not only for workers in the countries concerned, but also for the globalized world economy, characterized as it was by transnational integration and interdependence. The continuous lack of application of ratified ILO Conventions in a number of countries posed a challenge to the promotion of decent work. Neither the conclusions of the Conference Committee, technical cooperation nor high-level missions seemed to have the desired effect. She expressed the hope that the 97th Session of the International Labour Conference would make serious progress in discussing and addressing the problem within both the Committee on the Application of Standards and

other relevant committees, particularly the Committee on Strengthening the ILO's Capacity.

55. The Government member of France said that his Government fully supported the statement made by the Government member of Germany on behalf of the IMEC group. He then drew the Conference Committee's attention to the procedure for the examination of comments from employers' and workers' organizations by the Committee of Experts. That procedure, established by the Committee of Experts and outlined in paragraphs 59 and 60 of its report, guaranteed an adversarial examination of position. It ensured that government replies to comments were brought to the attention of the Committee of Experts before it examined the comments made by a workers' or employers' organization. This was why it was envisaged that, if such comments reached the Office late in the year (after 1 September), examination of the case by the Committee of Experts was postponed until the following year to give the Government time to respond. The practice was outlined in paragraph 59 of the report. Paragraph 60 of the report illustrated the normal application of the procedure. Under these conditions, it was surprising to note that the procedure had not been followed in the case of comments by a workers' organization concerning the application of Convention No. 87 with regard to the Act on the continuity of public service in the transport sector. The Government had been informed of the existence of the comments in mid-September 2007, but had not been in a position to reply before the meeting of the Committee of Experts in November. The Committee of Experts had, nevertheless, examined the comments without waiting for the Government's reply. Furthermore, it had issued a substantive opinion requesting France to amend the Act without having taken into account the viewpoint of the French authorities. The fact that all the parties had not been able to make their views known before a legal opinion was given was the more regrettable in that the opinion of the Committee of Experts had been presented in certain media as final. He called on the Committee of Experts to re-examine the case in the light of the detailed legal response it had provided to the comments of the workers' organization.
56. The Government member of Lebanon commended the report of the Committee of Experts for its substantive and scientific approach. In her view, the continued increase in the length of the report was indicative, on the one hand, of the depth of analysis by the Committee of Experts and, on the other, of the quality of the reports submitted by member States in reply to the comments of the Committee of Experts and in accordance with their constitutional obligations. She noted the references made in the report of the Committee of Experts to the meetings held between members of the Committee, as well as with the Employer and Worker Vice-Chairpersons of the Conference Committee, to discuss issues of common concern. In this respect, she emphasized that it was necessary for governments to know the outcome of such meetings in view of their repercussions on standards-related obligations. With a view to strengthening tripartism and social dialogue, she emphasized the need to revive tripartite meetings held in parallel to the meetings of the supervisory bodies with the aim of clarifying the concerns of the social partners in relation to the current discussions on changes in standards policy, for example in the context of the current discussions in the Conference on strengthening the ILO's capacity. She also noted the greater emphasis that was currently being placed on non-fundamental and non-priority Conventions. While this strengthened the integrated approach to standards, which was both useful and comprehensive, there was a risk that the resulting standards could be lengthy and burdensome to follow up. Consideration therefore needed to be given to the additional burden on Governments in preparing their reports, and she therefore called for a review of deadlines for the submission of such reports. In addition, she requested clarification of the meaning of the sentence "the reproduction of certain previous comments" in the report of the Committee of Experts the following year and its impact on the reporting cycle and the obligations of member States. She also hoped that the discussions on reviewing the report forms could simplify the replies to be prepared by governments and she requested further clarification on the significance of the new plan of action to improve the impact of the

standards system. She recalled that the current number of members of the Committee of Experts was still 16 and she raised the issue of the reasons behind the delay in filling the additional four vacancies on the Committee. She reiterated the need in this context to increase the Arab membership of the Committee. Finally, she indicated that she found the Information document on standards was interesting. It covered the issues of streamlining the submission and examination of information and reports due under article 22 of the Constitution, the action plan to achieve rapid and widespread ratification and effective implementation of the Maritime Labour Convention, 2006, as well as other issues to be addressed at the start of work of the Conference Committee. She also called for the translation of article 24 of the Constitution into Arabic, a matter raised during previous years.

Fulfilment of standards-related obligations

57. The Employer members appreciated the analysis by the Committee of Experts, in paragraph 14 of its report, of the specific difficulties faced by governments in meeting their reporting obligations. They agreed with the exhortation of the Committee of Experts that the broader technical cooperation programmes should enhance the impact of the standards system as decided by the Governing Body at its November 2007 session. This decision should be implemented fully. Notwithstanding the Office's efforts, there was a continued decline in article 22 reports which threatened the functioning and eventually the credibility of the ILO supervisory system. The technical cooperation programmes mentioned earlier would hopefully result in a sustainable long-term approach to reverse the decline in reporting.
58. The Worker members had followed with interest the process of revision of report forms, the aim of which should be to allow governments to more easily meet their obligations in reporting. Regarding statistics on reports received for ratified Conventions, they noted that the percentage of reports received before the deadline had increased. Reports received late were a hindrance to the smooth functioning of the supervisory system and this percentage had to be improved upon by increasing technical assistance from the Office and simplifying the report forms. Regarding the small number of reports received on Conventions applicable in non-metropolitan territories, the Committee of Experts' appeal that member States remedy this situation should be supported. Economically developed European countries should lead by example, especially as member States experiencing major economic difficulties and faced with the demands of international financial institutions were being singled out for criticism.
59. The Government member of Cuba noted with concern that this year the number of reports received had declined yet again, without any halt to the trend being noted over the years. The small number of reports received on Conventions applicable in metropolitan territories was also a concern. This trend was a hindrance to the supervisory mechanism and allowed those who failed in this obligation to avoid their responsibilities in respect of ratified Conventions. This trend could be corrected in some cases through efficient technical cooperation and in other cases by a broader dissemination of the reasons behind non-compliance.
60. The Worker member of France emphasized that compliance by Governments with their reporting obligations and the time limits for the submission of reports was essential for the effectiveness of the supervisory system and the capacity of workers' organizations to participate in it. The role of labour administrations, whose functioning affected application and compliance with labour legislation, was essential to the effective implementation of ILO Conventions. This mission required such administrations to have at their disposal the material and human resources to discharge their functions. It was important to emphasize that Employers needed to give their support in this regard.

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61. With regard to the constitutional obligations to send reports and submit the instruments adopted, the Government member of Italy said that the Italian Government had sent all the required reports within the established time limits and had fulfilled its obligation to submit the Maritime Labour Convention, 2006, and the Promotional Framework for Occupational Safety and Health Convention, (No. 187), and the Promotional Framework for Occupational Safety and Health Recommendation, 2006 (No. 197), to the competent authorities. He emphasized the important work and numerous technical assistance activities undertaken by the Office, collaborating closely with its experts in the field, to follow up the conclusions of the Conference Committee. He shared the concern of the Committee of Experts with regard to the submission of reports: late reports, the fall in the number of reports received, and failure to submit first reports and to reply to the comments of the Committee of Experts threatened the operation and credibility of the ILO's supervisory system. He emphasized that, in order to deal with such problems, it was essential to strengthen technical assistance activities within the framework of an individualized follow-up. The Italian Government supported this innovative and valuable system which was based on identifying the reasons for persistent failure to comply and of devising special technical assistance for member States with the aim of dealing with their problems and training officials in the preparation of reports. He hoped that problems related to the submission of reports could be integrated into technical cooperation programmes. His Government supported the proposal being discussed by the Governing Body to rationalize the submission of reports, revise report forms and submit reports online.
62. The Government member of Kuwait, also speaking on behalf of the Government members of the Gulf Cooperation Council, highlighted the urgent need for the appointment of Arabic-speaking labour standards specialists in both the Regional Office for the Arab States and at ILO headquarters in Geneva so that they could provide technical assistance to member States with a view to improving their capacity to prepare reports and train national officials responsible for labour standards. She also called for the report forms to be reviewed and both observations and direct requests to be simplified to help member States meet their reporting obligations and facilitate the channels of communication between the ILO and member States. Efforts should be made to provide an Arabic version of all documents distributed to the members of the Conference Committee, as Arabic was one of the official languages of the ILO.
63. The Government member of Lebanon emphasized that her country had fulfilled its constitutional obligations under articles 19 and 22 and added that the Ministry of Labour was currently examining the Work in Fishing Convention, 2007 (No. 188), in preparation for its submission to the competent authorities. She commended the ILO Regional Office for Arab States and the efforts made to provide technical assistance to the Arab States.

The reply of the Chairperson of the Committee of Experts

64. The Chairperson of the Committee of Experts, responding to points made, expressed the hope that the cautionary view of good practice put forward by the Employer members would not apply to the cases and examples given by the Committee of Experts. She therefore welcomed the other, positive comments that had been made. With regard to the suggestions made, she said that the Committee of Experts would examine the possibility of expanding the country profiles. She also welcomed the helpful suggestion to highlight the "double footnoted" cases more visibly.
65. With regard to the issue raised by the Employer members of whether the obligation to do overtime work could constitute forced labour, she recalled that the General Survey on forced labour, discussed at the previous session of the Conference, had indicated that "..."

the Committee considered that the imposition of overtime did not affect the application of the Convention so long as it was within the limits permitted by national legislation or collective agreements. Above those limits, the Committee has considered it appropriate to examine the circumstances in which a link arises between an obligation to perform overtime work and the protection provided by the Convention.” The matter was different when overtime work regularly went beyond the provisions of collective agreements and of national legislation and workers were in practice forced to work excessive hours of work to earn enough to support their families, and there was effectively no choice for them, or where they were under threat of dismissal unless they worked unreasonable hours of overtime. In each case it would then be a question of the time worked, the frequency of overtime, any particular circumstances in which the obligation to perform overtime arose, whether overtime work was genuinely voluntary, and the effect of non-performance on a worker’s ability to earn a survival wage. The hypothetical example to which reference had been made concerned overtime work to be performed in emergency situations, which, by their nature, had certain characteristics. Rather than examining hypothetical situations, however, the Committee of Experts would have to examine specific cases as they arose in order to provide further clarification as appropriate.

66. With regard to the comments made by the Government member of Lebanon concerning the difficulties experienced by governments in complying with their reporting obligations, she said that the Committee of Experts would look at certain aspects of the report forms with a view to simplifying them.

The reply of the representative of the Secretary-General

67. At the very outset, the representative of the Secretary-General wished to thank all those who had participated in this discussion and to underline its importance for the secretariat. Indeed, the general discussion had provided an opportunity to have comments and suggestions made by the constituents for the secretariat to carry its core responsibilities in supporting the work of the supervisory bodies. The Chairperson of the Committee of Experts had already responded to the issues raised concerning the report of the Committee of Experts. She would therefore address the following matters: (i) the percentage of replies for the General Survey; (ii) fulfilment of reporting obligations; (iii) processing by the Office of the comments received from employers’ and workers’ organizations on the application of ratified Conventions; (iv) the filling of vacancies within the Committee of Experts; and (v) other issues.
68. Regarding the first point, the speaker indicated that the percentage of replies under article 19 of the ILO Constitution for the General Surveys had remained stable over the past years and were as follows: 48.5 per cent for the 2008 General Survey on public procurement; 44 per cent for the 2007 General Survey on forced labour; 51 per cent for the 2006 General Survey on labour inspection; 52.5 per cent for the 2005 General Survey on hours of work; and 52 per cent for the 2004 General Survey on employment policy. The low percentage in 2007 for Forced Labour could be due to the high rate of ratification and the low number of reports requested from States that had not ratified.
69. Turning to the concerns expressed by the Employer and Worker members over the number of reports received and the lateness of receipt of the majority of reports, she pointed out that two years ago, the Office had launched an innovative “personalized” follow-up to identify the reasons for persistent failures in order to target assistance designed for member States to address these difficulties. The Office had contacted each of the countries mentioned in the reports of the Conference Committee and, in light of the replies received, organized a number of technical assistance activities. In addition, over the past two years, the Department had provided financial support to technical assistance activities directly

undertaken by the sub-regional offices in relation to cases of serious failures. This had begun to bear fruit, and with close coordination between headquarters and the field, there were now cases of States resuming fulfilment of their reporting obligations. More importantly, there would now be systematic integration of reporting obligations in the Decent Work Country Programmes (DWCPs) with follow-up by specialists in the field.

70. Concerning the statement made by the Government member of France in relation to comments sent to the ILO by Force Ouvrière dated 31 August 2007, the speaker explained that 31 August was a Friday and the registry dated receipt of this communication on the next working day, Monday, 3 September 2007. A letter was sent to the Government on 11 September 2007 informing it that this communication would be brought to the attention of the Committee of Experts at its next session and inviting it to respond. In terms of both procedure and due process, all deadlines were respected and the Government was provided with ample time to respond.
71. In respect of the concerns raised by certain speakers that the Committee of Experts was still not functioning to its full operating capacity, the representative of the Secretary-General underlined that the Secretary-General would make nominations to the Governing Body in June and November 2008 to fill these vacancies. To maintain geographic balance, it was planned to recommend two experts from Africa, one from Asia and one or two from Europe.
72. Finally, concerning the recruitment of Arabic-speaking officials both in the Beirut office and at headquarters, there was an Arabic-speaking senior standards specialist in the region, and there was an ongoing competition for an Arabic-speaking standards specialist in the department.

C. Reports requested under article 19 of the Constitution

Labour Clauses (Public Contracts) Convention (No. 94) and Recommendation (No. 84), 1949

73. The Committee devoted part of its general discussion to the examination of the first comprehensive General Survey carried out by the Committee of Experts on the application of the Labour Clauses (Public Contracts) Convention, 1949 (No. 94), and the Labour Clauses (Public Contracts) Recommendation, 1949 (No. 84). In accordance with the usual practice, this General Survey took into account information supplied by 85 member States under article 19 of the ILO Constitution as well as information communicated by member States which have ratified the Convention in their regular reports under articles 22 and 35 of the Constitution. Observations and comments received from 30 employers' and workers' organizations to which the government reports were communicated in accordance with article 23(2) of the Constitution were also reflected in the General Survey.

Integrating labour clauses into public procurement contracts: Standards and challenges for national law and policy

74. The Employer members welcomed the General Survey as an opportunity to clarify the meaning and relevance of Convention No. 94 and Recommendation No. 84 concerning labour clauses in public contracts which touched upon complex issues regarding the social dimension of public procurement. Convention No. 94 established the requirement for labour clauses to be inserted in contracts awarded by central public authorities for certain

construction works, the manufacture of goods, the shipment of supplies or equipment, and the supply of services. The Convention required that, in the performance of those contracts workers should be provided with wages, hours of work and other conditions of labour which were not less favourable than those established by collective agreement, arbitration award or national laws for work of the same character in the trade or industry concerned in the district where the work was performed. The Convention also required the establishment and maintenance of an adequate system of inspection and the imposition of remedies and sanctions in case of non-compliance with the terms of the labour clauses.

75. The Committee of Experts indicated that clauses in public contracts that restated the applicability and binding nature of national laws, including those dealing with wages, hours of work and other conditions of employment, were not sufficient to meet the requirements of the Convention. Indeed, the Committee of Experts emphasized that the Convention required governments to ensure that the most advantageous local labour conditions were secured for workers performing work under public procurement contracts, which placed the contractor under the obligation to apply the most favourable pay rates, including overtime pay, and other working conditions established in the industrial sector and geographical region concerned. Referring to the Committee of Experts' interpretation of the Convention as requiring the most advantageous wages and other working conditions for workers engaged in the execution of public contracts, the Employer members recalled that international labour standards usually prescribed universal minimum standards and, in this sense, Convention No. 94 was somewhat different since it went beyond minimum standards. They were concerned that, in prescribing the most advantageous local conditions, the ILO might have exceeded its mandate with respect to this Convention.
76. The Employer members addressed what appeared to be the basic assumption by the Committee of Experts, which was also an assumption upon which the two instruments appeared to be based, namely that competition on the basis of labour costs was socially unhealthy and should always be avoided. In essence, this assumption was that it was desirable to insulate labour costs from the competitive pressure inherent in any bidding or tendering process. In the view of the Employer members, this assumption was faulty. The value of competition should be evaluated by measuring the advantages versus the disadvantages. Moreover, certain questions needed to be considered, such as whether competition eliminated corruption, whether it increased productivity and transparency, and whether it procured goods and services at the best value for money or the best quality for the price. The Employer members considered that the proper functioning of labour markets was based on competitiveness, which could include competition regarding labour costs, as well as other costs.
77. With regard to the Committee of Experts' view that in accordance with the Convention governments should be seen as setting an example by acting as "model employers", the Employer members stated that they were not opposed to governments aspiring to be "model employers" or promoting model contractors, but wished to point out that what constituted a model employer could only be determined with reference to the various stakeholders, which included not only workers, but also the public at large, including tax payers, the unemployed and other groups. Being a model employer required compliance with national labour and employment laws, but did not necessarily involve, for example, paying workers the most advantageous local rate of pay. Furthermore, economic realities meant that public administrations in many States were no longer in a position to provide the best working conditions available. Therefore, if the public sector in many countries did not provide the most advantageous local working conditions, what justification was there for a government to impose such standards on a third-party contractor?
78. Commenting on the Committee of Experts' reference to the issue of avoiding social and wage dumping in public procurement operations, the Employer members observed that

wage competition was a complex issue with various facets. Moreover, the terms “social dumping” and “wage dumping” had a negative connotation and had been used inappropriately. In the context of international trade law, the term “dumping” was generally defined as the act of a manufacturer in one country exporting a product to another country at a price that was below the price it charged in its home market or was below its production cost. In the field of labour law and social policy, the terms denoted the export of goods from a country with weak or poorly enforced labour standards, reflecting the idea that the exporter had costs that were artificially lower than its competitors in countries with higher labour standards and constituted an unfair advantage. The Employer members expressed the view that non-compliance with the Convention did not necessarily amount to social or wage dumping and therefore the two concepts should be kept distinct. They accordingly suggested that the Committee of Experts should be more careful in the language used in the General Survey.

79. In the understanding of the Employer members, the broader purpose of the Convention was that public authorities should concern themselves with the working conditions of workers employed under public contracts and paid for by public funds. Although they agreed that this interest might in principle be reasonable, they raised a number of concerns relating to the instruments under examination. Firstly, the Convention did not appear to have widespread support. Of the 60 countries that had ratified it, only one quarter were substantially applying it. Secondly, the General Survey demonstrated that the prevailing view of governments was that workers employed under procurement contracts were not in need of special protection over and above national labour and employment laws. Indeed, the Committee of Experts concluded that, based on the review of national law and practice, the idea of including labour clauses in public contracts was not widely accepted among member States. In fact, the Committee of Experts noted that member States were unwilling to take the necessary action to implement the Convention. It also noted that the principle that the State should act as a model employer by offering the most advantageous conditions to workers paid indirectly through public funds did not appear to enjoy popularity. Uniformity and coherence in the application of the Convention was lacking in the countries which had ratified it. Moreover, certain countries which had previously given effect to the Convention had now amended their legislation and no longer applied its provisions. And yet, despite all these observations, the Committee of Experts still claimed that the Convention provided a clear, concrete and effective solution to the problem of how to ensure fair wages and working conditions to workers engaged in the execution of public contracts.
80. The Employer members disagreed with this conclusion. The overall picture was very clear. Most countries had determined that ratification of the Convention was not possible or desirable. Countries appeared to consider that the Convention was outdated or in contravention of EU rules, that its application was too costly or overly bureaucratic, or that national labour legislation provided adequate protection. The Employer members therefore believed that there was no need to engage in promotional efforts to try and attract new ratifications in the foreseeable future. Moreover, they considered that it was not for the Committee of Experts to assess whether the Convention provided an effective solution, as such determinations could only be made by the tripartite constituents. Finally, they disagreed with the assertion that the Convention was up to date and should be partially revised to take into account major developments in the area of public procurement, as well as developments at the ILO, such as the adoption of the 1998 Declaration on Fundamental Principles and Rights at Work. In maintaining this view, the Committee of Experts refused to take note of the increasing and clear opposition by governments, regional organizations and other constituents to the approach articulated in the Convention.
81. The Worker members, while emphasizing the importance of the discussion of the General Survey in the Conference Committee, recalled that Convention No. 94 and

Recommendation No. 84 had a twofold objective, namely to ensure that labour costs were not used as an element of competition when bidding for public contracts, and to guarantee that public contracts did not exert a downward pressure on wages and working conditions. According to the General Survey, a lack of interest in the two instruments had been observed in recent years. This lack of interest was related to modern policies applied to public procurement which were more geared towards unrestricted competition and “best value for money” than to raising the bar and applying best local practice. This was also connected with the general trend for the dismantling of public services observed globally and the rampant privatization that prevailed almost everywhere. Public authorities were constantly developing their tendering procedures, but no longer paid attention to the negative effects on the fundamental rights of workers.

- 82.** Convention No. 94 covered in its scope public authorities that awarded contracts involving the expenditure of funds and the employment of workers for the implementation of public policy, which might be intended to achieve economic recovery or to provide public infrastructure or public services to the population. At the time of its adoption, therefore, the Convention was seen as an instrument that was in line with the different roles of a modern democratic State. In 1949, two principles of great importance had been established. First, the State was under the obligation, through the inclusion of labour clauses in public contracts, to prevent any downward pressure on workers’ rights; and second, public funds should be used in a socially responsible manner, including by facilitating the achievement of good working conditions through the exercise of the fundamental right to freedom of association and collective bargaining. As regards the role of the State, the focus was on economic and social development policies in which public works were seen as a means of combating unemployment, particularly at times of economic depression, while ensuring that wages were at a level that safeguarded the living standards of workers.
- 83.** The situation had considerably evolved over time and was now being transformed by several factors such as: the growing importance of subcontracting in an internationalized context, which raised the question of disparities between the wages and working conditions of workers in geographically distant areas; the proliferation of public contracting with a cross-border dimension; the impact on public contracts of the general trend for the financialization of the economy; decentralization and the intervention of local authorities; the expanding use of public–private partnerships; and the practise of service-only or labour-only contracting. The aim of the General Survey was to call upon public authorities and international financial institutions (IFIs) to place Convention No. 94 and Recommendation No. 84 once again at the heart of their procurement practices. Convention No. 94 was the only appropriate instrument because it was universal, binding and effectively supervised, and should be promoted as such.
- 84.** Convention No. 94 addressed three principal aspects of public procurement: (i) the types of public contracts in which labour clauses were to be included; (ii) the prescriptive content of the labour clauses; and (iii) the means for ensuring compliance with the provisions of labour clauses. Recommendation No. 84 contained two substantive paragraphs, one advocating that labour clauses substantially similar to those in public contracts should be applied where private employers were granted subsidies or were licensed to operate a public utility, and the other specifying the details of working conditions that should be prescribed in labour clauses. These two instruments were the main international instruments concerning labour clauses in public contracts. It was difficult to overestimate their importance in view of the scale of modern public procurement and the facts and figures presented in the General Survey were very telling in this regard.
- 85.** Turning to the implementation of the Convention, four conditions needed to be met. First, a public authority. In the absence of a definition, some member States had interpreted this concept in a broad manner, which was very positive. However, the question arose as to

whether this lack of a definition constituted a problem when endeavouring to address the issue of public-private partnerships in which new forms of public regulation and participation were emerging. Second, the Convention gave equal weight to two elements, namely the expenditure of funds and the employment of workers. However, it was an open question whether a financial investment by a public authority could be considered as an expenditure of funds within the meaning of the Convention. Third, the Convention referred to contracts for works, supplies and services. This approach was very broad and appropriate to the modern development of public procurement. However, concerns were raised with respect to “turnkey” contracts, such as those that were becoming most common in Africa, whereby service providers would bring goods and labour, unconcerned about destabilizing the local market. Finally, the Convention only applied to central authorities. Nevertheless, the extent to which federate institutions operating around a central entity were concerned would depend on the specific sharing of responsibilities as determined by each State. In certain cases of decentralization, some public contracts could thus be excluded from the scope of the Convention, whether or not this was intentional.

- 86.** Convention No. 94 applied equally to subcontractors and assignees of contracts. Subcontracting was becoming generalized in many sectors. It was all too common in the construction industry, but also in sectors that were more sensitive to the informal economy, such as the cleaning services sector. Even though the rule was clear, its application was less clear since, in practice, enforcement was left to the national legislator. The only labour clauses which were in conformity with Convention No. 94 were those which imposed on the employer the obligation to comply with the highest standards at local level, and the conditions guaranteed needed to be those that were most favourable among those established by collective agreement, arbitration award or national legislation.
- 87.** With a view to addressing the practical difficulties of application, the Worker members believed that it was necessary to emphasize the significance of social dialogue in all forms and at all levels. They therefore supported the emphasis placed by the Committee of Experts on the importance of compliance with appropriate provisions in the field of safety and health, with a view to effective prevention. The Committee of Experts had found that in general the idea of including social clauses in public contracts was not widely accepted by member States, even though States should act as models in this respect. However, the Convention was simple in conception and offered a clear, specific and effective mechanism that could be adapted to modern realities and ensure that the rights of workers were protected. The Committee of Experts also observed that the legislative models on public procurement recommended to developing countries, mainly with a view to promoting international competition in a transparent and corruption-free environment, never addressed the social aspects of public contracts, or only referred to marginal aspects which were far from the firm principles set out in the Convention. The Worker members could only echo the concerns of the Committee of Experts when it highlighted that certain technical guidelines used by international organizations operating in the field of public procurement might lead countries to disregard their obligations deriving from ILO Conventions.
- 88.** A Worker member, speaking on behalf of the Building and Wood Workers’ International (BWI), indicated that the construction sector was very familiar with the Convention. The BWI had submitted detailed comments on the General Survey. She supported the remarks made by the Worker members and expressed her disappointment with the unduly negative attitude of the Employer members. She commented that BWI had never heard this opinion from the construction employers or contractors’ organizations. The number of ratifications of Convention No. 94 was higher than the average ratification rate. The Convention had been very relevant during the construction boom of the 1950s and 1960s and was still a very relevant and widely used instrument in the present construction boom, given that 70 per cent of investment in construction came from the public sector. Furthermore, it should

be recalled that the requirements and principles of Convention No. 94 were included in a large number of bidding documents for the procurement of works, including those of the World Bank and 13 multilateral development banks (MDBs), as well as in construction contracts, many national employment and procurement laws and collective agreements.

- 89.** The speaker added that the construction industry was a US\$3.5 trillion industry (50 per cent of capital investment) employing around 150 million persons worldwide (75 per cent from developing countries). Workers were, however, no longer directly employed by entities within the public sector or by large general contractors but rather by micro-enterprises with less than ten workers. There were large numbers of people in the informal economy and large numbers who were not genuinely “self-employed”. Due to the extremely high competition in the construction industry, contractors won bids by lowering their costs, of which labour was a major component. The winning tender was mostly the one who paid the lowest wages, did not provide safety equipment or accident coverage, and had the largest number of informal workers without any legal or social protection. The BWI was appalled by the poor quality of employment offered in construction and the high fatal accident rates were the most visible consequence of that exploitative environment.
- 90.** In the BWI’s view, “best value” was quite different from “lowest price”. The construction industry today sought to avoid the lowest-price culture and the economy of evasion created by informal contractual conditions, weak employment policies and exploitative labour practices. There were long chains of employers in the industry, from the client (i.e. the public authorities) to the prime contractor, specialized subcontractors, many labour-only subcontractors and tremendous numbers of informal workers. In this context, the construction contract was crucially important to ensure a level playing field and safeguard the practical implementation of labour standards. Contract clauses relating specifically to labour standards needed to be included in public contracts and should be expanded and strengthened.
- 91.** The Government member of Denmark, also speaking on behalf of the Government of Norway, commended the Committee of Experts for the high quality of the analysis of the General Survey. She also noted that it was user-friendly, as it contained diagrams, and encouraged the Office to continue this approach, where relevant. Although each of the issues addressed in the General Survey deserved detailed attention, the question remained as to why Convention No. 94 did not play a more central role. The Convention was the only international instrument to prevent social dumping and to ensure for the workers concerned wages and other working conditions not less favourable than those established by the national legislation or collective agreements for work of the same nature in the trade or industry concerned. She hoped that the present discussion in the Conference Committee would become an important milestone in making public procurement socially responsible. She therefore looked forward to a practical outcome from the debate.
- 92.** The Government member of the Netherlands welcomed the General Survey and stated that her Government supported the conclusion that the Convention was most relevant in times of globalization. Greater awareness was, however, needed as public procurement had become a highly specialized field with considerable financial implications. She indicated that her Government had high ambitions for sustainable procurement. Utilizing its large purchasing power, it had decided to make all purchases at the central level and a considerable amount of purchases at the local and provincial levels socially and environmentally sustainable. As part of the broader sustainability agenda, the Government encouraged enterprises to take their responsibility. At the same time, acting as a powerful consumer, the Government decided that the core labour standards would have to be subscribed to by suppliers in their production chains. In the initial stages, suppliers did not have to guarantee compliance with ILO standards, but had to make an effort, including bringing their subcontractors into line. For larger contracts, it would be necessary to show

the results of the efforts made, which would have to be supported by an external audit. Regarding the question of transnational application of Convention No. 94, she stated that the Convention had been adopted long before globalization and therefore its context was national. She added that, while admittedly there were very important international labour standards other than the core labour standards, especially those on minimum wages, safety and health at the workplace and reasonable working time, it had been decided that sustainable public procurement should primarily focus on core labour standards. Other standards might of course be added, if needed, in certain cases. Moreover, discussion was under way concerning the knowledge that procuring entities needed to have to comply with the core labour standards. While the responsibility for compliance lay primarily with the suppliers, the procuring entities did have a role to play and therefore needed to be trained. It was very important that the parties concerned had better access to specialized auditors and advisers on social criteria. In this connection, the ILO could help in developing the market of such auditing companies.

93. The Worker member of Sweden congratulated the Committee of Experts on an excellent General Survey. In fact, the General Survey should have been prepared a long time ago, because the Committee of Experts had expressed its concern that the Convention, which was the world's only binding, universal and systematically supervised instrument on the subject, seemed to be neglected and not properly used. He said that the General Survey encouraged everyone not only to understand the situation at the national level better, but also to see the broader picture of relevant developments in other international and regional organizations. It also gave an indication of how the Decent Work Agenda could be promoted through public procurement policies.
94. While noting that some positive developments were taking place in certain international organizations, the speaker called on ministries of labour and the social partners to engage more actively in dialogue with other ministries responsible for public procurement policies and with regional and international organizations to ensure that public procurement was used as a tool to promote decent work and the social dimension of globalization. He observed that some of those responsible for public procurement policies were not aware of the relevant ILO standards and he took the view that perhaps the public sector should try to catch up with the developments in many private enterprises in making social and ethical commitments, such as the signing of international framework agreements. He referred to the point raised by the Committee of Experts that the scope of Convention No. 94 principally covered contracts concluded by central authorities. member States should be reminded, however, of the possibility afforded by the Convention to extend its coverage to contracts awarded by local authorities. A similar mechanism was to be found in the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), under which countries were free to add additional grounds on which discrimination was to be prohibited while the accompanying Recommendation No. 111 called for the principles of non-discrimination to be included among the eligibility criteria for public contracts. Moreover, Recommendation No. 90, which accompanied the Equal Remuneration Convention, 1951 (No. 100), suggested that the principle of equal remuneration for men and women for work of equal value should be applied in work executed under public contracts.
95. The Government member of Morocco observed that the General Survey was published in a context characterized by the increasing use of concession agreements, privatization and recourse to subcontracting in public procurement. At the same time, a certain disengagement of the State to the benefit of private enterprises was observed, in particular, through the development of public-private partnerships. The General Survey demonstrated, on the one hand, that Convention No. 94 was not widely ratified, and on the other, that it was important to integrate social criteria into public procurement contracts. In this regard, the Government of Morocco had made efforts to improve national law and practice, for instance, through Decree No. 2-98-482 which guaranteed equality between

workers with regard to conditions of employment, the Labour Code which contained provisions guaranteeing respect of this principle, and the Instructions issued by the Prime Minister in April 2008 which reaffirmed this principle. These instruments were supplemented by the provisions of the Code of Contracts and the Code of Civil Procedure.

- 96.** The Government member of Italy thanked the Committee of Experts for having prepared an important General Survey which was a detailed analysis of national law and practice, taking into account the latest developments in public procurement and the problems relating to the application of the two instruments under discussion. Italy had ratified and applied Convention No. 94. In conformity with the two EU Public Procurement Directives of 2004, a new Code on public contracts was adopted in 2006. A single legal text, henceforth, covered all provisions on contracts entered into by public authorities. An important aspect of the General Survey was that it had made clear that the principles of the European Directives were not in contradiction with those contained in Convention No. 94. It would be helpful if the consequences of the latest decisions rendered by the Court of Justice of the European Communities (ECJ) were further analysed.
- 97.** The Government member of Egypt stated that, since Convention No. 94 was ratified in 1960, the Committee of Experts had addressed observations to her Government on several occasions. Even though specific legislation had been adopted to implement the principle of equal remuneration for all workers without any discrimination, the Committee of Experts continued to consider that this was not sufficient to give effect to the requirements of the Convention. She reiterated that her Government ensured to all workers the greatest degree of fairness and non-discrimination possible, and that it would continue to follow to the letter the provisions of Convention No. 94.
- 98.** The Government member of Canada welcomed the General Survey and expressed appreciation for the balanced views presented on the Convention and the Recommendation. The issue of labour clauses in public contracts did not lend itself to an easy consensus. With respect to the ratification record, he wondered why so few member States had ratified Convention No. 94 and even fewer were substantially implementing it. As noted in the General Survey, Canada had not ratified Convention No. 94 for a number of reasons and took the view that further promotion of the Convention would not change this situation.
- 99.** The Worker member of India indicated that the main objective of Convention No. 94 was for public authorities, while awarding contracts for the execution of construction works, or for the supply of goods and services, to ensure that ILO standards relating to working conditions and wages were observed appropriately, and that contractors who participated in the tendering process did not compromise working conditions and wages by curtailing costs in those areas in order to become the lowest bidders. With the advancement of globalization and open markets, the provisions of the Convention on labour clauses in public contracts were increasingly ignored and violated by public authorities. Economic interests led to the establishment of an economic hegemony to the detriment of underdeveloped countries by exploiting the cheap labour available in these countries. The capitalist world wanted to exploit this situation and hence the ruling class of the advanced industrialized countries would never wish to honour the Convention. Subsumed under the term of “globalization”, education, health, construction of roads and rails, were all being transferred to the private sector and thus out of the orbit of public contracts. There was no doubt that the values of all ILO standards, including Convention No. 94, gradually eroded in an era when competitiveness and profits were maximized through a decrease of labour costs.
- 100.** The Government member of the United Kingdom stated that his Government was committed to improving the quality of working life for individuals so that they could

expect a certain standard of working conditions and protection in the workplace. The United Kingdom's procurement policy was such that all public procurement was to be based on value for money, having due regard to propriety and regularity. There was scope to incorporate social considerations, such as the ILO labour standards, in the procurement process provided they were compatible with EU legislation. Under the European Union procurement rules, requirements in the selection or award criteria that were not relevant to the subject matter of the contract were not permitted and any special contract conditions should relate to the performance of the contract in question and be compatible with EU legislation. Contract clauses requiring compliance with minimum working conditions would not always be relevant to the performance of the contract and could, in some instances, be indirectly discriminatory. Therefore, the inclusion of such clauses required consideration on a case-by-case basis. In addition, the speaker considered that a blanket approach to insert references to legislative provisions in public contracts would add to the length and bureaucracy of the procurement process. In some cases these burdens could be disproportionate to the benefits to be gained and might potentially deter small businesses – including those owned by women, black, minority ethnic groups or other disadvantaged groups – from tendering for public contracts. He concluded by stating that his Government's decision to denounce Convention No. 94 was consistent with the United Kingdom's procurement policy and position on national employment legislation, whilst remaining committed to the principles of the ILO labour standards and Convention No. 94.

- 101.** The Government member of Mauritius indicated that his country was among the 60 countries that had ratified Convention No. 94. He welcomed the General Survey because it shed light on the essential purpose of the instruments under discussion and contributed to a better understanding of their normative requirements. Non-compliance with the Convention, as rightly pointed out in the General Survey, was mainly due to significant misunderstandings of the Convention's core requirements and also to the fact that the Convention was situated halfway between labour and administrative law. In his country, the provisions of Convention No. 94 had been fully complied with until 1975 but they were somehow not fully integrated in the 1975 Labour Act during the labour law consolidation process. Nevertheless, by the very definition of "employer" in the national legislation, the workers employed by contractors and subcontractors were ensured wages, hours of work, and other conditions of labour – including occupational safety and health and social security protection – which were not less favourable than those established for work of the same character in the trade or industry concerned. In addition, amendments to the Public Procurement Act of 2006 were under preparation in order to put in place a new legal framework for public procurement which was expected to be in full compliance with Convention No. 94. For this purpose, his Government also drew on other relevant international instruments and model laws.
- 102.** The Government member of the Democratic Republic of the Congo stated that his country, although having ratified Convention No. 94 in 1960, had not yet been able to implement it effectively in practice. The national authorities had not yet enabled the Ministry of Employment, Work and Social Security (METPS) to take appropriate action with a view to ensuring that labour clauses in public contracts were based on the principle of equality between national and foreign workers regarding conditions of recruitment, remuneration and social security. He mentioned, however, that in the context of a public contract for road construction, which had recently been concluded between the Government and a private Chinese company, the METPS had taken concrete action, and as a result, the contract did not only make reference to the provisions of Convention No. 94 but also guaranteed decent working conditions for both national and expatriate workers alike.

The social dimension of public procurement and present-day relevance of Convention No. 94

- 103.** The Employer members recalled that, almost 60 years after its adoption, Convention No. 94 had received only 60 ratifications, of which 36 had been registered in the first 15 years following its adoption. Only three countries had ratified it over the past decade. The Convention had been denounced by the United Kingdom in 1982 as it had concluded that its provisions had become inappropriate for the country. Furthermore, the response rate to the questionnaire for the General Survey had been relatively poor, with slightly under half of the member States providing replies. Only 29 national workers' and employers' organizations from 17 countries had expressed their views on the instruments. The Employer members concluded that Convention No. 94 was an outdated and ill-conceived instrument which had never enjoyed wide support and the ratification record of which had long stagnated. In addition, the Convention was protectionist in nature and unduly interfered with sound public procurement policies and the most effective functioning of markets. By making mandatory the most favourable local wages and working conditions, it protected the conditions of a specific group of workers at the cost of the taxpayer and could compromise the quality of publicly procured goods and services. Moreover, it could actually have the effect of excluding from public contracts workers who enjoyed decent, though not necessarily the most advantageous, working conditions. Commenting on the Committee of Experts' view that the Convention was an up to date instrument and that a similar conclusion was reached by the ILO Governing Body's Working Party on Policy regarding the Revision of Standards, the Employer members observed that although the Working Party had classified the instrument as being up to date ten years ago, this decision had in part been based on the premise that significant ratifications were expected. This had not been the case. Furthermore, the discussion of the General Survey provided an opportunity to assess the instrument in much greater depth than the Working Party had been able to do, and should therefore be seen as updating the findings of the Working Party.
- 104.** The Worker members concurred with the view of the Committee of Experts that Convention No. 94 was an underused instrument. However, rather than affirming that the Convention might need to be partially revised in order to keep pace with sweeping changes in the public procurement sector, its content and underlying philosophy should be the subject of an awareness-raising campaign to achieve better understanding of its objectives with a view to strengthening its principles, which were still relevant. Convention No. 94 needed to be placed at the heart of the institutional debate at the national and international levels, and neither the European Union, nor the IFIs should disregard this debate. The core issue was the role of social justice and the promotion of workers' rights, which was essential to any democratic State. Well-known cases examined by the Committee of Experts showed that a State which undervalued workers' rights either denuded itself of its vital forces or plunged its population into despair.
- 105.** A Worker member, speaking on behalf of the European Trade Union Confederation (ETUC), stressed that Convention No. 94 was an up to date and indispensable instrument in a globalizing world. Its aim was to ensure that wages and working conditions were not used as an element of competition for public contracts, thus exerting downward pressure. The issue at stake was not whether minimum or any other standards should be applied under public contracts, but rather that the State, as the single biggest buyer in any given market, should not remain neutral. By insisting on a level of wages similar to the one agreed collectively, the Convention supported collective bargaining and strengthened the industrial relations system. The importance of including all subcontractors in the chain was to prevent the creation of a loophole for both the contractor and the State that would be an enormous disincentive for collective bargaining. The objectives of Convention No. 94 were recognized in the treaties establishing the European Union. In addition, the European

Commission considered that it was important and legitimate to pursue environmental and social objectives through public procurement. The 2004 Public Procurement Directives recognized the respect for collective agreements while in 2006, the European Commission and the European Council called on EU Member States to ratify up to date ILO Conventions, including Convention No. 94.

- 106.** Another Worker member, speaking on behalf of the BWI, recalled that in December 2001, a clear, international consensus had emerged among Governments, construction employers or contractors associations and construction trade unions participating in the ILO Tripartite Meeting on the Construction Industry in the Twenty-First Century. This consensus was aimed to offer fair and reasonable working conditions and to implement international labour standards in the construction industry in order to create a level playing field and eliminate unfair competition. Convention No. 94 was highlighted as an important instrument to achieve this objective. In the conclusions, it was proposed that governments should use their procurement procedures to ensure that contractors and subcontractors complied fully with national labour legislation, and specifically with health and safety legislation. It was recommended that these obligations be included in the contract as labour clauses, and that there should be an immediate sanction in the form of exclusion from tender lists for those not fulfilling their obligations. It was further agreed that IFIs should encourage socially responsible business practices promoting and protecting workers' rights in accordance with the 1998 Declaration on Fundamental Principles and Rights at Work. Following the ILO meeting, the Confederation of International Contractors' Associations (CICA) and the BWI developed some joint approaches towards labour clauses in public contracts and had actively been promoting these clauses together with MDBs. This had resulted in the development of new labour clauses in the Standard Bidding Documents for procurement of works used by the World Bank and copyright of FIDIC. These clauses covered workers' organizations, discrimination, child labour, forced labour, health and safety, HIV/AIDS and record-keeping requirements.
- 107.** The Government member of Denmark, speaking also on behalf of the Government of Norway, expressed the view that the Convention and its accompanying Recommendation remained as relevant, valid and necessary today as they had been in 1949 when adopted. Globalization had created new challenges putting to the test the balance between economic and social forces of the economy. The Convention made a valuable contribution in this regard, although its scope was limited to public contracts. She supported the view that governments should act as model employers and emphasized that Convention No. 94 only required governments to ensure the generally accepted level of wages and other working conditions for work of the same character in the trade or industry concerned. The Convention was still valid and relevant also for countries where the labour markets were regulated by collective agreements concluded between highly representative employers' and workers' organizations. The so-called Nordic model was based on the conviction that the social partners were best qualified to recognize the problems on the labour market and to find appropriate solutions. In this context, Convention No. 94 had been found to be particularly useful in situations where contracted enterprises brought foreign workers to Norway and Denmark. Labour clauses required the level of wages and other working conditions of those posted workers to correspond to the local level, preventing them from being employed in second-class jobs or under substandard working conditions. The Convention also offered a development potential. In developing countries where the public sector was often the largest employer, the Convention should be ratified and implemented as it provided the basis for the exercise of the fundamental right to freedom of association and collective bargaining in order to ensure decent wages and working conditions. She accordingly expressed the hope that IFIs and MDBs would not fail to take due consideration of the Convention.

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- 108.** Replying to certain comments made by the Employer members, the Worker member of Sweden noted that not only had the Convention been classified as up to date by the Working Party on Policy regarding the Revision of Standards but, in addition, in adopting the report of the Conference Committee on Sustainable Enterprises in 2007, the Employer members had recognized the value of Convention No. 94 in promoting sustainable procurement policies. Moreover, he recalled the tripartite consensus that all ILO up to date instruments should be promoted. He added that, in his view, the low level of ratification of the Convention was due to lack of awareness of its objectives, and a ratification campaign was therefore necessary. The case of the Minimum Age Convention, 1973 (No. 138) offered an interesting example. Back in 1985, it had only received 43 ratifications and serious doubts had been expressed about its ratification prospects. Yet, some 20 years later, the situation had completely changed. Efforts should therefore be made to ensure that the same happened with Convention No. 94.
- 109.** The Employer member of Norway addressed the specific question of posted foreign workers engaged in the execution of public contracts and stated that her country had implemented Convention No. 94 through a government regulation which took effect in March 2007. The clause safeguarding posted workers' working conditions and wages required wages and conditions of labour to be not less favourable than those established in national collective agreements in force and not less favourable than what was considered normal for the relevant location and profession. Employers in her country supported the purpose of the regulation, as it was important that foreign workers working in Norway were offered acceptable wages and working conditions. The political debate, however, regarding wages and working conditions for foreign workers had been confusing because of the use of the term "social dumping", for which no legal definition existed. In her view, offering foreign workers wages below those stipulated in national collective agreements did not constitute social dumping, since those workers received lodging, food and travel costs. Besides, wages and working conditions for foreign workers were regulated by four different acts and regulations. The overlap in scope between the four instruments made it extremely difficult for a contracting authority to find out which instrument took precedence.
- 110.** The Worker member of Kenya argued that the issue at stake was how public funds – sourced through domestic taxes and borrowed funds from international institutions and multilateral arrangements – were spent. In this regard, the purpose of Convention No. 94 and Recommendation No. 84 was to safeguard the interests of all citizens from being subjected to work situations that would not conform to the aspirations and expectations of the working people. Including labour clauses in public contracts could not be seen as asking too much from contractors, both domestic and foreign, who benefited from the utilization of public funds. Given that nationals of the contracting countries had to bear the full cost of these funds, it was fair that they obtained proper benefits from public contracts. Accordingly, foreign contractors should not be allowed to import foreign personnel and machinery. The Convention also addressed the issue of job creation, which called for a labour-intensive execution of the contracts awarded through public funds. Furthermore, the recognition of the relevant trade unions in the area of the execution of a public contract should be emphasized. Therefore, tender boards should include workers' representatives as public watchdogs. In conclusion, Convention No. 94 and Recommendation No. 84 needed urgent revision to take into account the changing nature of globalized business operations and should then be promoted as other core Conventions.
- 111.** The Government member of Spain noted that Convention No. 94 and Recommendation No. 84 reflected the social needs that they were designed to address when they were first drafted. The instruments were adopted at the time of the Second World War in a situation characterized by the devastation of huge areas, which required an enormous effort by the public sector for the reconstruction of infrastructure and for overall economic recovery. At

the same time, reconstruction should not be detrimental to the working and living conditions of the workers concerned. Convention No. 94, therefore, offered a legal solution balancing both needs, thereby giving rise to the necessity for the inclusion of labour clauses in public contracts. The circumstances had certainly changed, but the quest for social justice was timeless. Thus, public authorities could still not invoke intense international competition or financial crises as excuses for disregarding labour rights. Both the Convention and the Recommendation had lost nothing of their currency and continued to offer legal solutions that were still valid today. Despite the recent ruling by the ECJ that seemed to follow a different approach, it should be recalled that Convention No. 94 was a universal standard which had given rise to various EU directives. In the same vein, the Government member of Italy indicated that the Convention continued to be a valid tool for ensuring fair wages and working conditions to workers engaged in the performance of public contracts.

112. The Employer member of Denmark, speaking on behalf of the local public employers, expressed great interest in the General Survey, which addressed a wide range of important issues. Local governments, being often the largest employer in Danish districts and also the largest providers of tenders for many different public tasks, were everyday users of Convention No. 94. The Convention wisely allowed States to define the term “public authority” themselves. Denmark had defined the concept in a way that municipalities had a free choice whether or not to use the Convention in tendering procedures. In practice, municipalities applied the Convention in most cases. His organization recommended that municipalities should include parts of the wording of the Convention in the tender documents, in order to avoid controversy and litigation. The question of compatibility between Convention No. 94 and EU law became even more topical after certain recent decisions of the ECJ. Despite these rulings, however, the local public employers in Denmark would still use Convention No. 94. They would continue to apply the Convention, not necessarily in order to improve working conditions, but rather in order to ensure that work paid for by them would be carried out in a manner comparable to that normally preformed in Danish districts.
113. The Worker member of the United Kingdom stated that the present discussion went to the heart of the question of what kind of international economy one wished to create. In theory, globalization provided new opportunities for developing countries. However, in reality this was only the case when the necessary supporting economic and social policies were in place. The principles enshrined in Convention No. 94 were central to such policies. By proposing a standard labour clause in public contracts, the Convention sought to ensure that such contracts did not force down wages and working conditions. He recalled that the United Kingdom was the first country to ratify Convention No. 94 but also the only country ever to have denounced it. A number of leading companies in the United Kingdom had since incorporated the London Living Wage into their procurement policies. While some argued that this was unlawful, EU rules clearly stated that suppliers should be appointed because of their overall economic advantage, not simply because they offered the lowest cost. The Trades Union Congress (TUC) and other European unions were gravely concerned about the recent cases where the ECJ ruled that free movement of goods, services, workers and capital took precedence over fundamental workers’ rights, including the right of unions to organize and to bargain collectively. More positively, in the United Kingdom, after sustained trade union pressure, the Ministry of Finance was about to publish a booklet describing the way in which social clauses could be used to promote skills and equality in procurement contracts. This development made it even more illogical that the United Kingdom had still not decided to re-ratify Convention No. 94.
114. The Government member of Sweden emphasized that her Government fully supported the idea behind Convention No. 94 although it had not yet ratified it. Public authorities awarding contracts for works, goods or services should indeed ensure decent working

conditions. The decision not to ratify Convention No. 94 was taken by the Swedish Parliament already in 1950 and was supported by both workers and employers. The interests pursued by the Convention were seen as already being ensured by the Swedish system of collective agreements. The Government had not found reasons to revise its decision since then.

115. The Worker member of Japan stated that the two instruments regarding labour clauses were very important and continued to be relevant and valid, particularly in the light of the increasing importance of public contracting and the related competitive pressures. The tendency of national and local governments to contract private companies at low cost resulted in reduced profits for the contracting companies and consequently declining wages and working conditions for their workers. Granting contracts for public works to private companies was only rarely aimed at the reduction of expenditures, while no consideration was given to whether the workers concerned were provided with fair employment and working conditions. The labour costs were being compressed below the minimum wage and individual workers were being transformed into self-employed workers as a means to evade social insurance obligations. A growing number of workers were not able to maintain a minimum livelihood while cost-cutting had also led to a deterioration of public services.

Recent case law of the Court of Justice of the European Communities

116. The Worker members noted that a central question was how to avoid social dumping, and in particular wage dumping, in public procurement procedures. No region was immune from the issue of wage dumping, as shown by the recent ruling of the ECJ in the *Dirk Rüffert* case (C-346/06, judgement of 3 April 2008). The case consisted of a confrontation between two fundamental aspects of European law: article 49 of the Treaty of the European Community on the freedom to provide services and the Posting of Workers Directive (96/71/EC). Developments in the *Rüffert* case bore witness to a certain approach to public procurement under which workers were seen as cost factors. The case highlighted the right of public authorities, in granting procurement contracts, to require tendering enterprises to undertake to pay wages that corresponded to those already agreed through collective bargaining where the work was to be performed. The ECJ judgement ignored the 2004 directives on public procurement, which explicitly permitted social clauses. It did not recognize the right of member States and public authorities to use public procurement contracts as a means of combating unfair competition in relation to wages and working conditions by cross-border service providers. The unfortunate ruling was considered to be an open invitation to engage in social dumping.
117. The Employer members welcomed the judgement in the *Rüffert* case to the extent that it gave precedence to the freedom to provide services within the EU common market over national legislation that prescribed payment of wages as laid down in a local collective agreement. The Court had found that there was no justification to prescribe rates of pay laid down in a local collective agreement for workers in the context of a public works contract where the same obligation did not apply to workers in the context of a private contract. The judgement demonstrated an obvious discrepancy between the requirements of Convention No. 94 and EU regulations, which could result in 27 EU Member States not being in a position to ratify or continue to apply the Convention. The decision might also have implications for countries beyond the European Union.
118. The Worker member of Sweden indicated that in Sweden for many years the argument against ratification of the Convention had been that it was prevented by EU rules. In this regard, he welcomed the observation by the Committee of Experts that EU directives on public procurement were compatible with Convention No. 94 and did not prevent EU

Member States from ratifying the Convention. The recent ECJ judgement in the *Rüffert* case raised both concerns among trade unions and expectations in some other quarters. He expressed his belief that the European Union had no intention of undermining Convention No. 94 or allowing itself to be used as a scapegoat. The EU executive organs had declared several times that EU Member States should ratify and implement all up to date ILO Conventions, which included Convention No. 94.

119. The Employer member of Norway stated that despite repeated requests by the employers, the Government had been unable to clarify the Regulation of March 2007 on foreign posted workers, saying it would have to be interpreted on a case-by-case basis. That left clarification up to the courts. The Regulation clearly created a restriction on the free movement of services from EU Member States to Norway, and the recent judgement of the ECJ in the *Rüffert* case demonstrated that the European courts would rule against such unwarranted restrictions, even when they had a social objective. Employers in Norway therefore intended to pursue the matter through the courts.
120. A Worker member, speaking on behalf of the ETUC, emphasized that Convention No. 94 was particularly important in the European context because of the extensive subcontracting practices with a cross-border dimension and policies of intra-EU mobility. A series of cases decided by the ECJ had dealt recently with situations where employers sought to challenge locally applicable wages and working conditions by establishing themselves elsewhere in one of the new EU Member States (*Viking* case). In other cases, workers were hired through subcontractors located in new EU Member States (*Laval* case). With regard to the *Rüffert* case, she noted that the action taken by the public authorities concerned, by requiring payment of wages to all workers in line with the rates agreed in locally applicable collective agreements, were in line with Convention No. 94. However, contrary to the Advocate General's opinion, the ECJ held that, in the case at hand, wages had been fixed in a manner contrary to the directive concerning the posting of workers and that the setting of higher wages than those applicable in posted workers' home country amounted to a restriction of the freedom of services which was not justified by the aim of protecting workers. Unfortunately, the *Rüffert* case confirmed the ECJ's narrow interpretation of the posting of workers directive and did not make any reference to the public procurement directives which explicitly allowed social clauses to prevent social dumping and oblige public authorities to investigate when tenders were abnormally low. In the ETUC's view, this was an open invitation for social dumping and a race to the bottom and thus, contrary to the aims of Convention No. 94. Although there was tension and political conflict between the *Rüffert* case and ILO Convention No. 94, it should be recognized as of limited scope and to be very EU-specific, it was only relevant to intra-EU cross-border subcontracting. It did not apply to public procurement at the national level with only national actors involved, nor when posting from outside the EU. Nonetheless, it was problematic and a threat to collective bargaining and social standards. The speaker concluded that it was now time for the European Union and its members to show that they remained committed to the ILO and to support the promotion of Convention No. 94. It was urgent that the European Union addressed the issues at stake in relation to intra-Community mobility and procurement in order to avoid ambiguities, keeping in mind that the goals of Convention No. 94 were fully compatible with the aims of the EU Treaty.
121. The Government member of Sweden indicated that following the judgement of the ECJ in the *Laval* case (C-341/05, judgement of 18 December 2007), her Government had decided to appoint an inquiry commission to formulate proposals for any amendments in the Swedish legislation that might be deemed necessary as a result of the ruling. Both the *Laval* and the *Rüffert* cases concerned the balance between social protection of workers and the EU rules on freedom to provide services. Given that the two cases were closely related, it could not be excluded that the result of the inquiry might have an impact also on the application of social clauses in public contracts. The question of whether Convention

No. 94 was compatible with EU legislation was crucial for determining whether Sweden could ratify the Convention. At this stage, however, the Government was not in a position to revise its 1950 decision not to proceed with the ratification of the Convention.

The outlook: Prospects for promotion and other possible future ILO action

122. The Employer members stated that they could not support promotional activities for Convention No. 94 or for the adoption of the concepts set out in the Convention by other international organizations. They also expressed their opposition to any efforts to revise the Convention with a view to extending its scope to new forms of public procurement. They suggested that the Office might conduct research on the economic and social impact of labour clauses in public procurement contracts with a view to developing a revised and updated position on the issue of a social dimension, if any, of public procurement contracts. They proposed that a tripartite meeting of experts be organized with a view to preparing a guidance document regarding this issue.
123. The Worker members presented a number of proposals as to how the Office could follow up on the Committee of Experts' General Survey. Promoting the social dimension of public procurement, as envisaged in Convention No. 94, was an essential element of any trade union strategy aimed at promoting decent working conditions and fair wages. The Committee of Experts' recommendation to promote Convention No. 94 and to increase its impact should be supported. In this regard, the Office should launch a major campaign to raise awareness of an instrument that was still not widely understood. The Office should provide technical assistance to governments that had ratified the Convention so that they could give full effect to it. Efforts should also be made to obtain further ratifications. Technical assistance for the implementation of the Convention should become an integral part of DWCPs.
124. The Worker members further proposed that research programmes should be developed with the objective of identifying good practices in the area of labour clauses in public contracts. The International Institute for Labour Studies could play an important role in this respect. The Office should intensify the dialogue with governments and international institutions active in public procurement with a view to promoting Convention No. 94 as an essential element of sustainable public procurement policies. It should also establish a global database on socially responsible practices in relation to public procurement. Some very interesting initiatives existed in that area within the Trades Union International of Workers in Building, Wood, Building Materials and Allied Industries (UITBB). The data so collected could then be analysed at a meeting of experts to be convened by the Office. In contrast, the Worker members were of the view that revising Convention No. 94 was not necessary at the present time. They expressed the hope that the General Survey would enable the ILO, in the very near future, to position itself as the champion of sustainable public procurement policies.
125. The Government member of Denmark, speaking also on behalf of the Government of Norway, considered that the ILO should continue to promote and strengthen the capacities of the social partners through technical cooperation, and that the spirit of the Convention could be used as a source of inspiration and guidance for labour policy. She called on member States to ratify and implement the Convention. The Government member of the Netherlands emphasized that there was a need to increase awareness about the requirements of Convention No. 94 regarding social criteria in public procurement. Easily accessible information should be provided by the ILO concerning qualified and reliable auditors. Governments should also exchange information about their experiences with the social dimension of public procurement.

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- 126.** The Worker member of Sweden agreed with the Committee of Experts' recommendation that these instruments should be actively promoted by the Office to secure additional ratifications and better implementation. The General Survey pointed to current developments which needed to be taken into account in relation to public procurement from a decent work perspective, which he assumed would be the subject of future discussions. The Worker member of Japan stated that the lack of ratification had increased the number of workers without social protection, resulting in decent work becoming an elusive goal. The Office should therefore launch a promotional campaign so as to attract new ratifications of the Convention and should allocate the necessary resources to this effect.
- 127.** Another Worker member, speaking on behalf of the BWI, expressed the view that further popularizing Convention No. 94 and promoting its ratification would be a useful follow-up on the findings of the General Survey. The promotional activities should include discussions on public procurement and labour clauses in public contracts at national and regional level. In order to improve living and working conditions in the construction industry, the BWI looked forward to continuing to work with construction employers and public authorities in the framework of the construction action programme of the ILO and at the national level. Another worker member, speaking on behalf of the ETUC, expressed the hope that EU Member States would support further activities for the promotion of Convention No. 94. It was important to note that ten EU Member States had ratified ILO Convention No. 94 and that all EU Member States had ratified all eight core Conventions of the ILO, which included freedom of association and the promotion of collective bargaining.
- 128.** The Government member of Italy expressed his support for undertaking a promotional campaign and offering technical assistance with respect to the Convention and stressed the important contribution that the International Training Centre of the ILO in Turin could make in strengthening the visibility of the Convention. In the same vein, the Government member of Mauritius noted that in view of its relevance, the Convention should be actively promoted before any consideration was given to possible revision, while the Government member of the Democratic Republic of the Congo called for large diffusion of the Convention and also sensitization of governments for further ratifications.
- 129.** The Government member of Canada referred to the Committee of Experts' view that the instruments under discussion might no longer address current procurement patterns and that they might need to be reviewed. In this context, his Government did not support additional efforts to promote the Convention. The Office's resources would be better used in assessing whether Convention No. 94 could be revised to make it meaningful for current procurement practices and to make its provisions sufficiently flexible, encouraging wide ratification and implementation. Given the importance of the social dimension of public procurement practices, more tripartite discussions were necessary in this regard.
- 130.** The Government member of Lebanon noted that the Committee of Experts had made a number of suggestions, including the adoption of a Protocol to the Convention. In such case, the impact of a future Protocol on the national legislation should be carefully analysed. In addition, the relation between a future ILO instrument on public procurement and other relevant international instruments would have to be discussed. In the meantime, the provisions of the Convention needed further clarification and explanation. The Committee of Experts and the Office should play an active role in this regard, for instance by supplying technical assistance and holding workshops and expert meetings. Finally, she observed that the General Survey had its own specificity regarding the scientific approach and in-depth analysis of some of the provisions of the Convention which seemed to be obscure at first glance.

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- 131.** The Government member of Spain estimated that there was room for additional ratifications and that the current ratification record did not at all diminish the relevance of the Convention. He also referred to some shortcomings of the Convention which would need to be addressed in the event of a partial revision. Firstly, the concept of public authority would need to be defined differently: instead of referring to an administrative entity or a public entity, emphasis should be given to the public nature of the funds used in the procurement process. Secondly, account needed to be taken of the fact that the exception of low-value contracts could result in opening the door for failure in applying the Convention, which was facilitated by the fact that no quantitative limit had been established. Thirdly, it would be appropriate to provide for additional flexibility in the case of regions affected by natural disasters generally caused by climate change, although the exception of force majeure would still be acceptable. Fourthly, in accordance with the Convention, the public authority could impose penalties, such as the withholding of payments, in cases of failure to apply labour clauses. Nevertheless, in such cases the public authority should not be considered as responsible. But, in such a situation, it would be possible to go further and to provide that the public authorities assume a subsidiary responsibility.

Final remarks

- 132.** In their concluding observations, the Employer members noted that the discussion on the General Survey had been rich, although there had been little participation of Worker representatives from developing countries and of member States not parties to Convention No. 94. Some Governments had indicated that they had no intention to ratify the instrument while others had stated that there was no need for special protection of workers in the context of public contracts over and above the generally applicable labour legislation. One Government supported the concept of requiring decent working conditions in connection with work performed under public contracts, while another was in favour of generally including core labour standards in public procurement contracts.
- 133.** The General Survey was the first comprehensive survey in relation to Convention No. 94 and Recommendation No. 84 and the present debate was the first general discussion on these instruments. As a result, the Employers members believed that they were not bound by the findings of the Working Party on Policy regarding the Revision of Standards concerning the status of the instruments. In response to the submissions regarding the link between Convention No. 94 and collective bargaining, they were of the view that the Convention sought to impose the terms and conditions of certain collective agreements on employers who had chosen not to be parties to those agreements or to be parties to an alternate collective agreement. This was contrary to the voluntary nature of collective bargaining. Furthermore, the Convention interfered with sound public procurement policies and might compromise the quality of procured goods and services. The Convention might have the effect of excluding from work under public procurement contracts workers who enjoy decent working conditions but not necessarily enjoying the most advantageous working conditions. The Employer members concluded by reiterating that Convention No. 94 should not be promoted and that they opposed efforts to revise it with a view to extending its scope to new forms of public procurement. While accepting the role of a social dimension in public procurement contracts, they did not consider Convention No. 94 as a proper instrument for doing so.
- 134.** The Worker members concluded their comments on the General Survey and the discussion that followed by stating that the Conference Committee on the Application of Standards was facing a situation where the analysis, albeit clear in the General Survey, lay bare diametrically opposite approaches on the part of employers and workers. Everything that the Worker members believed in and that justified their presence in the Committee had been repudiated in the Employer members' intervention. Under the circumstances, the

Worker members maintained fully their position in favour of a campaign aiming at promoting the Convention, strengthening its visibility, further research and exchange on good practices, continued technical assistance, and expert meetings to pursue reflection on socially sustainable procurement. Pointing to an inconsistency in the Employer members' line of argument, the Worker members recalled the conclusions adopted after the Conference discussion on the promotion of sustainable enterprises in June 2007 according to which the ILO was requested to promote the ratification and application of the international labour Conventions relevant to the promotion of sustainable enterprises, including Convention No. 94, the Labour Inspection Convention, 1947 (No. 81), the Workers' Representatives Convention, 1971 (No. 135) and the Maternity Protection Convention, 2000 (No. 183).

- 135.** The Worker members reminded those governments that might still have doubts as to the need of promoting Convention No. 94 that fair competition required transparency and respect for the rights and dignity of workers. This implied, in particular, the prohibition to resort to undeclared or illegal work in the case of subcontracting under public contracts, the promotion of social dialogue and the observance of collective agreements. Governments had an interest in favouring fair, equitable and efficient industrial relations systems. Furthermore, governments should not lose sight of the fact that the practice of social dumping, namely imposing precarious and illegal working conditions on workers and thus impoverishing them to the extent that they needed to have recourse to social assistance to survive, amounted to subsidizing enterprises from the state budget. Finally, the Worker members considered that good employers were those who had innovative ideas, while the less efficient ones attempted to exploit their workers. Whereas the latter were doomed to disappear in a market economy that would observe the rights and dignity of workers, dynamic and innovative employers that respected social dialogue would prevail. There was a choice to make.

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- 136.** With respect to the General Survey on labour clauses in public contracts, the Chairperson of the Committee of Experts expressed her appreciation for the interesting comments made during the discussion, which had been of excellent quality. As frequently in a tripartite setting, a wide range of positions and approaches were presented. The Worker members and governments had overwhelmingly confirmed the continued relevance of the Convention. She hoped that the somewhat dramatic language used by some speakers to criticize the Convention would not come in the way of further tripartite dialogue on these important issues.
- 137.** In reply to a few points raised by the Employer members, the Chairperson of the Committee of Experts pointed out that neither the Convention nor the General Survey operated on the basic assumption that "competition was unhealthy". On the contrary, the Convention and the General Survey realistically accepted the need for competition. That was given. The Convention sought to ensure that so far as public contracts were concerned, there was a truly level playing field from which all competitors should start, namely all bidders had to respect as a minimum certain locally established standards. She further stated that it was difficult to understand the argument that the insertion of labour clauses into public contracts could lead to corruption and a lack of transparency and that their absence would somehow bring about true transparency and fairer competition. Moreover, she clarified that the Convention did not require payment of the "highest wages" but wages not less favourable than those established for the same work in the same place by collective agreement, arbitral award or national laws or regulations. In response to the argument that the Convention went beyond ILO standards by requiring more than minimum standards, she observed that the Convention naturally had to address the situation where collective agreements improved the minimum standards set out in labour

legislation. To suggest that governments acting as model employers should nevertheless permit some workers to be employed in public contracts at substandard wages and conditions simply because they were foreign-sourced would be reason for serious concern. Finally, the Chairperson of the Committee of Experts stressed that there were some basic principles that never grew old. The core principle of Convention No. 94, which was that workers employed under government contracts should receive wages and should enjoy working conditions at least as favourable as best local practice, was not out of date. It was at the very heart of the ILO and should not be easily labelled as “protectionist”.

138. In her reply, the representative of the Secretary-General noted that there was a clear consensus that the question of labour clauses in public contracts called for further study and analysis. Both the Employer and the Worker members, as well as a number of Governments among those who participated in the discussion, had proposed that a tripartite meeting of experts should be convened to continue to examine the complex issues of whether and how to integrate social clauses into public procurement contracts. The Office took note of this nearly unanimous request and would look into possible options for carrying it forward, probably by bringing the matter before the Governing Body for decision on the first suitable occasion.
139. As regards the question of the promotion of Convention No. 94, the Office understood that there was strong support for specific action in this regard. With the exception of the Employer members and the Government representative of Canada, all speakers favoured promotional and awareness-raising activities. In this respect, the International Labour Standards Department had been working on a “Practical Guide to Convention No. 94” which aimed at helping constituents better understand the requirements of the Convention and ultimately improving the application of the Convention in law and practice. Finally, the representative of the Secretary-General drew the Committee’s attention to the fact that the Sectoral Activities Branch of the Office would organize a two-day “Global Dialogue Forum on Procurement in Construction” in February 2009, with the main theme “Achieving decent work in construction through procurement and contracts”.

D. Compliance with specific obligations

140. The Worker members emphasized that the obligation to submit reports constituted a fundamental element of the ILO supervisory system. The observance of this obligation was indeed of the essence to prevent governments that neglected their reporting duties from gaining an undue advantage, as well as to allow the supervisory bodies to proceed with the examination of national laws and practices. It was therefore appropriate to insist upon the respect of this obligation, so that the member States concerned could take the necessary measures in this regard.
141. The Employer members indicated that any form of non-compliance with the obligation to submit reports, which was a key element of the ILO supervisory system, involved a serious failure of that system. Those States which most flagrantly violated these obligations eluded examination by this Committee. The situation was even more serious when it came to the submission of first reports. Similarly, the failure to submit instruments to the competent authorities was a clear indication of a lack of commitment on the part of the government concerned. The essence of the activity of this Committee, and in general of the supervisory mechanisms, was the establishment of dialogue between member States and the Organization, through the submission of reports. The slight progress observed in the last years was not satisfactory. Two years ago, the Committee insisted on taking a new approach to cases of failure to submit reports. The report of the Committee of Experts should provide a better understanding of the reasons for such a failure, a global analysis of these reasons and more information on the circumstances of each country.

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142. It was necessary to examine various strategies, including assistance from the member States which complied with their standards-related obligations and regular direct contact with ILO standards specialists. In this respect, the efforts of the Office were appreciated even though the results had been limited. Weak administrative structures and certain exceptional circumstances linked to catastrophes were elements which could contribute to understanding the difficulties of States in complying with the submission of reports. On the other hand, the lack of coordination among various competent units of the State, changes in governments or technical difficulties in the submission of reports could not be considered as elements justifying these failures.
143. In examining individual cases relating to compliance by States with their obligations under or relating to international labour standards, the Committee applied the same working methods and criteria as last year.
144. In applying those methods, the Committee decided to invite all governments concerned by the comments in paragraphs 25 (failure to supply reports for the past two or more years on the application of ratified Conventions), 31 (failure to supply first reports on the application of ratified Conventions), 35 (failure to supply information in reply to comments made by the Committee of Experts), 76 (failure to submit instruments to the competent authorities), and 87 (failure to supply reports for the past five years on unratified Conventions and Recommendations) of the Committee of Experts' report to supply information to the Committee in a half-day sitting devoted to those cases.

Submission of Conventions, Protocols and Recommendations to the competent authorities

145. In accordance with its terms of reference, the Committee considered the manner in which effect was given to article 19, paragraphs 5–7, of the ILO Constitution. These provisions required member States within 12, or exceptionally 18, months of the closing of each session of the Conference to submit the instruments adopted at that session to the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action, and to inform the Director-General of the ILO of the measures taken to that end, with particulars of the authority or authorities regarded as competent.
146. The Committee noted from the report of the Committee of Experts (paragraph 74) that considerable efforts to fulfil the obligation to submit had been made in certain States, namely: **Afghanistan, Armenia, Islamic Republic of Iran, Madagascar and Swaziland.**
147. In addition, the Committee was informed by various other States of measures taken to bring the instruments before the competent national authorities. It welcomed the progress achieved and expressed the hope that there would be further improvements in States that still experienced difficulties in complying with their obligations.

Failure to submit

148. The Committee noted that in order to facilitate the work of the Committee, the report of the Committee of Experts mentioned only the governments which had not provided any information on the submission to the competent authorities of instruments adopted by the Conference for seven sessions at least (from the 87th Session in June 1999 to the 94th (Maritime) Session in February 2006). This time frame was deemed long enough to warrant inviting Government delegations to the special sitting of the Conference Committee so that they may explain the delays in submission.

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149. The Committee noted that the five governments concerned with this serious failure to submit had not replied to its invitation to provide information to this session of the Conference, that is, **Sierra Leone, Solomon Islands, Somalia, Turkmenistan and Uzbekistan**.
150. The Committee further noted that more than 50 countries were identified by the Committee of Experts in paragraph 70 of its report. Those countries were experiencing considerable delays in submitting the instruments adopted by the Conference to the competent authorities, as required by the ILO Constitution. The Committee hoped that appropriate measures would be taken by the governments and the social partners concerned so that they could bring themselves up to date, and avoid being invited to provide information to the next session of this Committee.

Supply of reports on ratified Conventions

151. In Part II of its report (Compliance with obligations), the Committee had considered the fulfilment by States of their obligation to report on the application of ratified Conventions. By the date of the 2007 meeting of the Committee of Experts, the percentage of reports received was 65.0 per cent, compared with 66.5 per cent for the 2006 meeting. Since then, further reports had been received, bringing the figure to 73.2 per cent (as compared with 75.4 per cent in June 2006, and 78.3 per cent in June 2005).

Failure to supply reports and information on the application of ratified Conventions

152. The Committee noted with regret that no reports on ratified Conventions had been supplied for the past two or more years by the following States: **Bolivia, Cape Verde, Denmark** (Faeroe Islands), **Sierra Leone, Solomon Islands, Somalia, Tajikistan, Togo, Turkmenistan** and **United Kingdom** (Anguilla, St Helena).
153. The Committee also noted with regret that no first reports due on ratified Conventions had been supplied by the following countries: since 1992: **Liberia** (Convention No. 133); since 1994: **Kyrgyzstan** (Convention No. 111); since 1995: **Kyrgyzstan** (Convention No. 133); since 1998: **Equatorial Guinea** (Conventions Nos 68, 92); since 1999: **Turkmenistan** (Conventions Nos 29, 87, 98, 100, 105, 111); since 2002: **Gambia** (Conventions Nos 105, 138), **Saint Kitts and Nevis** (Conventions Nos 87, 98), **Saint Lucia** (Convention No. 182); since 2003: **Dominica** (Convention No. 182), **Gambia** (Convention No. 182), **Iraq** (Conventions Nos 172, 182); since 2004: **Antigua and Barbuda** (Conventions Nos 122, 131, 135, 142, 144, 150, 151, 154, 155, 158, 161, 182), **Dominica** (Conventions Nos 144, 169), **The former Yugoslav Republic of Macedonia** (Convention No. 182); since 2005: **Antigua and Barbuda** (Convention No. 100), **Liberia** (Conventions Nos 81, 144, 150, 182); and since 2006: **Albania** (Convention No. 171), **Dominica** (Conventions Nos 135, 147, 150), **Georgia** (Convention No. 163), **Kyrgyzstan** (Conventions Nos 17, 184), **Nigeria** (Conventions Nos 137, 178, 179). It stressed the special importance of first reports on which the Committee of Experts based its first evaluation of compliance with ratified Conventions.
154. In this year's report, the Committee of Experts noted that 49 governments had not communicated replies to most or any of the observations and direct requests relating to Conventions on which reports were due for examination this year, involving a total of 555 cases (compared with 415 cases in December 2006). The Committee was informed that, since the meeting of the Committee of Experts, 16 of the governments concerned had sent replies, which would be examined by the Committee of Experts at its next session.

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155. The Committee noted with regret that no information had yet been received regarding any or most of the observations and direct requests of the Committee of Experts to which replies were requested for the period ending 2007 from the following countries: **Afghanistan, Antigua and Barbuda, Barbados, Belize, Bolivia, Cambodia, Cape Verde, Chad, Congo, Democratic Republic of the Congo, Equatorial Guinea, Ethiopia, France (French Southern and Antarctic Territories, Réunion), Gambia, Guinea, Guinea-Bissau, Guyana, Haiti, Ireland, Jamaica, Kyrgyzstan, Lesotho, Liberia, Malaysia – Sabah, Mali, Mongolia, Nigeria, Pakistan, Saint Kitts and Nevis, Seychelles, Sierra Leone, Solomon Islands, Sudan, Tajikistan, Togo, Uganda, United Kingdom** (Anguilla, Bermuda, British Virgin Islands, Gibraltar, Montserrat, St Helena) and **Zambia**.
156. The Committee noted the explanations provided by the governments of the following countries concerning difficulties encountered in discharging their obligations: **Barbados, Congo, Democratic Republic of the Congo, France (French Southern and Antarctic Territories, Réunion), Gambia, Ireland, Lesotho, Mali, Nigeria, Russian Federation, Saint Kitts and Nevis, San Marino, Solomon Islands, Somalia, The former Yugoslav Republic of Macedonia, Uganda and United Kingdom** (Anguilla, Bermuda, British Virgin Islands, Gibraltar, Montserrat, St Helena).
157. The Committee stressed that the obligation to transmit reports was the basis of the supervisory system. It requested the Director-General to adopt all possible measures to improve the situation and solve the problems referred to above as quickly as possible. It expressed the hope that the subregional offices would give all due attention in their work in the field to standards-related issues and, in particular, to the fulfilment of standards-related obligations. The Committee also bore in mind the reporting arrangements approved by the Governing Body in November 1993, which came into operation from 1996, and the modification of these procedures adopted in March 2002 which came into force in 2003.

Supply of reports on unratified Conventions and Recommendations

158. The Committee noted that 146 of the 301 article 19 reports requested on the Labour Clauses (Public Contracts) Convention (No. 94) and the Labour Clauses (Public Contracts) Recommendation, 1949 (No. 84), had been received at the time of the Committee of Experts' meeting, and a further five since, making 50.1 per cent in all.
159. The Committee noted with regret that over the past five years none of the reports on unratified Conventions and Recommendations, requested under article 19 of the Constitution, had been supplied by: **Antigua and Barbuda, Cape Verde, Democratic Republic of the Congo, Equatorial Guinea, Gambia, Guinea, Haiti, Iraq, Kiribati, Kyrgyzstan, Liberia, Pakistan, Paraguay, Russian Federation, San Marino, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, Tajikistan, The former Yugoslav Republic of Macedonia, Togo, Turkmenistan, Uganda, Uzbekistan and Yemen**.

Communication of copies of reports to employers' and workers' organizations

160. Once again this year, the Committee did not have to apply the criterion: "the Government has failed during the past three years to indicate the representative organizations of employers and workers to which, in accordance with article 23(2) of the Constitution, copies of reports and information supplied to the ILO under articles 19 and 22 have been communicated".

Application of ratified Conventions

161. The Committee noted with particular interest the steps taken by a number of governments to ensure compliance with ratified Conventions. The Committee of Experts listed in paragraph 50 of its report new cases in which governments had made changes to their law and practice following comments it had made as to the degree of conformity of national legislation or practice with the provisions of a ratified Convention. There were 65 such cases, relating to 52 countries; 2,620 cases where the Committee of Experts was led to express its satisfaction with progress achieved since it began listing them in 1964. These results were tangible proof of the effectiveness of the supervisory system.
162. This year, the Committee of Experts listed in paragraph 53 of its report, cases in which measures ensuring better application of ratified Conventions had been noted with interest. It noted 314 such instances in 119 countries.
163. At its present session, the Conference Committee was informed of other instances in which measures had recently been or were about to be taken by governments with a view to ensuring the implementation of ratified Conventions. While it was for the Committee of Experts to examine these measures, the present Committee welcomed them as fresh evidence of the efforts made by governments to comply with their international obligations and to act upon the comments of the supervisory bodies.

Specific indications

164. The Government members of **Barbados, Cambodia, Congo, Democratic Republic of the Congo, Denmark** (Faeroe Islands), **Ethiopia, France** (French Southern and Antarctic Territories, Réunion), **Gambia, Ireland, Kiribati, Lesotho, Mali, Nigeria, Russian Federation, Saint Kitts and Nevis, San Marino, Solomon Islands, Somalia, The former Yugoslav Republic of Macedonia, Uganda, United Kingdom** (Anguilla, Bermuda, British Virgin Islands, Gibraltar, Montserrat, St Helena), **Yemen** and **Zambia** had promised to fulfil their reporting obligations as soon as possible. In addition, the Government member of **Iraq** apologized for the lack of appropriate conditions to provide the Committee with the requested reports and promised full cooperation with the ILO, in observance of the ILO Constitution.

Case of progress

165. In the case of **Sweden (Labour Inspection Convention, 1947 (No. 81))**, the Committee welcomed the measures taken by the Government through the Work Environment Authority to improve the functioning of the labour inspection. These measures included the creation of a web site for the online notification of employment accidents and other incidents; the determination of a method for the mapping of workplaces likely to present occupational hazards, thereby facilitating the evaluation of all workplaces registered in this respect; and appropriate training activities for all staff involved in the handling of supervision procedures, particularly with a view to ensuring compliance with professional rules and ethical principles. The Committee noted that this case was included in the list of countries as a case of progress that should serve as an example of good practice.

Special sitting concerning the application by Myanmar of the Forced Labour Convention, 1930 (No. 29)

166. The Committee held a special sitting concerning the application by Myanmar of Convention No. 29, in conformity with the resolution adopted by the Conference in 2000. A full record of the sitting appears in Part Three of the report.

Special cases

167. The Committee considered it appropriate to draw the attention of the Conference to its discussion of the cases mentioned in the following paragraphs, a full record of which appears as Part Two of this report.
168. As regards the application by **Bangladesh of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**, the Committee noted the information provided by the Government representative and the debate that followed. The Committee observed that the Committee of Experts' comment referred to serious violations of the Convention both in law and in practice, including: allegations of the raiding of the offices of the Bangladesh Independent Garment Workers' Union Federation (BIGUF) and the arrest of some of its officers; further arrests and police harassment of other unionists in the garment sector; arrests of hundreds of women trade unionists in 2004 whose case was still pending before the courts; and obstacles to the establishment of workers' organizations and associations in export processing zones (EPZs). It further observed with regret that many of the discrepancies between the Bangladesh Labour Law of 2006 and the provisions of the Convention concerned matters upon which the Committee of Experts had been requesting appropriate legislative action for some time now. The Committee noted the Government's statement that the Labour Law of 2006 was adopted following a process of consultations with the social partners over many years. It further noted the Government's indication that it was in the process of reviewing the Labour Law, within the framework of the tripartite consultative committee, in order to bring its provisions into conformity with the Convention in respect of any remaining loopholes. As regards the allegations of arrests and detentions, it noted the Government's statement that none of these persons remained in custody nor were the charges against them being actively pursued. The Committee observed that in reply to its request concerning technical assistance, the Government stated that it would conduct a needs assessment and request such assistance if needed. Expressing its concern over the apparent escalation of violence in the country, the Committee stressed that freedom of association could only be exercised in a climate that was free from violence, pressure or threats of any kind against the leaders and members of workers' organizations. The Committee requested the Government to provide full particulars to the Committee of Experts in respect of all the allegations of arrest, harassment and detention of trade unionists and trade union leaders and urged it to give adequate instructions to the law enforcement bodies so as to ensure that no person was arrested, detained or injured for having carried out legitimate trade union activities. The Committee further urged the Government to take measures for the amendment of the Bangladesh Labour Law and the EPZ Workers' Associations and Industrial Relations Act so as to bring them into full conformity with the provisions of this fundamental Convention as requested by the Committee of Experts. The Committee emphasized in this regard the serious difficulties prevailing as regards the exercise of trade union rights in EPZs and the restrictions on the right to organize of a number of categories of workers under the Labour Law. It called upon the Government to ensure that all workers, including casual and subcontracted workers, were fully guaranteed the protection of the Convention. The Committee expressed the hope that the necessary concrete steps would be taken without delay and trusted that all additional measures would result in an improvement and not a deterioration of the trade union rights situation in the country. It requested the Government to provide a detailed report on all of the above matters for examination at the forthcoming session of the Committee of Experts.
169. As regards the application by **Zimbabwe of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**, the Committee deeply deplored the persistent obstructionist attitude demonstrated by the Government through its refusal to come before it in two consecutive years and thus seriously hamper the work of the ILO supervisory mechanisms to review the application of voluntarily ratified Conventions. The

Committee recalled that the contempt shown by the Government to this Committee and the gravity of the violations observed had led this Committee to decide last year to mention this case in a special paragraph of its report and to call upon the Government to accept a high-level technical assistance mission. The Committee further deplored the Government's refusal of the high-level technical assistance mission that the Committee had invited it to accept. The Committee observed with profound regret that the comments of the Committee of Experts referred to serious allegations of the violation of basic civil liberties, including the quasi-systematic arrest and detention of trade unionists following their participation in public demonstrations. In this regard, the Committee further regretted the continual recourse made by the Government to the Public Order and Security Act (POSA) and lately, to the Criminal Law (Codification and Reform) Act of 2006, in the arrest and detention of trade unionists for the exercise of their trade union activities, despite its calls upon the Government to cease such action. The Committee also observed that the Committee on Freedom of Association continued to examine numerous complaints regarding these serious matters. The Committee took note with deep concern of the vast information presented to it concerning the surge in trade union rights and human rights violations in the country and the ongoing threats to trade unionists' physical safety. In particular, it deplored the recent arrests of Lovemore Matombo and Wellington Chibebe and the massive violence against teachers as well as the serious allegations of arrest and violent assault following the September 2006 demonstrations. The Committee emphasized that trade union rights could only be exercised in a climate that was free from violence, pressure or threats of any kind. Moreover, these rights were intrinsically linked to the assurance of full guarantees of basic civil liberties, including freedom of speech, security of person, freedom of movement and freedom of assembly. It recalled that it was essential to their role as legitimate social partners that workers' and employers' organizations were able to express their opinions on political issues in the broad sense of the term and that they could publicly express their views on the Government's economic and social policy. The Committee therefore urged the Government to ensure all these basic civil liberties, to repeal the Criminal Law Act and to cease abusive recourse to the POSA. It called upon the Government immediately to halt all arrests, detentions, threats and harassment of trade union leaders and their members, drop all charges brought against them and ensure that they are appropriately compensated. It called upon all governments with missions in the country to be present at the trial of Mr Matombo and Mr Chibebe and follow closely all developments in relation to their case. The Committee urged the Government to cooperate fully in the future with the ILO supervisory bodies, in accordance with the international obligations that it voluntarily assumed by its membership in the Organization. The Committee firmly urged the Government to ensure for all workers and employers full respect for the civil liberties enunciated in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights without which freedom of association and trade union rights were void of any meaning. It urged the Government to accept a high-level, tripartite, special investigatory mission in this case of flagrant disregard for the most basic freedom of association rights. It urged the other governments that had ratified this Convention to give serious consideration to the submission of an article 26 complaint and called upon the Governing Body to approve a commission of inquiry.

Continued failure to implement

- 170.** The Committee recalled that its working methods provide for the listing of cases of continued failure over several years to eliminate serious deficiencies, previously discussed, in the application of ratified Conventions. This year the Committee noted with great concern that there had been continued failure over several years to eliminate serious discrepancies in the application by **Zimbabwe of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**.

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171. The Government of the country to which reference was made in paragraph 176 was invited to supply the relevant reports and information to enable the Committee to follow up the abovementioned matter at the next session of the Conference.

Participation in the work of the Committee

172. The Committee wished to express its gratitude to the 57 governments which had collaborated by providing information on the situation in their countries and participating in the discussion of their individual cases.
173. The Committee regretted that, despite the invitations, the governments of the following States failed to take part in the discussions concerning their countries' fulfilment of their constitutional obligations to report: **Afghanistan, Albania, Cape Verde, Chad, Guinea, Guinea-Bissau, Haiti, Jamaica, Liberia, Malaysia – Sabah, Mongolia, Tajikistan and Togo**. It decided to mention the cases of these States in the appropriate paragraphs of its report and to inform them in accordance with the usual practice.
174. The Chairperson of the Committee announced that on the last day of the discussion of individual cases, the Committee would deal with the cases in which governments had not responded to the invitation. Given the importance of the Committee's mandate, assigned to it in 1926, to provide a tripartite forum for dialogue on outstanding issues relating to the application of ratified international labour Conventions, a refusal by a government to participate in the work of the Committee was a significant obstacle to the attainment of the core objectives of the International Labour Organization. For this reason, the Committee could discuss the substance of the cases concerning governments which were registered and present at the Conference, but which had chosen not to be present before the Committee. The debate which ensued in such cases would be reflected in the appropriate part of the report, concerning both individual cases and participation in the work of the Committee.
175. The Worker members recalled that in 2007, the **Government of Zimbabwe** boycotted this Committee defiantly with deliberate intent after having asked for several postponements to which the Committee acceded. At that juncture, the Employer members had expressed the following view: "The situation created by the Government of Zimbabwe was regrettable, insulting to the Committee and to the ILO supervisory system as a whole." They had agreed with that view then, they agreed with it now. The Worker members further recalled that the allegations raised by the Government last year in document D.10 largely attempted to state that the Committee was entertaining a political issue. Yet all that the Committee of Experts and this Committee continued to address were violations of a freely ratified Convention by the Government. This continued defiance was a travesty of justice, was very regrettable and should not be allowed to prevail without reprimand.
176. The Employer members pointed out that this was the second year that the **Government of Zimbabwe** had elected not to appear before this Committee in accordance with its methods of work. This was regrettable and insulting to this Committee and the ILO supervisory machinery. Last year, under the 2005 Bosnia and Herzegovina precedent, the Committee had had the limited possibility to discuss the case based on the information supplied by the Government in document D.10. This year, there was no D. document. However, as reflected on page 7 of document D.1, the Committee had amended its methods of work to provide that the Committee could discuss the substance of the cases concerning which governments were registered and present for the Conference. The Employer members further underlined that the Government of Zimbabwe had participated in the discussion of an earlier case concerning another country this year. Moreover, its representatives were sitting in the gallery now. They concluded by stating that the

substantive discussion of this case would be reflected in Part Two of the Committee's report, but would also appear in a special paragraph in Part One of the Committee's report.

177. The representative of the Secretary-General informed the Committee that the **Government delegation of Equatorial Guinea** was not accredited to the Conference this year. The Chairperson of the Committee stated that in the case of governments that were not present at the Conference, the Committee would not discuss the substance of the case, but would bring out in the report the importance of the questions raised. In this situation, a particular emphasis would be put on steps to be taken to resume the dialogue.
178. The Worker members pointed out that the **Government of Equatorial Guinea** was on the list of individual cases of the Conference Committee in the context of two footnotes in respect of Conventions Nos 87 and 98. Equatorial Guinea ratified these Conventions in 2001. Since then, the main argument of the Government to evade its obligation to promulgate a law that would comply with the principles contained in Conventions Nos 87 and 98 had been to state that there was neither trade union culture nor trade unions in the country. The immediate consequence of this was that collective bargaining could not be exercised in the country. The Worker members stressed that at least four organizations of workers had requested recognition which illustrated the will of the workers in that country to try to create a trade union culture. However, they had been pushed underground by the Government. Hence, the attitude of the Government was unacceptable and the situation was serious. The Government needed to recognize that the trade union tradition would come to exist of itself once the trade unions concerned started to function. In this regard, the ILO could provide technical assistance. The Worker members therefore asked the Office to formally request the Government to accept technical assistance.
179. The Employer members indicated that the absence of a report to the Committee meant that this case could not be discussed properly. There was some indication in the General Report of the Committee of Experts that some contact had been made between the member State and the Office. The Employer members could only hope that this dialogue would bear fruit and that this Committee would be able to discuss this case in a more informed manner in the future.
180. The Committee noted with regret that the governments of the States which were not represented at the Conference, namely: **Antigua and Barbuda, Belize, Dominica, Equatorial Guinea, Kyrgyzstan, Saint Lucia, Seychelles, Sierra Leone, Turkmenistan** and **Uzbekistan**, were unable to participate in the Committee's examination of the cases relating to them. It decided to mention these countries in the appropriate paragraphs of this report and to inform the governments, in accordance with the usual practice.

Geneva, 10 June 2008.

(Signed) Ms Noemí Rial
Chairperson

Mr Jinno Nkhambule
Reporter

INTERNATIONAL LABOUR CONFERENCE

97th Session, Geneva, 2008

**Observations
of the Committee of Experts on the Application
of Conventions and Recommendations**

Individual cases

Forced Labour Convention, 1930 (No. 29)

India

(Ratification: 1954)

1. The Committee has noted the Government's reports received in 2005 and 2006 together with its two replies to the communications received from the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) dated 31 August 2005. The Committee also notes the further communication of the ITUC dated 30 August 2007 which was forwarded to the Government on 17 September 2007, in order to afford it the opportunity to make comments on the matters raised therein.

Bonded labour and the need to identify the magnitude of the practice

2. The Committee has previously referred on many occasions to the urgent need for a comprehensive, large-scale national survey on bonded labour, using appropriate methodologies, in order to ascertain the scope and order of magnitude of the practice and of the efforts needed to identify, free, and rehabilitate workers who are exploited by it and to prosecute those who use it to exploit them. This issue is again a subject of the 2005 communication from the ICFTU referred to in paragraph 1 above.

3. The ICFTU in its 2005 communication on this topic, adverted to a number of matters including indications that:

- according to the 2005 ILO report, "A global alliance against forced labour", a commission set up in 1995 by the Supreme Court to investigate bonded labour cases in Tamil Nadu conducted a large-scale survey and concluded that, in that state alone, there were more than 1 million bonded labourers spread across 23 districts and 20 occupations;

- while the Government has denied the existence of bonded child labour in the silk industry, a report by the Centre for Education and Communication (CEC), in conjunction with Anti-Slavery International, highlights a 1998 report by the Labour Commissioner indicating that 3,077 cases of child bonded labour were found in silk reeling units in areas of the Bangalore district of Karnataka;

- the number of people identified by the Government since 1976 does not represent the total number of bonded labourers in the country. It again referred to the systematic survey on bonded labour conducted in 1978–79, the Ghandi Peace Foundation (GPF), and the National Labour Institute (NLI), an autonomous body of the Ministry of Labour, which estimated that 2.6 million bonded labourers were employed in agriculture alone.

4. The Committee notes the Government's response in its 2006 report and the annex attached thereto, which indicated that:

- as a result of government-funded local surveys, during the period 2000–01 to 2005–06, 15,111 bonded labourers were identified in 149 districts and all of them were rehabilitated;

- the incidence of bonded labour, as reported from state governments, declined from 2,465 bonded labourers in 2003–04, to 866 in 2004–05, to 397 during the year 2005–06; this decline, according to the Government, is "a result of concerted efforts made by the Government through various anti-poverty programmes, awareness, sensitization, etc.";

- the Government considers that the figures quoted by the non-governmental agencies regarding incidence of bonded labour relied upon by the ICFTU are invalid, as they were not derived from the use of appropriate statistical tools for collecting primary data;

- the Government reiterates that it does not consider it necessary to conduct a large-scale national survey on bonded labour, since the central Government already provides grants to the states to conduct district-wide surveys, and that a national survey is not possible to carry out because of the need to use qualitative methods for collecting appropriate data.

5. In relation to the need for a comprehensive national survey, the Committee notes the 2004–05 Annual Report of the National Human Rights Commission (NHRC) from its Internet site, indicating that, pursuant to the recommendations of its Expert Group on Bonded Labour, the commission has since 2003 conducted workshops for sensitizing and educating district magistrates, police superintendents, NGOs and other field officials involved in the implementation of the Bonded Labour System (Abolition) Act, 1976 (BLSA); that such workshops have "proved useful in identifying significant issues relating to identification, release and rehabilitation of bonded labour"; and that among the "important points" emerging from this process was the need for a "fresh, comprehensive survey to determine the magnitude of bonded labour".

6. The Committee also notes from a news update dated 28 June 2007 and posted on the Internet site of the NHRC, that during a national workshop held on 28 June 2007 a former NHRC special rapporteur, who chaired a session on adequacy and effectiveness of administrative mechanisms, called for "effective surveys to identify bonded labour".

7. The Committee once again urges the Government to undertake a large-scale national survey on bonded labour as a matter of priority, using valid and appropriate statistical methodologies, and requests that the Government supply information in its next report on the measures taken or envisaged towards this end.

Vigilance committees

8. The Committee in its previous observation requested that the Government continue to provide information on the vigilance committees (VCs) – the bodies constituted by state governments at district and subdivision levels pursuant to section 13 of the BLSA to, inter alia, advise district magistrates to ensure that the provisions of the BLSA are properly implemented, survey for the occurrence of bonded labour offences, monitor the number of such

offences, and provide for the rehabilitation of freed bonded labourers – as well as to provide information on measures taken or contemplated to improve the effectiveness of the VCs in carrying out these activities.

9. The Committee has noted that the ICFTU, in its 2005 communication, referred to the 2001–02 Annual Report of the NHRC, which states that the VCs “were not in position in many places” and even where constituted “have become defunct over the years”, and that they “have not made worthwhile contributions anywhere in terms of the identification, release and rehabilitation of bonded labour”.

10. The Government in its 2006 report indicates that state governments have all confirmed the constitution of VCs, that “the meetings are being held regularly”, and that state governments are frequently requested to ensure that such committees are duly constituted or reconstituted. The Government, in reply to the ICFTU comments, stated in its 2005 report that “there might be a few instances when the VCs did not meet regularly (but) these instances cannot lead to a conclusion that (they) were not ... delivering useful results”.

11. In relation to the operation of VCs, the Committee notes the following from the Annual Report 2004–05 of the NHRC, that:

- in Rajasthan, the State Labour Committee on Bonded Labour was not meeting regularly and had held no meetings after 10 September 2001;
- in Maharashtra, the VCs “are not meeting regularly and the detection of bonded labour is practically nil in the State”; and
- in Punjab, there had been no reported detection of bonded labour since the previous review, and despite advice from the commission, the state government “does not seem interested in taking up the Awareness Generation Programme”.

12. The Committee further notes that the general recommendations which have evolved out of the series of sensitization and awareness-raising workshops conducted by the NHRC and referred to above, have included recommendations:

- for a convergence of the work done by government agencies and NGOs;
- for the constitution of district and subdivisional level VCs;
- for the VCs to examine the status of already rehabilitated bonded labourers, to plan for rehabilitation of identified bonded labourers, and to monitor bonded labour-prone areas and industries; and
- for the periodic review of VCs and their functions.

13. The Committee hopes that in its next report the Government will address itself to the shortcomings of the VCs in fulfilling their mandate under the BLSA, which are clearly evidenced by a preponderance of recent information from governmental and other sources, including that cited above, and that it comment on recommendations concerning the apparent need for other local institutions to assume the functions of the VCs.

Law enforcement

14. In its earlier comments, the Committee referred to the problem of law enforcement in connection with the eradication of bonded labour and sought information on the number of prosecutions, convictions and acquittals in various states under the BLSA and also questioned the adequacy of the penalties imposed. The Committee previously observed that, in the light of *Article 25 of the Convention*, the number of prosecutions launched under the Act did not appear to be adequate in relation to the number of identified and freed bonded labourers reported by the Government.

15. The Committee notes that the ICFTU in its 2005 communication referred to a finding by the NHRC reported in its Annual Report 2001–02 that, “the prosecution of offenders under the bonded labour system has, in fact, been neglected in every state reviewed”.

16. The Government in its 2005 report referred to section 21 of the BLSA, under which the power of judicial magistrates to try offences may be conferred upon executive magistrates, and stated that the Act “has enough penal provisions to deal with the issue of bonded labour”, and that the judiciary in India “is proactive in dealing with the issue of bonded labour”.

17. The Committee notes that the Government in its 2006 report states that, although exact information on the number of prosecutions launched for offences relating to bonded labour during the period under review was not available, according to statistics reported by state governments, there had been 5,893 prosecutions initiated; convictions obtained in 1,289 cases; and fines of 107 million rupees so far realized under the BLSA. The Government adds that the low rate of prosecutions could be explained, in part, by the existence in rural and informal sectors of society of an informal system of grievance and dispute resolution centred on village-level bodies, known as “Nyaya Panchayat” or “Lok Adalats”.

18. The Committee also notes the following findings of the NHRC published in its 2004–05 Annual Report:

- in Uttar Pradesh, 55 bonded labourers were identified and freed in 2004–05, but the “prosecution aspect remains totally neglected”;
- in Madhya Pradesh, a total of 22 criminal cases under the BLSA had been registered since 1999–2000 and 20 cases were pending trial, but the power of executive magistrates to try offences conferred under section 21 of the BLSA was being used “reluctantly”; and
- in Jharkand, orders regarding the empowerment of executive magistrates to exercise powers of judicial magistrates under the BLSA had not yet been issued.

19. The Committee further notes from the 2004–05 Annual Report of the NHRC that among the “important points” emerging from the series of

sensitization and awareness-raising workshops on bonded labour conducted by the commission since 2003 in association with the Ministry of Labour and Employment and concerned state governments, and referred to above, is the need for "prosecution of offending employers".

20. The Committee hopes that in its next report the Government will provide comprehensive information about the practical workings of the village institutions referred to above, including:

- **detailed information about their geographic prevalence and detailed statistics, for every state, concerning the number of bonded labour complaints lodged with these bodies;**
- **the number of bonded labour cases adjudicated through them; and**
- **the outcomes of such cases.**

The Committee also asks that in its next report the Government supply detailed information about measures it is taking or contemplating to address the serious and ongoing deficiencies in the prosecution of cases of bonded labour and, more generally, in the enforcement of the penalties and sanctions prescribed under Chapter VI of the BLSA, as well as information assessing the practical results of the ongoing sensitization and awareness-raising workshops conducted by the NHRC for law enforcement officials and members of the judiciary.

Release and rehabilitation

21. The Committee notes the indication in the 2005 observations of the ICFTU that significant problems exist in policies and programmes for the release and rehabilitation of bonded labourers, which include, among other things, corruption and bribery in the distribution of rehabilitation packages; discriminatory treatment in the provision of rehabilitation packages against bonded labourers identified by non-governmental organizations; and the failure of rehabilitation resources to provide economic security and sustained livelihoods to freed workers.

22. The Committee notes the reply of the Government in its 2005 report to the ICFTU comments in which it indicated that efforts were being made to upgrade the skills of beneficiaries required in their previous occupations; referred to directions to state governments to dovetail rehabilitation packages with other poverty-alleviation programmes; and asserted that no case of relapse into bondage had been received from beneficiaries already rehabilitated.

23. The Committee also notes from a news update of the NHRC dated 28 June 2007 and referred to above, that in the course of a national workshop held on 28 June 2007, the secretary of the Ministry of Labour and Employment stated that "no data on the freed bonded labour is available and how their rehabilitation has taken place is still a question", and that the secretary also called upon state officials to initiate projects so as to converge development schemes for the benefit of freed bonded labourers.

24. The Committee hopes that in its next report the Government will supply detailed information about the measures it refers to for upgrading the skills of freed bonded labourers and about its policy of integrating rehabilitation packages with other poverty-alleviation programmes, including information about the implementation and practical outcomes of these policies and programmes.

25. The Committee also requests that in its next report the Government provide detailed information about measures it is taking or contemplating to address the significant problems and shortcomings, exemplified in the reports discussed above, in the Government's policies and programmes for the release and rehabilitation of identified bonded labourers.

Child labour

26. The Committee has previously raised a number of questions concerning efforts to eliminate child labour falling under the Convention (i.e. in conditions which are sufficiently hazardous or arduous that the work concerned cannot be considered voluntary). The Committee expressed the hope that the Government would redouble its efforts in this field, particularly with regard to the identification of working children and strengthening the law enforcement machinery, in order to eradicate the exploitation of children, especially in hazardous occupations; and it also requested the Government to supply the results of the latest census on the number of working children in the country.

27. The Committee notes the indications of the Government in its 2006 report, including the following statements:

- based on census data from 2001 there are an estimated 12.63 million child labourers nationally in the age group 5–14, an increase from the estimate of 11.28 million based on the 1991 Census;
- during the 10th Five-Year Plan (2002–07) the National Child Labour Projects (NCLPs) scheme for the rehabilitation of working children withdrawn from hazardous occupations, launched by the Ministry of Labour and Employment on 15 August 1994, was expanded in scope from 100 to 250 districts;
- the central Government has increased the budget allocation for NCLPs from 2,500 million rupees under the previous plan to 6,670 million rupees under the current Five-Year Plan;
- increased monitoring of government schemes for eliminating child labour has taken place at state and district levels.

28. The Committee notes with interest that the Child Labour (Prohibition and Regulation) Act, 1986 (CLPRA), was amended in October 2006, in order to extend the prohibition of employment of children to occupations involving employment in domestic service, hotels, motels, restaurants, road-side eateries, tea shops, resorts, and recreational centres.

29. The Committee requests that in its next report the Government supply information about the application and enforcement of the prohibitions under this amendment to the CLPRA.

30. The Committee notes, with regard to enforcement of the CLPRA, the statement of the Government in its 2006 report that it was “moving in the direction” of creating suitable enforcement machinery. The Committee, however, also notes the statistical data (as reported by state governments and the Organisation of the Chief Labour Commissioner) posted on the Internet site of the National Child Labour Project of the Ministry of Labour and Employment. This data include the following comparative statistics for the periods 2004–05 and 2002–03:

- in 2004–05, 242,223 inspections were conducted and 16,632 violations were detected, whereas in 2002–03, 26,411 violations were detected;
- in 2004–05, 2,609 prosecutions were launched compared to 9,159 in 2002–03; and
- in 2004–05, there were 1,385 convictions and 447 acquittals, in comparison to 4,013 convictions in 2002–03.

31. The Committee notes that there has been a steep drop in the detection of violations and initiation of prosecutions during 2004–05, when at the same time the estimates indicate a continuing increase in child labour. The Committee also notes that no data were reported on the nature of the sanctions or sentences imposed in cases where convictions were achieved.

32. The Committee asks the Government to provide information in its next report on the nature of sanctions or sentences received in relation to successful convictions, supplying copies of the court decisions (including those of the Supreme Court) concerning the work of children in hazardous occupations. The Committee also asks the Government to comment on the drop in the detection of violations and initiation of prosecutions during 2004–05 and also any explanation for the comparatively high rate of acquittals. Further, the Committee requests the Government to elaborate on what is meant by its assertion that the Government is committed to “moving in the direction” of creating suitable enforcement machinery.

33. The Committee notes two news releases of the Ministry of Labour and Employment dated 20 August 2007 and 22 August 2007, posted on the Internet site of the Government’s Public Information Bureau, indicating that the Ministry was now implementing its scheme of NCLPs in 250 districts in a total of 20 states. Under the scheme, these children were placed into special schools and provided with accelerated bridging education, vocational training, mid-day meals, stipends, and health check-up facilities. At present, 343,000 children were enrolled in the special schools and 457,000 children had already been mainstreamed into the formal education system since the scheme’s inception. An expansion of the scheme along with an enlargement of its scope through additional components during the 11th Five-Year Plan (2007–12) was under consideration. The programme covered children working in notified hazardous occupations in the agricultural sector, among others. In addition, a scheme of grants-in-aid to voluntary agencies for the benefit of children withdrawn from hazardous occupations was being implemented in other districts not covered by the NCLP scheme.

34. The Committee hopes that in its next report the Government will provide updated and detailed information about the implementation in all 20 states of the NCLPs scheme for rehabilitating child labour withdrawn from hazardous industries and about the status of plans to enlarge its scope under the next Five-Year Plan.

Prostitution and commercial sexual exploitation

35. In its earlier comments, the Committee welcomed the adoption of a National Plan of Action to combat trafficking and commercial sexual exploitation of women and children, among other positive measures taken by the Government, as well as the Government’s intention to review the existing legal framework including the Immoral Trafficking (Prevention) Act, the India Penal Code, the Criminal Procedure Code and the Evidence Act, with a view to making the punishment more stringent for traffickers but at the same time, more victim-friendly. The Committee also expressed the hope that measures would be taken to compile reliable statistics concerning the extent and magnitude of the problem of trafficking and commercial sexual exploitation in India, including the problem of child prostitution.

36. The Committee notes with interest the enactment of the Commissions for Protection of Child Rights Act, 2005 (CPCRA), referred to by the Government in its 2006 report. The Committee notes that the purpose of the Act is to provide for the constitution of a national commission and analogous state-level commissions “for providing speedy trial of offences against children”. The Committee notes some of the salient points of the CPCRA with respect to the functions and powers of the national commission, which include:

- inquiring into violation of child rights and recommend initiation of proceedings in such cases (section 13(1)(c));
- examining all factors that inhibit the enjoyment of rights of children such as trafficking and prostitution and to recommend appropriate remedial measures (section 13(1)(d));
- inquiring into complaints relating to the deprivation and violation of child rights and take up such matters with appropriate authorities (section 13(1)(j));
- forwarding any case to a magistrate, who shall hear the complaint against the accused as if it were forwarded under section 346 of the Code of Criminal Procedure (section 14(2));
- where an inquiry discloses a violation “of a serious nature or contravention of provisions of any law”, recommending the initiation of proceedings for prosecution (section 15(i));
- commissions constituted by state governments at the state level are accorded functions and powers analogous to those of the national commission (section 24).

37. The Committee notes the Government's reference to proposed legislation, the draft Offences against Children Bill, 2006 (DOCB). The Government states that the DOCB seeks to improve deficiencies in the India Penal Code, which does not separately take cognizance of various offences against children, and that it specifically includes the offence of sexual exploitation of children and trafficking and provides for corresponding sanctions.

38. The Committee hopes that in its next report the Government will supply information concerning the practical application of the provisions of the Commissions for Protection of Child Rights Act, 2005 referred to above, as they relate to trafficking of children for purposes of commercial sexual exploitation or prostitution. The Committee hopes that the Government will soon enact the draft Offences against Children Bill and asks the Government to supply updated information on the prospects for such action.

39. The Committee also notes from the Internet site of the Parliament of India that the Immoral Traffic (Prevention) Amendment Bill, 2006 was introduced in the Lok Sabha in May 2006 and adopted by the Parliamentary Standing Committee on Human Resource Development in November 2006 and thereafter reported back to both Houses of Parliament. The Bill amends the Immoral Traffic (Prevention) Act 1956 (ITPA), which makes trafficking and sexual exploitation of persons for commercial purposes a punishable offence. Among other things, the Bill provides for more stringent punishment of offenders; deletes provisions relating to the prosecution of prostitutes for solicitation; defines the term "trafficking in persons" and punishes trafficking in persons, including children, for the purpose of prostitution; increases penalties for certain trafficking offences; and provides for the constitution of authorities at the central and state levels to combat trafficking.

40. Further, the Committee notes from a press release dated 20 August 2007, posted on the Internet site of the Government's Press Information Bureau (PIB), that a pilot project on combating trafficking of women and children for sexual exploitation was being implemented; that a "Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation and Reintegration of Victims of Trafficking and Commercial Sexual Exploitation" had been included in the Annual Plan, 2007-08; and that the Central Advisory Committee on Combating Child Prostitution, headed by the Secretary of the Ministry of Women and Child Development (WCD), was reviewing the States' activities in combating trafficking and prostitution every quarter.

41. The Committee hopes that in its next report the Government will supply updated and detailed information on: the status of the Immoral Traffic (Prevention) Amendment Bill, 2006; on the progress in the implementation of pilot projects aimed at combating trafficking of women and children for commercial sexual exploitation; and on the work of the central advisory committees within relevant ministries in terms of measures to combat/prevent trafficking for commercial sexual exploitation and prostitution and to review states' activities in this area.

Myanmar

(Ratification: 1955)

Historical background

1. In previous comments the Committee has drawn attention to gross breaches of the Convention by the Government of Myanmar and the failure by the Government to implement the recommendations of the Commission of Inquiry, appointed by the Governing Body in March 1997.

2. The Commission of Inquiry, appointed in 1997 under article 26 of the Constitution, concluded that the Convention was violated in national law and in practice in a widespread and systematic manner, and made the following recommendations:

- (1) that the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Convention;
- (2) that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military; and
- (3) that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced.

The Commission of Inquiry emphasized that, besides amending the legislation, concrete action needed to be taken immediately to bring an end to the exaction of forced labour in practice, in particular by the military.

3. The continued failure of the Government to comply with those recommendations and the observations of the Committee of Experts as well as other matters arising from the discussion in the other bodies of the ILO, led to the unprecedented exercise of article 33 of the Constitution by the Governing Body at its 277th Session in March 2000, followed by the adoption of a resolution by the Conference at its June 2000 session. The detailed history of this extremely serious case has been set out at length in previous observations of this Committee in recent years.

4. Each of the ILO bodies, in discussing this case, had focused attention on the recommendations of the Commission of Inquiry. The Committee of Experts has in its previous observations identified four areas in which measures should be taken by the Government to achieve those recommendations. Specifically, the Committee indicated the following measures:

- issuing specific and concrete instructions to the civilian and military authorities;
- ensuring that the prohibition of forced labour is given wide publicity;
- providing for the budgeting of adequate means for the replacement of forced or unpaid labour; and
- ensuring the enforcement of the prohibition of forced labour.

Developments since the Committee's last observation

5. There has been a number of discussions and conclusions by ILO bodies and also further documentation received which the Committee has considered in the course of making this observation. In particular the Committee notes:

- the discussions and conclusions of the Conference Committee on the Application of Standards during the 96th Session of the International Labour Conference in June 2007;
- the documents submitted to the Governing Body at its 298th and 300th Sessions (March and November 2007) as well as the discussions and conclusions of the Governing Body during the sessions;
- the comments made by the International Trade Union Confederation (ITUC) in a communication received on 31 August 2007 together with the detailed appendices of some 740 pages;
- the reports of the Government of Myanmar received on 17 and 20 August, 10 September and 12 and 23 October as well as 3 December 2007; and
- the Supplementary Understanding (SU) of 26 February 2007 to the earlier Understanding of 19 March 2003 concerning the appointment of an ILO Liaison Officer in Myanmar.

The Supplementary Understanding of 26 February 2007

6. The Committee notes at this point that the SU is a very important development and its significance is discussed in greater detail towards the end of this observation. It is important for the SU to be viewed in the context of the other documentation, discussions and conclusions referred to above.

7. The SU concerns the appointment and role of an ILO Liaison Officer in Myanmar, and was concluded after long negotiations between the ILO and the Government of Myanmar. The SU provides for a new complaints mechanism to be established and put into operation, and has as its prime object “to formally offer the possibility to victims of forced labour to channel their complaints through the services of the Liaison Officer to the competent authorities with a view to seeking remedies available under the relevant legislation”. The mechanism was to be implemented on a trial basis over a period of 12 months and could thereafter be extended by mutual agreement (GB.298/5/1, appendix).

8. The role of the Liaison Officer in the context of the SU and the impact of his work in the circumstances in which he was required to perform it in the country, was a major subject of later discussion in ILO bodies.

Discussion and conclusions of the Conference Committee
on the Application of Standards

9. The conclusion of the Conference Committee during the 96th Session in June 2007, was that, whilst the complaints mechanism set up under the SU was continuing to function, it had to be assessed against the ultimate goal of eliminating forced labour.

10. In this connection, the Committee notes that the Committee on the Application of Standards in its conclusions in June 2007 (ILC, 96th Session, *Provisional Record* No. 22, Part 3) “observed that the mechanism had to be assessed against the ultimate goal of eliminating forced labour, and it remained to be seen what the impact would be”; and that the recent documentation submitted to the Governing Body stated that “it is both physically and financially very difficult for victims of forced labour or their relatives to lodge a complaint if they live outside Yangon” noting that “informal networks have been developed” which “although valuable ... do not necessarily extend to all parts of the country” (GB.300/8, paragraph 9). The Committee also notes from the documentation that “regarding the mechanism set up by the Supplementary Understanding, it is not possible today to say to what extent it is fully functional after the civil unrest and its suppression, and thus to what extent experiences from it can be built upon” (GB.300/8, Add, paragraph 9).

Discussions in the Governing Body

11. The Committee notes that the reports to the Governing Body at its 300th Session in November 2007 regarding the progress of the complaints mechanism indicated that as of 7 November 2007, the Liaison Officer had received 56 complaints (GB.300/8 (Add.), paragraph 3). Of those complaints, 19 were assessed as falling outside the mandate of the Liaison Officer and 24 were formally submitted for investigation and appropriate action to the Deputy Minister of Labour in his capacity as Chairman of the Government Working Group on Forced Labour. Four complaints were closed after being assessed as having an insufficient basis to proceed, and nine complaints were still being processed or could not proceed until further information was received from the complainants (GB. 300/8, paragraph 5 and GB.300/8 (Add.), paragraph 5).

12. In addition, the Governing Body called upon the Government to ensure that the mechanism provided by the SU remained fully functional with no further detention or harassment of complainants, facilitators or others, and that it should be fully applied to the military authorities. It considered that full attention should also be given to preventing the recruitment of child soldiers (paragraph 5). Importantly, the Governing Body also called for the putting into place of an appropriate network towards ensuring that the nationwide application of the SU, including in the combat zones, and to ensure that forced labour victims are able to easily access the complaints mechanism (paragraph 6).

Communication received from the International Trade Union Confederation

13. The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication received on 31 August 2007. Appended to this communication were 45 documents, amounting to more than 740 pages, containing extensive and detailed documentation referring to forced labour practices on the part of civil and military authorities. In many cases, the documentation refers to specific dates, detailed locations and circumstances, and specific civil bodies, military units and individual officials. The documentation covers a broad area of the country

(including many parts of Chin, Kayah, Kayin, southern Mon, northern Rakhine and Shan States, and of Ayeyarwady, Bago, Mandalay and Tanintharyi Divisions) during the period from the second half of 2006 through the first half of 2007. The incidents referred to involve the alleged requisition of labour for the full range of tasks identified by the Commission of Inquiry:

- portering for the military (or other military/paramilitary groups, for military campaigns or regular patrols);
- construction or repair of military camps/facilities;
- other support for camps (guides, messengers, cooks, cleaners, etc.);
- income-generation by individuals or groups (including work in army-owned agricultural and industrial projects);
- various infrastructure projects; and
- cleaning/beautification of rural or urban areas.

14. The documentation includes copies of 145 written orders apparently from military and other authorities to villages in Kayin State, containing a range of demands entailing in most cases a requirement for (uncompensated) labour. It also includes photographs purporting to show people in Mon State being forced to work on military development projects, as detailed in an accompanying report. It further includes a video in which five men state that they were forced to work for the Myanmar army since April 2007 as porters, sentries, carrying out construction projects, building fences and doing various tasks in army camps, as well as being forced to provide ox carts and tractors to the army. A copy of the ITUC's communication and its annexes was transmitted to the Government for such comments as it may wish to provide.

The Government reports

15. The Committee notes the Government's reports received on 17 and 20 August, 10 September, 12 and 23 October, and 3 December 2007. These reports make reference to information contained in a communication from the ITUC to the Committee dated 31 August 2006 that was forwarded to the Government and to which reference was made in the Committee's previous observation. The Government has not responded in detail to the information contained in the ITUC's communication, except to state its view that "most of the issues raised by the [ITUC] are totally groundless" and to note that such cases "would be covered by the mechanism to deal with the forced labour complaints under the Supplementary Understanding" agreed between the ILO and Myanmar on 26 February 2007.

16. The Committee must point out that agreement on the Supplementary Understanding and the establishment of the complaint mechanism provided for thereunder, in no way relieves the Government of its obligation under the Convention to suppress the use of forced labour. Rather, they are a means to assist the Government in meeting this obligation through the full implementation of the recommendations of the Commission of Inquiry.

17. The Committee requests the Government to respond in detail in its next report to the numerous specific allegations contained in the most recent communication from the ITUC as well as that of the previous year.

Assessment of the situation

Issuing specific and concrete instructions to the civilian and military authorities

18. The Committee notes that in its report the Government has again referred to a series of letters, directives, telegrams and rules issued by various civil and military authorities relating to the Orders prohibiting forced labour. However, as noted in its previous observation, since the Government has supplied minimal details of the content of these instructions, and given that all the indications suggest that the imposition of forced labour continues to be widespread, the Committee is yet to be convinced that clear instructions have been effectively conveyed to all civil authorities and military units. **The Committee reinforces the need for appropriate publicity to be given to these Orders.**

19. The Committee must also emphasize that, even if the Orders provide a statutory basis in practice for ensuring compliance with the Convention, this still falls far short of the formal repeal of the provisions of the relevant legislation requested by the Commission of Inquiry. **The Committee therefore hopes that the Government will take the necessary steps to amend these provisions as soon as possible, something it has been promising to do for 40 years. The Committee also hopes that the Government will take advantage of the opportunity to bring constitutional clarity to the prohibition of forced labour.**

Ensuring that the prohibition of forced labour is given wide publicity

20. In relation to ensuring that the prohibition of forced labour is given wide publicity, the Committee refers to its comment above. The Committee also notes the agreement on 26 February 2007 of a Supplementary Understanding between the ILO and the Government, which is a welcome development. The mechanism that it establishes to deal with complaints of forced labour provides an opportunity to the authorities to demonstrate that continued recourse to the practice is illegal and will be punished as a penal offence, as required by the Convention. The fact that Order No. 1/99 as supplemented by the Order of 27 October 2000, has been used as a legal basis for criminal convictions of government officials for exacting forced labour, is in line with the Committee's conclusion in its observation published in 2001, that these Orders "could provide a statutory basis for ensuring compliance with the Convention in practice, if given bona fide effect not only by the local authorities empowered to requisition labour under the Village and Towns Acts, but also by civilian and military officers entitled to call on the assistance of local authorities under the Acts".

21. The Committee also notes that some publicity has been given to the signing of the Supplementary Understanding and to the subsequent prosecutions of two officials for imposing forced labour (a press release on 26 February 2007; a press conference by the Director-General of the Department of Labour on 26 March 2007; and an article on the prosecutions in the *New Light of Myanmar* on 31 March 2007). The Committee also

notes from the report submitted to the 300th Session of the Governing Body that the Government “has undertaken widespread training for administrators to raise awareness of the law and to explain the Supplementary Understanding procedure”, that “a further round of such training on a joint ILO/Ministry of Labour basis has been discussed” and that “the Government has drafted a booklet entitled *Eradication of forced labour – Educational Paper No. 1*”, consultations on the content and format of which are continuing prior to its dissemination throughout the administration (GB.300/8, paragraph 8).

22. The Committee considers that such publicity is vital in ensuring that the prohibition of forced labour is widely known and applied in practice, and should continue and be expanded. The Committee shares the view of the Governing Body that “an unambiguous public statement that all forms of forced labour are prohibited throughout the country and will be duly punished” from the Government of Myanmar “at the highest level” (GB.300/8, conclusions) would be extremely valuable.

Providing for the budgeting of adequate means for the replacement of forced or unpaid labour

23. In this regard, the Committee stresses the importance of its request, made regularly in previous observations and underlined in the recent conclusions of the Conference Committee on the Application of Standards, that specific instructions be issued to all military units making clear the prohibition of forced labour and the fact that this will be strictly enforced. This requires the budgeting of adequate means for the replacement of forced labour, which tends also to be unpaid, are necessary if recourse to the practice is to end.

24. Similarly, the Committee notes that the Government’s report of 17 August 2007 states that it provides a budget allotment including labour costs “for all Ministries to implement their respective projects” and that a signed statement from the Ministry of Construction indicating the sum in question is provided in an annex to the report. Again, the Committee fails to understand, if adequate resources really are provided to civil and military authorities, why it is that recourse to unpaid forced labour apparently remains widespread, particularly by the military and by local civil administrations. ***The Committee repeats its earlier request that the Government, in its next report, provide detailed information about the measures taken to budget for adequate means for the replacement of forced or unpaid labour.***

Ensuring the enforcement of the prohibition of forced labour

25. The Committee is bound to express its concern that, as stated in the reports submitted by the Office to the Governing Body referred to above, and in the information provided by the Government, that out of 24 complaints (as of 7 November) forwarded by the Liaison Officer to the authorities for investigation and appropriate action, only one case has so far resulted in the prosecution of those responsible (Case No. 001, which led to the prosecution of two civilian officials). A number of other cases have led to administrative action against civilian officials (for example, dismissals or warnings for the officials concerned). Although seven of the cases forwarded to the authorities by the Liaison Officer involved allegations against military personnel (for forced recruitment of children into the army, and imposition of forced labour against villagers), there are so far no indications that any action, criminal or even administrative, has been taken against any military personnel. The Committee notes the recent information provided by the Government on 3 December 2007 that it has taken concrete measures to prevent recruitment of children into the military by setting up a central committee and working committees, with follow-up workshops.

26. The Committee notes the information from the Liaison Officer that the Government Working Group “appears to be more successful in achieving prompt and constructive outcomes in cases associated with civil administrations. It is more difficult to obtain timely and appropriate responses on complaints involving the military” (GB.300/8, paragraph 6). The Committee indicates that this is all the more concerning, as it has previously observed that forced labour is a particular problem in areas of the country with a heavy presence of the army.

27. The Committee reemphasizes that the illegal exaction of forced labour must continue to be punished as a penal offence, rather than an administrative issue, as required by Art. 25 of the Convention. While taking account of the measures to be taken by the Government regarding recruitment of children, it is also essential that the legal penalties be strictly enforced in cases involving military personnel, including in cases of forced recruitment of children into the armed forces.

Conclusion

28. The Committee considers that there are obvious constraints and limits on the contribution that the complaint mechanism can make to the eradication of forced labour. This is due to structural limitations on the mechanism and is magnified by the uncertainties of the present situation in the country. The mechanism can certainly provide welcome relief to individual victims by offering an objective and safe channel for complaints to be raised and addressed, and beyond this it can send a powerful signal to potential perpetrators that they are not free to act with impunity. However, the mechanism is not obviously well-suited to dealing with some of the more extreme and widespread violations in remote areas, of the kind referred to in the documentation submitted by the ITUC.

29. More fundamentally, the complaint mechanism, whilst valuable, does not address the root causes of the forced labour problem that were identified by the Commission of Inquiry and by the High-level Team (see GB.282/4). Namely, it does not address the basic governance relationships prevailing in the country, the role of the army and its self-reliance policy, and the absence of freedom of association and, more generally, freedom of assembly, which recent events have served to graphically illustrate. The prevailing situation in Myanmar, ten years after the establishment of the Commission of Inquiry, seems to provide sad support to the perception that addressing these root causes remains indispensable.

30. In the light of this, the Committee believes that the only way that genuine and lasting progress in the elimination of forced labour can be made is for the Myanmar authorities to demonstrate unambiguously their commitment to achieving that goal. This requires, beyond the agreement of the Supplementary Understanding, that the authorities establish the necessary conditions for the successful functioning of the complaint mechanism, and that they take the long overdue steps to repeal the relevant provisions of domestic legislation and adopt the appropriate legislative and regulatory framework to give effect to the recommendations of the Commission of Inquiry. ***The Committee remains hopeful that, having agreed the Supplementary Understanding, the Government will finally take the required steps to achieve compliance with the Convention in law and in***

Paraguay

(Ratification: 1967)

Articles 1(1) and 2(1) of the Convention. Debt bondage of indigenous communities in the Chaco. In comments made since 1997, the Committee has expressed its concern about the existence of cases of debt bondage in the indigenous communities of the Chaco. The Committee observed that debt bondage constituted a serious violation of the Convention.

The Committee notes the comments made in August 2006 by the International Confederation of Free Trade Unions (ICFTU) – now the International Trade Union Confederation (ITUC). The ITUC refers to the practice of forced labour in Chaco, the existence of which has been confirmed in the report: *Debt bondage and marginalization in the Chaco of Paraguay*. The research contained in the report was carried out under the technical cooperation project called Forced Labour, Discrimination and Poverty Reduction among Indigenous Peoples, which is part of the Special Action Programme to combat Forced Labour (SAP-FL) of the ILO.

The report confirms the existence of forced labour practices, specifying “a number of factors” that lead to situations of forced labour encountered by many indigenous workers on the estates of Chaco: the payment of wages to workers that are below the legal minimum; providing them with insufficient quantities of food; charging excessive prices for those provisions available for purchase, there being no access on the estates to other markets or means of subsistence (hunting and fishing); and the payment of partial or total wages in kind. All of these lead to the indebtedness of the worker which obliges him, and in many cases his family as well, to work permanently on the estates.

The ITUC also refers to violations of section 47 of the Labour Code, which provides that a contract will be void when it fixes a salary under the minimum wage or if it involves direct or indirect obligations to buy goods or food from shops, businesses or a place determined by the employer. Articles 231 and 176 of the Labour Code provide that only 30 per cent of wages can be paid in kind, and the value of these goods must be the same as those at the nearest urban settlement. The ITUC asserts that such provisions are not being enforced in practice, thus creating conditions of indebtedness leading the indigenous workers of the Chaco into situations of forced labour.

The report was confirmed during workshops conducted separately with organizations of employers and workers as well as for the Inspection Services. Subsequently the Ministries of Labour and Justice created an Office of Inspection in Mariscal Estigarriba, in the Chaco region in March of 2006. The Committee has learned, however, from information available from the SAP-FL of the ILO that the work was difficult for the two inspectors appointed to this office, who apparently resigned recently because of the limited support they received from Asunción.

The Committee also notes the conclusions of the Tripartite Seminar of September 2007 relating to the need for the Government to establish, by means of decree, a Tripartite Committee on Fundamental Principles at Work and the Prevention of Forced Labour, consisting of six representatives of each group, Employers, Workers and Government. The Committee, once established, would have 60 days to develop an action plan.

In its report of 2006, the Government referred to the report mentioned above and to the three workshops carried out with various social actors, and it also indicated that it planned to create an inter-institutional and cross-sector National Commission responsible for overseeing this issue. The Committee notes that the Government's report communicated in September 2007 does not contain any information in this regard.

The Committee notes the convergence of the allegations it has been examining since 1997 on the debt bondage to which the indigenous workers of the Chaco region of Paraguay are being subjected. It notes existing provisions of labour law which, if applied, would contribute to the prevention of indebtedness that requires workers to continue working to pay off their debt, and it notes that measures taken to combat the phenomenon seem stalled at present.

The Committee hopes that in its next report the Government will communicate information on the various measures taken or envisaged to combat practices by which forced labour is imposed on the indigenous workers of Chaco, in particular information on:

- ***the operation of the Office of Inspection in Marsical Estigarriba, providing copies of inspection reports that have been prepared by that Office; and***
- ***the creation of the National Tripartite Committee on Fundamental Principles and the Prevention of Forced Labour and its operation, and the communication of a copy of the action plan once it has been adopted.***

Article 25. Penalties for the exaction of forced labour. The Committee recalls that by virtue of Article 25 of the Convention, criminal sanctions shall be imposed, and strictly enforced, upon those found guilty of having imposed forced labour. ***The Committee requests the Government to communicate information about the measures taken or planned to ensure the application of Article 25 of the Convention, including copies of relevant judgements.***

Article 2(2)(c). Obligation to work imposed on non-convicted detainees. In its previous comments, the Committee referred to section 39 of Act No. 210 of 1970, which provides that work shall be compulsory for detainees. Section 10 of the above Act defines detainees as not only convicted persons, but also persons subjected to security measures in a prison establishment. The Committee recalled that persons who have been detained but not convicted shall not be obliged to carry out any type of work.

The Committee notes the Draft Code on the Execution of Sentences, communicated by the Government in its report of 2006. Sections 127, 68 and 69 of the Draft Code, read together, provide for the obligation to work of convicted persons, those sentenced to a term of imprisonment pursuant to a final judgement rendered by a competent court. If these provisions are adopted they would be in compliance with Article 2(2)(c) of the Convention under which work or service can only be imposed on an individual by virtue of a conviction in a court of law. The Committee notes, however, that

section 34 of the Draft Code states: "Provided they are compatible with the status of persons as detainees, do not contradict the principle of presumption of innocence, and are more favourable and useful for protecting said persons, the provisions relating to the living conditions and standards of conduct of Title III shall apply." The Committee observes in this respect that Title III, Chapter 7, of the Draft Code contains provisions relating to compulsory work by convicted persons which, by virtue of section 34, could be applied to detainees. It would be necessary, in order to eliminate the possibility of imposing work upon those who are in preventive detention, that this be explicitly prohibited, with the clarification that the detainee could work if he so requested.

The Committee hopes that in its next report the Government will be able to indicate that the national legislation has been brought into conformity with the Convention, and that it will communicate a copy of the Code on the Execution of Sentences once it has been adopted.

Sudan

(Ratification: 1957)

Articles 1(1) and 2(1) of the Convention. Abolition of forced labour practices. 1. For many years, the Committee has been examining information concerning the practices of abduction and forced labour affecting thousands of women and children in the regions of the country where an armed conflict was under way. The Committee has pointed out on numerous occasions that these situations constitute gross violations of the Convention. These victims are forced to perform work for which they have not offered themselves voluntarily, and the work is performed under extremely harsh conditions, as well as the victims being ill-treated in ways which may include torture and death. In its earlier comments, the Committee considered that the scope and gravity of the problem were such that it was necessary to take urgent action that was commensurate in scope and systematic. The Government was therefore requested to provide detailed information on the measures taken to combat the practice of forced labour through abduction of women and children and to ensure that, in accordance with the Convention, penal sanctions are imposed on perpetrators.

2. The Committee has noted with interest the adoption in 2005 of the Interim National Constitution, which followed the signing of the Comprehensive Peace Agreement in January 2005. The Committee notes with interest that Part Two of the Interim National Constitution contains the Bill of Rights which promotes the human rights and fundamental freedoms, and that Article 30 of the Interim National Constitution specifically prohibits slavery and forced or compulsory labour.

3. The Committee has taken note of the Government's report received in October 2006 and of the summary reports of activities of the Committee for the Eradication of Abduction of Women and Children (CEAWC) supplied in November 2005 and October 2006, as well as of the discussion that took place in the Conference Committee on the Application of Standards in June 2005. It has also noted the observations dated 6 September 2005, received from the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation), concerning the application of the Convention by Sudan, as well as the Government's reply to these observations.

Conference Committee on the Application of Standards. 4. The Committee has noted that, in its conclusions adopted in June 2005, the Conference Committee observed the convergence of allegations and the broad consensus among the United Nations bodies, the representative organizations of workers and non-governmental organizations concerning the continuing existence and scope of the practices of abduction and the exaction of forced labour. The Committee noted that, while there had been positive and tangible steps, including the conclusion of the Comprehensive Peace Agreement, it was of the view that there was no verifiable evidence that forced labour had been abolished. The Committee invited the Government to avail itself of the technical assistance of the ILO and other donors to enable it to eradicate the practices identified by the Committee of Experts and to bring the perpetrators to justice. The Committee considered that only an independent verification of the situation in the country would enable it to determine that forced labour in the country had ended. The Committee decided that, in the framework of the ILO technical assistance, a full investigation of the facts be undertaken and requested the Government to provide the ILO with all the necessary assistance.

United Nations bodies. 5. The Committee notes that, in the UN Security Council resolution 1769 (2007), the Security Council noted with strong concern ongoing attacks on the civilian population and humanitarian workers and continued and widespread sexual violence. The resolution referred to the report of the Secretary-General and the Chairperson of the African Union Commission on the Hybrid operation in Darfur and the report of the Secretary-General of 23 February 2007. The resolution emphasized the need to bring to justice the perpetrators of such crimes and urged the Government of Sudan to do so and reiterated its condemnation of all violations of human rights and international humanitarian law in Darfur. The Committee also notes that, in the Decision 2/115, of the UN Human Rights Council concerning Darfur, of 28 November 2006, the Human Rights Council, while welcoming the Darfur Peace Agreement, noted with concern the seriousness of the human rights and humanitarian situation in Darfur and called on all parties to put an immediate end to the ongoing violations of human rights and international humanitarian law, with a special focus on vulnerable groups, including women and children. The Committee further notes a report on the situation of human rights in Darfur prepared by the group of experts mandated by Human Rights Council resolution 4/8 presided by the Special Rapporteur on the situation of human rights in Sudan (A/HRC/5/6, of 8 June 2007), in which the experts group shared the concern of the Council regarding the seriousness of ongoing violations of human rights and international humanitarian law in Darfur as well as the lack of accountability of perpetrators of such crimes. According to the recommendations contained in the report, all allegations of violations of human rights and international humanitarian law must be duly investigated and perpetrators must be promptly brought to justice (paragraph 43(h)).

Comments from workers' organizations. 6. In the observations of 2005 referred to above, the ICFTU welcomed the fact that the Government had finally recognized the scale of the problem in its statement to the Conference Committee in June 2005 and, in particular, the Government's indications that the CEAWC had successfully resolved, through documentation, retrieval and reunification measures, 11,000 cases of abductions. However, the ICFTU expressed concern about the assistance and reintegration of these individuals into Sudanese society. While welcoming the positive developments, such as the signing of the Comprehensive Peace Agreement and the adoption of the Interim National Constitution, which provided a historic opportunity for the Government to resolve the issue of abduction and forced labour once and for all, the ICFTU expressed the view that it would not automatically lead to an end to abductions, exaction of forced labour and associated human rights violations, as events in Darfur had demonstrated. It also referred in this connection to the information concerning widespread and systematic cases of sexual slavery and forced prostitution, and called on the Government to ensure that such crimes are prosecuted and punished severely. The ICFTU believed that the impunity that those responsible for abductions and the exaction of forced labour have enjoyed – illustrated by the absence of any prosecutions for abductions in

the last 16 years – contributed to the continuation of this practice throughout the civil war and more recently in Darfur. Finally, the ICFTU strongly supported a recommendation made by the Conference Committee that “only an independent verification of the situation in the country would enable it to determine that forced labour in the country had ended” and urged the Government to fully support and provide assistance to the ILO investigation on abductions in Sudan.

Government's response. 7. In its 2006 report, the Government confirms its strong and continued commitment to completely eradicate the phenomenon of abductions and to provide continued support to the CEAWC. The Government indicates that, out of 14,000 cases of abductions, the CEAWC has already successfully resolved 11,000 cases and has been able to reunify abducted persons with their families in 3,394 cases. The Government has confirmed its statement to the Conference Committee that abductions have stopped completely, which, according to the Government, has been also confirmed by the Dinka Chiefs Committee (DCC). The Government states that the workers' concern about the assistance and reintegration of the abductees has no factual base. As regards the prosecution of perpetrators, the Government repeats its previous indications that the CEAWC has been requested by all the tribes concerned including the DCC not to resort to legal action, unless the amicable efforts of the tribes are not successful. It also states that, within the context of the comprehensive peace process, there is an argument for not pursuing prosecutions against those responsible for abductions and forced labour since 1983 (and even before) in the spirit of national reconciliation.

8. While noting the Government's renewed commitment to resolve the problem, as well as the progress achieved by the CEAWC in the liberation of abductees, the Committee strongly urges the Government to pursue its efforts with vigour in order to resolve the remaining cases of abductions and reintegrate the victims, thus putting an end to the long-standing and large-scale practice of the exaction of forced labour through abduction of women and children. The Committee refers again to the broad consensus among the United Nations bodies, the representative organizations of workers and non-governmental organizations concerning the continuing existence and scope of the violations of human rights and international humanitarian law in certain regions of the country. The Committee trusts that the Government will take urgent measures, in accordance with the recommendations of the relevant international bodies and agencies, to put an end to all human rights violations, which would help to create better conditions for the full observance of the forced labour Conventions.

Article 25. Penalties for the illegal exaction of forced or compulsory labour. 9. In its earlier comments, the Committee referred to a criminal code provisions punishing the offence of abduction with penalties of imprisonment, and requested the Government to take measures to ensure that, in accordance with the Convention, penal sanctions are imposed on perpetrators. While noting the Government's view expressed in the report that, within the context of the comprehensive peace process, there is an argument for not pursuing prosecutions against those responsible for abductions and forced labour in the spirit of national reconciliation, the Committee again draws the Government's attention to the provision of *Article 25* of the Convention. This Article provides that “the illegal exaction of forced or compulsory labour shall be punishable as a penal offence, and it shall be an obligation on any Member ratifying this Convention to ensure that the penalties imposed by law are really adequate and are strictly enforced”. The Committee considers that the non-application of penal sanctions to perpetrators is contrary to this provision of the Convention and will have the effect of ensuring impunity for abductors who exploit forced labour. **The Committee therefore trusts that the necessary measures will be taken to ensure that legal proceedings are instituted against perpetrators, particularly against those unwilling to cooperate, and penal sanctions are imposed on persons convicted of having exacted forced labour, as required by the Convention. The Committee requests that the Government provide, in its next report, information on the application in practice of the penal provision punishing the offence of abduction, as well as the provisions punishing kidnapping and the exaction of forced labour (sections 161, 162 and 163 of the Criminal Code), supplying sample copies of the relevant court decisions.**

[The Government is asked to supply full particulars to the Conference at its 97th Session and to reply in detail to the present comments in 2008.]

Labour Inspection Convention, 1947 (No. 81)

Sweden

(Ratification: 1949)

1. *Progress achieved during the period covered by the Government's report.* The Committee notes with interest the information provided by the Government concerning the developments that have occurred in the organization and operation of the labour inspection system, including: (i) the development of a computerized application through which a form can be downloaded by employers for the declaration of employment accidents and other incidents; and (ii) the determination of a method for the mapping of workplaces where work environment hazards may be suspected, thereby allowing the Work Environment Authority to evaluate all the workplaces registered in this respect.

2. *Article 7 of the Convention. Training of the staff of the labour inspection services.* The Committee notes with satisfaction that the in-house training provided by the Work Environment Authority, which was previously limited to inspection personnel only, now includes basic training for all associates concerned with the handling of supervision procedures. After the basic training, associates undergo supplementary training according to the competence required for their respective duties. The Committee does not doubt that such a measure will contribute to achieving a significant improvement in the operation of the labour inspectorate as it will enable the various categories of personnel concerned to adopt a more relevant approach to their own duties in relation to the objectives of labour inspection and the principles to be followed by inspection personnel, particularly those relating to professional rules and ethics.

Uganda

(Ratification: 1963)

The Committee notes the Government's reply to its observation made in 2004 and repeated in 2005 concerning the process of dismantling the labour inspection system and the need to take measures to establish a system that is in conformity with the Convention. The Government indicates that it has duly noted the comments of the Committee of Experts but adds that the Committee for the Revision of the Constitution has been unable to reverse the decentralization process, contrary to previous announcements. However, the Government says that it is aware of the requirement imposed by the Convention to place the labour inspection system under the control of a central authority pursuant to *Article 4 of the Convention* and undertakes to keep the ILO informed of all developments in this respect and to send copies of any relevant legislative, regulatory or administrative texts. While recognizing that the decentralization policy has had a negative impact on the labour inspection system, the Government considers that this is particularly because the district authorities are unaware of the role of labour inspection in the production process that they have not given suitable priority to labour services in general. While noting the Government's statements, the Committee recalls that the question of the deterioration of the functioning of the labour inspection has been the subject of its observations for many years and was raised in discussions within the Committee of the International Labour Conference at its June 2001 and June 2003 sessions.

1. *Dismantling of the labour inspectorate owing to the decentralization of labour administration functions.* During the discussion in June 2003, the Conference Committee noted that the Government had not supplied the requested information to the Committee of Experts. It reminded it of the commitment made before it in June 2001 to examine all aspects of the labour inspection situation with all the partners concerned, if necessary having recourse to technical assistance, and also its commitment to review the decentralization measures. In addition, the Conference Committee also expressed again the hope that the Government would quickly send the Committee of Experts the requested information and the details showing that its legal and practical obligations had been implemented, in particular with the assistance of the employers' and workers' organizations, by means of administrative and financial measures which were essential for the implementation of labour inspection services in conformity with the Convention.

During its November–December 2003 session, the Committee of Experts was bound to note once again that the Government had not sent any report relating to the Convention and to send it a new observation, in which it reiterated its deep concerns and called on the Government to take the necessary measures as soon as possible, with the required technical assistance.

After examination of the Government's report covering the period ending in May 2003, but sent to the ILO in June 2004, the Committee essentially pointed out, in an observation which it sent to the Government in 2005, that the labour inspection system, the performance of which had been badly affected by an unfavourable economic situation before the start of the decentralization process, continued to deteriorate owing to the persistence of the economic stagnation, on the one hand, and to the manner in which decentralization of the labour administration was being implemented, on the other. Moreover, the existing legal framework governing the powers, organization and working of the labour inspectorate, still based on the principle of the existence of a central supervisory authority and monitoring of the inspection system, was no longer applicable either in law or in practice, since the process of decentralizing competence to the heads of district was accompanied by withdrawal of the central government in relation to the use of budgetary resources by the districts. The Committee referred to its previous comments and also to the discussions within the Conference Committee at the 2001 and 2003 sessions of the International Labour Conference and also noted the information describing an in-depth reform of its institutions appearing ultimately to aim at decentralizing most state functions. However, as the Government itself observed, decentralization did not comply with *Article 4 of the Convention*, which calls for supervision and control of the labour inspection system by a central authority.

The information supplied by the Government shows that the very notion of a central labour inspection authority has become devoid of all substance. The little authority that the minister retains in law cannot be exercised for want of the necessary structure and resources, and some heads of districts take the attitude that to maintain or establish local labour inspection services serves little purpose. An ILO mission carried out from 9 to 13 May 2005 revealed that there were a total of 26 labour inspectors for all 56 districts, and that assistance to the labour services from all donors was low in the light of labour inspection needs, particularly with regard to training relating to the gathering of information and the drafting of reports.

The ILO mission was informed that, in order to reconsider the decentralization of the labour inspectorate, revision of the Constitution was necessary. However, the labour inspection function has not been mentioned explicitly as one of the functions calling for relevant measures in the White Paper

drawn up to this end.

Since such developments are particularly worrying in terms of the Convention's social and economic objectives, the Committee called on the Government, in an observation sent to it in 2004 and repeated in 2005, to reconsider, if not the principle of a decentralized labour inspectorate which now appears firmly to be a part of the overall national project, at least the methods and means of implementing decentralization. The Committee reiterated that the Government would be bound to observe the principle of placing the labour inspection system under a central authority, pursuant to *Article 4* of the Convention taken as a whole, since restructuring in Uganda seemed to be moving towards a kind of "federalism", in which the districts are like the "federated units" referred to in *paragraph 2* of this Article. It also emphasized that the obligations laid down under *article 22* of the ILO Constitution that the Government assumed on ratifying the Convention must in any event remain the responsibility of the State. It is the duty of the State to ensure that the conditions needed to apply the Convention exist nationwide. National laws must ensure that competence for labour inspection is shared between the central bodies of the labour administration and the decentralized authorities, and there must be uniform legislation governing the status, conditions of service and training of inspection staff (*Articles 6 and 7*). Furthermore, there must be scrupulous observance of the need to ensure the establishment either of a labour inspection system in each district or, possibly, of a system in which competence is determined on a broader regional basis, if such an option is deemed better suited to the more rational use of available resources. In any event, resources must be assigned on a legal basis to the labour inspection in order to make available to labour inspection services the staff, material and logistical resources needed to perform their duties (*Articles 6, 7, 9, 10 and 11*).

2. Establishment of an inspection system suited to economic and social needs: Urgent preliminary measures. As already observed by the Committee, the fact that it has been impossible for many years to produce an annual report on the work of the inspection services (*Articles 20 and 21*) not only reflects the extent to which the inspection system has been dismantled but, even more regrettably, prevents any assessment of needs either at the national or regional level. As a result, it is impossible to determine any priorities for action and evaluate the resources needed. The Committee notes in this respect that the Government has not sent the report which, according to the Government, deals with the inspections carried out, without stating the period or geographical area covered.

In its previous comments, the Committee stressed the need to study and anticipate on a tripartite basis the effects of globalization on working conditions and workers' rights in order to secure the social partners' attachment to the principle that an effective labour inspection service needs to be established in the twofold interest of social protection and improved productivity. Referring to the technical assistance provided by ILO under the Strengthening Labour Relations in East Africa (SLAREA) project to raise the Government's awareness of the importance of the tripartite dimension of labour administration, the Committee hoped that measures would be taken in this area, particularly in the context of the application of this Convention. However, it observes that the Government gives no indication that progress has been made in this direction.

The Committee is therefore bound to urge the Government, in the light of the above, to adopt as soon as possible all measures that are essential for the establishment and functioning of an inspection system which conforms to the requirements of the Convention, including in particular seeking the necessary funds and technical assistance, keeping the ILO informed and sending copies of the relevant legislative, regulatory and administrative texts. It also requests the Government to supply the information required by the Convention report form, to send its report to employers' and workers' organizations in accordance with article 23, paragraph 2, of the ILO Constitution and to keep the ILO duly informed.

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

Bangladesh

(Ratification: 1972)

The Committee notes the Government's report and its reply to the comments made by the International Confederation of Free Trade Unions (ICFTU), now the International Trade Union Confederation (ITUC), in 2006. It also takes note of the adoption of the Bangladesh Labour Act, 2006, which replaced the Industrial Relations Ordinance, 1969, and on which it comments further below.

The Committee also notes the comments sent by the ITUC in a communication dated 27 August 2007 with regard to legislative issues already raised by the Committee and serious allegations of civil rights violations committed in 2006: (i) the killing of a striker by the police on 23 May 2006 in the context of a strike in the garment sector at Gazipur, which led to a riot on the same day, in particular in the Savar EPZ and the districts of Uttara, Mirpur, Kafrul, Old Dhaka, and Tejgaon; according to the ITUC, the riot was followed by a harsh crackdown by the army's rapid action battalion with hundreds of workers arrested; (ii) the raiding of the offices of the Bangladesh Independent Garment Workers' Union Federation (BIGUF) on the same day (23 May 2006), the arrest of two BIGUF union organizers (Rashedul Alam Faju and Rebecca Khatun) and an office staff person (Minara) and their physical abuse while in police custody; their subsequent charging with destruction of property, vandalism and other charges connected to the labour unrest of that day; (iii) the arrest on the same day (23 May 2006) of Moshrefa Mishu, President of the Garment Workers' Union Forum and her detention for five days (allowed bail on 26 May) and the filing of 19 charges against her in connection with the same events; (iv) the arrest on 13 October 2006 of Chandon, International Secretary of BIGUF and his interrogation throughout the night about BIGUF's activities to organize workers in the EPZs; (v) police harassment against the American Center for International Labor Solidarity, set up by AFL-CIO, after publishing a pamphlet for EPZ workers; (vi) the arrest of three top leaders of the Bangladesh Cha Sramik Union (BCSU) on 24 March 2006 on charges which had already been investigated and found groundless the year before (released on bail on 13 April 2006) and brutal dispersion by the police of the BCSU members gathered outside the police station; (vii) assault against and serious injury of Roy Ramesh Chadra, General Secretary of the Bangladesh National Council of Textile, Garment and Leather Workers and an executive committee member of ITGLWF-TWARO on 14 April 2006; (viii) shots fired on 10 May 2006 against Mohammed Firoz Mia, President of the Bangladesh Telejogajog Sramik Karmochari Union which represents workers at the Bangladesh Telephone and Telegraph Board, who was actively campaigning against privatization. **Recalling that freedom of association can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of workers' organizations and that detention of trade unionists for reasons connected with their activities in defence of the interests of workers constitutes a serious interference with civil liberties in general and with trade union rights in particular, the Committee requests the Government to communicate its observations on the very serious comments made by the ITUC.**

With regard to additional civil liberties violations communicated by the ICFTU in previous communications, including harassment of unions by the intelligence authorities, police violence against protesting workers, arrest of trade unionists, as well as the difficulty in establishing trade unions in the ship recycling industry, the Committee notes the Government's observations according to which trade unions have not been harassed by the law enforcement agencies but rather the law enforcement agencies were obliged to perform their duties in cases where trade union leaders leading a procession, rally or demonstration were not in control of the mob so that unruly people would start to rampage, damage property, barricade highways, etc.; moreover, although workers in any sector have the right to establish trade unions under the new Labour Law of 2006, workers in the shipbreaking sector are casual workers and do not get an opportunity to form unions, because of the limited period of their employment (connected to the breaking of a specific ship). The Committee recalls that *Article 8 of the Convention* provides that workers and their organizations, like other persons or organized collectivities, shall respect the law of the land and that the law of the land shall not be such as to impair, nor shall it be so applied so as to impair, the guarantees provided for in this Convention. In this regard, the Committee wishes to emphasize that the authorities should resort to the use of force only in situations where law and order is seriously threatened. The intervention of the forces of order should be in due proportion to the danger to law and order that the authorities are attempting to control and governments should take measures to ensure that the competent authorities receive adequate instructions so as to eliminate the danger entailed by the use of excessive violence when controlling demonstrations which might result in a disturbance of the peace. Furthermore, the Committee recalls that, by virtue of *Article 2 of the Convention*, workers without distinction whatsoever, including casual and informal sector workers in the shipbreaking industry, shall have the right to establish and join organizations of their own choosing. **The Committee requests the Government to indicate in its next report any measures taken, including instructions given to the law enforcement authorities, so as to avoid the danger of excessive violence in trying to control demonstrations, and ensure that arrests are made only where criminal acts have been committed.**

With regard to its previous comments concerning the arrest of 350 women trade unionists including the General Secretary of the JSL Women's Committee, the Committee notes from the Government's report that in 2004, in order to maintain law and order, the law enforcement agencies had to detain a few women from a mob while they were on a rampage, damaging a number of factories, barricading a highway, etc.; specific charges had been brought against them immediately after the incident as per the law of the land. The case (No. 7 of 2004) is still pending and a copy of judicial decisions may be communicated to the Committee as and when pronounced. **The Committee requests the Government to communicate details as to the charges brought in 2004 against 350 women trade unionists, including the General Secretary of the JSL's Women's Committee, Shamsur Nahar Bhuiyan and to provide a copy of all judicial decisions taken in this matter. Moreover, noting with regret that the Government does not provide any information on the registration of Immaculate (Pvt.) Ltd Sramik Union despite previous requests to this effect, the Committee once again requests the Government to report on the measures taken to ensure the prompt registration of the union.**

The Committee further recalls that its previous comments concerned the following issues:

1. *Right to organize in export processing zones (EPZs).* The Committee recalls that the EPZ Workers' Associations and Industrial Relations Act, 2004, contains numerous and significant restrictions and delays in relation to the right to organize in EPZs and in particular: (i) contained a blanket denial of the right to organize in EPZs until 31 October 2006 after which workers' associations may be established (section 13(1)); the Committee notes

that this deadline has been met and takes note of the latest communication of the ITUC, according to which, on 1 November 2006, workers had the right to apply to form workers' associations but the Bangladesh Export Processing Zones Authority (BEPZA) failed to devise and provide the prescribed form needed by the workers to this effect, thus preventing in practice the establishment of such associations; (ii) provides that workers' associations will not be allowed in industrial units established after the commencement of the Act, until a period of three months has expired after the commencement of commercial production in the concerned unit (section 24); (iii) provides that there can be no more than one workers' association per industrial unit (section 25(1)); (iv) establishes excessive and complicated minimum membership and referendum requirements for the establishment of workers' associations (a workers' association may be formed only when a minimum of 30 per cent of the eligible workers of an industrial unit seek its formation, and this has been verified by the executive chairperson of BEPZA, who shall then conduct a referendum on the basis of which the workers shall acquire the legitimate right to form an association under the Act, only if more than 50 per cent of the eligible workers cast their vote, and more than 50 per cent of the votes cast are in favour of the formation of the workers' association sections 14, 15, 17 and 20); (v) confers excessive powers of approval of the constitution drafting committee to the Executive Chairperson of the BEPZA (section 17(2)); (vi) prevents steps for the establishment of a workers' association in the workplace for a period of one year after a first attempt failed to gather sufficient support in a referendum (section 16); (vii) permits the deregistration of a workers' association at the request of 30 per cent of the workers even if they are not members of the association and prevents the establishment of another trade union for one year after the previous trade union was deregistered (section 35); (viii) provides for the cancellation of the registration of a workers' association on grounds which do not appear to justify the severity of this sanction (such as contravention of any of the provisions of the association's constitution) (section 36(1)(c), (e)–(h) and 42(1)(a)); (ix) establishes a total prohibition of industrial action in EPZs until 31 October 2008 (section 88(1) and (2)); (x) prevents workers' associations from obtaining or receiving any fund from any outside source without the prior approval of the Executive Chairperson of the BEPZA (section 18(2)); (xi) provides for severe restrictions of strike action, once recognized (possibility to prohibit a strike if it continues for more than 15 days or even before this deadline, if the strike is considered as causing serious harm to productivity in the EPZ – section 54(3) and (4)); (xii) establishes an excessively high minimum number of trade unions to establish a higher level organization (more than 50 per cent of the workers' associations in an EPZ – section 32(1)); (xiii) prohibits a federation from affiliating in any manner with federations in other EPZs and beyond EPZs (section 32(3)); and (xiv) does not seem to afford guarantees against interference with the right of workers to elect their representatives in full freedom (e.g., the procedure of election shall be determined by the BEPZA, etc. – sections 5(6) and (7), 28(1), 29, 32(4)). **Noting that the Government's report does not provide any new information in respect of the above, the Committee once again requests the Government to take the necessary measures to amend the EPZ Workers' Associations and Industrial Relations Act so as to bring it into conformity with the Convention and to provide detailed information in its next report in this respect. It also requests the Government to provide its observations on the comments made by the ICFTU concerning obstacles to the establishment of workers' associations in EPZs after 1 November 2006 and to provide statistical information on the number of workers' associations established in the EPZs after that date.**

2. *Other discrepancies between national legislation and the Convention.* The Committee recalls that for many years it had been referring to serious discrepancies between the national legislation and the Convention. It now notes the adoption of the Bangladesh Labour Act, 2006 (the Labour Act) which replaced the Industrial Relations Ordinance, 1969 (section 353(1)(x)).

The Committee notes with deep regret that the new Act does not contain any improvements in relation to the previous legislation and in certain regards contains even further restrictions which run against the provisions of the Convention. Thus, the Committee notes the following:

- the need to repeal provisions on the exclusion of managerial and administrative employees from the right to establish workers' organizations (section 2 XLIX and LXV of the Labour Act) as well as new restrictions of the right to organize of fire-fighting staff, telex operators, fax operators and cipher assistants (exclusion from the provisions of the Act based on section 175 of the Labour Act);

- the need to either amend section 1(4) of the Labour Act or adopt new legislation so as to ensure that the workers in the following sectors, which have been excluded from the scope of application of the Act including its provisions on freedom of association, have the right to organize: offices of or under the Government (except workers in the Railway Department, Posts, Telegraph and Telephone Departments, Roads and Highways Department, Public Works Department and Public Health Engineering Department and the Bangladesh Government Press); the security printing press; establishments for the treatment or care of the sick, infirm, aged, destitute, mentally disabled, orphans, abandoned children, widows or deserted women, which are not run for profit or gains; shops or stalls in public exhibitions which deal in retail trade; shops in any public fair for religious or charitable purposes; educational, training and research institutions; agricultural farms with less than ten workers; domestic servants; and establishments run by the owner with the aid of members of the family; **in case any of the above sectors are already covered by existing legislation, the Committee requests the Government to provide information in this respect;**

- the need to repeal provisions which restrict membership in trade unions and participation in trade union elections to those workers who are currently employed in an establishment or group of establishments, including seamen currently engaged in merchant shipping (section 2 LXV and 175, 185(2) of the Labour Act);

- the need to repeal or amend new provisions which define as an unfair labour practice on the part of a worker or trade union, an act aimed at "intimidating" any person to become, continue to be or cease to be a trade union member or officer, or "inducing" any person to cease to be a member or officer of a trade union by conferring or offering to confer any advantage and the consequent penalty of imprisonment for such acts (sections 196(2) (a) and (b) and 291 of the Labour Act); the Committee considers that the terms "intimidating" or "inducing" are too general and do not sufficiently safeguard against interference in internal trade union affairs, since, for instance, a common activity of trade unions is to recruit members by offering advantages, including with regard to other trade unions;

- the need to repeal provisions which prevent workers from running for trade union office if they were previously convicted for compelling or attempting to compel the employer to sign a memorandum of settlement or to agree to any demand by using intimidation, pressure, threats, etc. (sections 196(2)(d) and 180(1)(a) of the Labour Act);

- the need to lower the minimum membership requirement of 30 per cent of the total number of workers employed in an establishment or group of establishments for initial and continued union registration as well as the possibility of deregistration if the membership falls below this number (sections 179(2) and 190(f) of the Labour Act); the need to repeal provisions which provide that no more than three trade unions shall be registered in

any establishment or group of establishments (section 179(5) of the Labour Act) and that only one trade union of seamen shall be registered (section 185(3) of the Labour Act); finally, the need to repeal provisions prohibiting workers from joining more than one trade union and the consequent penalty of imprisonment in case of violation of this prohibition (sections 193 and 300 of the Labour Act);

- the need to repeal provisions denying the right of unregistered unions to collect funds (section 192 of the Labour Act) upon penalty of imprisonment (section 299 of the Labour Act);

- the need to lift several restrictions on the right to strike: requirement for three-quarters of the members of a workers' organization to consent to a strike (sections 211(1) and 227(c) of the Labour Act); possibility of prohibiting strikes which last more than 30 days (sections 211(3) and 227(c) of the Labour Act); possibility of prohibiting strikes at any time if a strike is considered prejudicial to the national interest (sections 211(3) and 227(c) of the Labour Act) or involves a public utility service including the generation, production, manufacture, or supply of gas and oil to the public, as well as railways, airways, road and river transport, ports, and banking (sections 211(4) and 227(c) of the Labour Act); prohibition of strikes for a period of three years from the date of commencement of production in a new establishment, or an establishment owned by foreigners or established in collaboration with foreigners (sections 211(8) and 227(c) of the Labour Act); penalties of imprisonment for participation in – or instigation to take part in unlawful industrial action or go-slow (sections 196(2)(e) and 291, 294–296 of the Labour Act);

- the need to repeal provisions which provide that no person refusing to take part in an illegal strike shall be subject to expulsion or any other disciplinary measure by the trade union, so as to leave this matter to be determined in accordance with trade union rules (section 229 of the Labour Act);

- the need to amend new provisions which define as an unfair labour practice on the part of workers, an act of compelling or attempting to compel the employer to sign a memorandum of settlement or to accept or agree to any demand by using "intimidation", "pressure", "threat" so as to ensure that there is no interference with the right of trade unions to engage in activities like collective bargaining or strikes, and to repeal the consequent penalty of imprisonment for such acts (sections 196(d) and 291(2) of the Labour Act);

- the need to amend provisions which impose a penalty of imprisonment for failure to appear before the conciliator in the framework of settlement of industrial disputes (section 301 of the Labour Act).

The Committee requests the Government to indicate in its next report the measures taken or contemplated so as to bring the Labour Act, 2006 into full conformity with the provisions of the Convention.

The Committee also notes that it is not clear from the provisions of the Labour Act whether Rule 10 of the Industrial Relations Rules, 1977 (IRO) which previously granted the Registrar of Trade Unions overly broad authority to enter trade union offices, inspect documents, etc., without judicial review, has been repealed. It would appear from section 353(2)(a) that the rule remains in force, as the section in question provides that any rule under any provision of the repealed laws (including the IRO) shall have effect until altered, amended, rescinded or repealed, so far as it is not inconsistent with the provisions of the Labour Act, 2006. ***The Committee requests the Government to indicate in its next report whether Rule 10 of the Industrial Relations Rules, 1977 has been repealed by the entry into force of the Labour Act, 2006 and, if not, to indicate the measures taken or contemplated with a view to its repeal or amendment.***

The Committee notes the Government's report and its reply to the comments made by the International Confederation of Free Trade Unions (ICFTU), now the International Trade Union Confederation (ITUC), in 2006. It also takes note of the adoption of the Bangladesh Labour Act, 2006, which replaced the Industrial Relations Ordinance, 1969, and on which it comments further below.

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procession, rally or demonstration were not in control of the mob so that unruly people would start to rampage, damage property, barricade highways, etc.; moreover, although workers in any sector have the right to establish trade unions under the new Labour Law of 2006, workers in the shipbreaking sector are casual workers and do not get an opportunity to form unions, because of the limited period of their employment (connected to the breaking of a specific ship). The Committee recalls that *Article 8 of the Convention* provides that workers and their organizations, like other persons or organized collectivities, shall respect the law of the land and that the law of the land shall not be such as to impair, nor shall it be so applied so as to impair, the guarantees provided for in this Convention. In this regard, the Committee wishes to emphasize that the authorities should resort to the use of force only in situations where law and order is seriously threatened. The intervention of the forces of order should be in due proportion to the danger to law and order that the authorities are attempting to control and governments should take measures to ensure that the competent authorities receive adequate instructions so as to eliminate the danger entailed by the use of excessive violence when controlling demonstrations which might result in a disturbance of the peace. Furthermore, the Committee recalls that, by virtue of *Article 2 of the Convention*, workers without distinction whatsoever, including casual and informal sector workers in the shipbreaking industry, shall have the right to establish and join organizations of their own choosing. ***The Committee requests the Government to indicate in its next report any measures taken, including instructions given to the law enforcement authorities, so as to avoid the danger of excessive violence in trying to control demonstrations, and ensure that arrests are made only where criminal acts have been committed.***

With regard to its previous comments concerning the arrest of 350 women trade unionists including the General Secretary of the JSL Women's Committee, the Committee notes from the Government's report that in 2004, in order to maintain law and order, the law enforcement agencies had to detain a few women from a mob while they were on a rampage, damaging a number of factories, barricading a highway, etc.; specific charges had been brought against them immediately after the incident as per the law of the land. The case (No. 7 of 2004) is still pending and a copy of judicial decisions may be communicated to the Committee as and when pronounced. ***The Committee requests the Government to communicate details as to the charges brought in 2004 against 350 women trade unionists, including the General Secretary of the JSL's Women's Committee, Shamsur Nahar Bhuiyan and to provide a copy of all judicial decisions taken in this matter. Moreover, noting with regret that the Government does not provide any information on the registration of Immaculate (Pvt.) Ltd Sramik Union despite previous requests to this effect, the Committee once again requests the Government to report on the measures taken to ensure the prompt registration of the union.***

The Committee further recalls that its previous comments concerned the following issues:

1. *Right to organize in export processing zones (EPZs).* The Committee recalls that the EPZ Workers' Associations and Industrial Relations Act, 2004, contains numerous and significant restrictions and delays in relation to the right to organize in EPZs and in particular: (i) contained a blanket denial of the right to organize in EPZs until 31 October 2006 after which workers' associations may be established (section 13(1)); the Committee notes that this deadline has been met and takes note of the latest communication of the ITUC, according to which, on 1 November 2006, workers had the right to apply to form workers' associations but the Bangladesh Export Processing Zones Authority (BEPZA) failed to devise and provide the prescribed form needed by the workers to this effect, thus preventing in practice the establishment of such associations; (ii) provides that workers' associations will not be allowed in industrial units established after the commencement of the Act, until a period of three months has expired after the commencement of commercial production in the concerned unit (section 24); (iii) provides that there can be no more than one workers' association per industrial unit (section 25(1)); (iv) establishes excessive and complicated minimum membership and referendum requirements for the establishment of workers' associations (a workers' association may be formed only when a minimum of 30 per cent of the eligible workers of an industrial unit seek its formation, and this has been verified by the executive chairperson of BEPZA, who shall then conduct a referendum on the basis of which the workers shall acquire the legitimate right to form an association under the Act, only if more than 50 per cent of the eligible workers cast their vote, and more than 50 per cent of the votes cast are in favour of the formation of the workers' association sections 14, 15, 17 and 20); (v) confers excessive powers of approval of the constitution drafting committee to the Executive Chairperson of the BEPZA (section 17(2)); (vi) prevents steps for the establishment of a workers' association in the workplace for a period of one year after a first attempt failed to gather sufficient support in a referendum (section 16); (vii) permits the deregistration of a workers' association at the request of 30 per cent of the workers even if they are not members of the association and prevents the establishment of another trade union for one year after the previous trade union was deregistered (section 35); (viii) provides for the cancellation of the registration of a workers' association on grounds which do not appear to justify the severity of this sanction (such as contravention of any of the provisions of the association's constitution) (section 36(1)(c), (e)–(h) and 42(1)(a)); (ix) establishes a total prohibition of industrial action in EPZs until 31 October 2008 (section 88(1) and (2)); (x) prevents workers' associations from obtaining or receiving any fund from any outside source without the prior approval of the Executive Chairperson of the BEPZA (section 18(2)); (xi) provides for severe restrictions of strike action, once recognized (possibility to prohibit a strike if it continues for more than 15 days or even before this deadline, if the strike is considered as causing serious harm to productivity in the EPZ – section 54(3) and (4)); (xii) establishes an excessively high minimum number of trade unions to establish a higher level organization (more than 50 per cent of the workers' associations in an EPZ – section 32(1)); (xiii) prohibits a federation from affiliating in any manner with federations in other EPZs and beyond EPZs (section 32(3)); and (xiv) does not seem to afford guarantees against interference with the right of workers to elect their representatives in full freedom (e.g., the procedure of election shall be determined by the BEPZA, etc. – sections 5(6) and (7), 28(1), 29, 32(4)). ***Noting that the Government's report does not provide any new information in respect of the above, the Committee once again requests the Government to take the necessary measures to amend the EPZ Workers' Associations and Industrial Relations Act so as to bring it into conformity with the Convention and to provide detailed information in its next report in this respect. It also requests the Government to provide its observations on the comments made by the ICFTU concerning obstacles to the establishment of workers' associations in EPZs after 1 November 2006 and to provide statistical information on the number of workers' associations established in the EPZs after that date.***

2. *Other discrepancies between national legislation and the Convention.* The Committee recalls that for many years it had been referring to serious discrepancies between the national legislation and the Convention. It now notes the adoption of the Bangladesh Labour Act, 2006 (the Labour Act) which replaced the Industrial Relations Ordinance, 1969 (section 353(1)(x)).

The Committee notes with deep regret that the new Act does not contain any improvements in relation to the previous legislation and in certain regards contains even further restrictions which run against the provisions of the Convention. Thus, the Committee notes the following:

- the need to repeal provisions on the exclusion of managerial and administrative employees from the right to establish workers' organizations (section 2 XLIX and LXV of the Labour Act) as well as new restrictions of the right to organize of fire-fighting staff, telex operators, fax operators and

cipher assistants (exclusion from the provisions of the Act based on section 175 of the Labour Act);

– the need to either amend section 1(4) of the Labour Act or adopt new legislation so as to ensure that the workers in the following sectors, which have been excluded from the scope of application of the Act including its provisions on freedom of association, have the right to organize: offices of or under the Government (except workers in the Railway Department, Posts, Telegraph and Telephone Departments, Roads and Highways Department, Public Works Department and Public Health Engineering Department and the Bangladesh Government Press); the security printing press; establishments for the treatment or care of the sick, infirm, aged, destitute, mentally disabled, orphans, abandoned children, widows or deserted women, which are not run for profit or gains; shops or stalls in public exhibitions which deal in retail trade; shops in any public fair for religious or charitable purposes; educational, training and research institutions; agricultural farms with less than ten workers; domestic servants; and establishments run by the owner with the aid of members of the family; ***in case any of the above sectors are already covered by existing legislation, the Committee requests the Government to provide information in this respect;***

– the need to repeal provisions which restrict membership in trade unions and participation in trade union elections to those workers who are currently employed in an establishment or group of establishments, including seamen currently engaged in merchant shipping (section 2 LXV and 175, 185(2) of the Labour Act);

– the need to repeal or amend new provisions which define as an unfair labour practice on the part of a worker or trade union, an act aimed at “intimidating” any person to become, continue to be or cease to be a trade union member or officer, or “inducing” any person to cease to be a member or officer of a trade union by conferring or offering to confer any advantage and the consequent penalty of imprisonment for such acts (sections 196(2) (a) and (b) and 291 of the Labour Act); the Committee considers that the terms “intimidating” or “inducing” are too general and do not sufficiently safeguard against interference in internal trade union affairs, since, for instance, a common activity of trade unions is to recruit members by offering advantages, including with regard to other trade unions;

– the need to repeal provisions which prevent workers from running for trade union office if they were previously convicted for compelling or attempting to compel the employer to sign a memorandum of settlement or to agree to any demand by using intimidation, pressure, threats, etc. (sections 196(2)(d) and 180(1)(a) of the Labour Act);

– the need to lower the minimum membership requirement of 30 per cent of the total number of workers employed in an establishment or group of establishments for initial and continued union registration as well as the possibility of deregistration if the membership falls below this number (sections 179(2) and 190(f) of the Labour Act); the need to repeal provisions which provide that no more than three trade unions shall be registered in any establishment or group of establishments (section 179(5) of the Labour Act) and that only one trade union of seamen shall be registered (section 185(3) of the Labour Act); finally, the need to repeal provisions prohibiting workers from joining more than one trade union and the consequent penalty of imprisonment in case of violation of this prohibition (sections 193 and 300 of the Labour Act);

– the need to repeal provisions denying the right of unregistered unions to collect funds (section 192 of the Labour Act) upon penalty of imprisonment (section 299 of the Labour Act);

– the need to lift several restrictions on the right to strike: requirement for three-quarters of the members of a workers’ organization to consent to a strike (sections 211(1) and 227(c) of the Labour Act); possibility of prohibiting strikes which last more than 30 days (sections 211(3) and 227(c) of the Labour Act); possibility of prohibiting strikes at any time if a strike is considered prejudicial to the national interest (sections 211(3) and 227(c) of the Labour Act) or involves a public utility service including the generation, production, manufacture, or supply of gas and oil to the public, as well as railways, airways, road and river transport, ports, and banking (sections 211(4) and 227(c) of the Labour Act); prohibition of strikes for a period of three years from the date of commencement of production in a new establishment, or an establishment owned by foreigners or established in collaboration with foreigners (sections 211(8) and 227(c) of the Labour Act); penalties of imprisonment for participation in – or instigation to take part in unlawful industrial action or go-slow (sections 196(2)(e) and 291, 294–296 of the Labour Act);

– the need to repeal provisions which provide that no person refusing to take part in an illegal strike shall be subject to expulsion or any other disciplinary measure by the trade union, so as to leave this matter to be determined in accordance with trade union rules (section 229 of the Labour Act);

– the need to amend new provisions which define as an unfair labour practice on the part of workers, an act of compelling or attempting to compel the employer to sign a memorandum of settlement or to accept or agree to any demand by using “intimidation”, “pressure”, “threat” so as to ensure that there is no interference with the right of trade unions to engage in activities like collective bargaining or strikes, and to repeal the consequent penalty of imprisonment for such acts (sections 196(d) and 291(2) of the Labour Act);

– the need to amend provisions which impose a penalty of imprisonment for failure to appear before the conciliator in the framework of settlement of industrial disputes (section 301 of the Labour Act).

The Committee requests the Government to indicate in its next report the measures taken or contemplated so as to bring the Labour Act, 2006 into full conformity with the provisions of the Convention.

The Committee also notes that it is not clear from the provisions of the Labour Act whether Rule 10 of the Industrial Relations Rules, 1977 (IRO) which previously granted the Registrar of Trade Unions overly broad authority to enter trade union offices, inspect documents, etc., without judicial review, has been repealed. It would appear from section 353(2)(a) that the rule remains in force, as the section in question provides that any rule under any provision of the repealed laws (including the IRO) shall have effect until altered, amended, rescinded or repealed, so far as it is not inconsistent with the provisions of the Labour Act, 2006. ***The Committee requests the Government to indicate in its next report whether Rule 10 of the Industrial Relations Rules, 1977 has been repealed by the entry into force of the Labour Act, 2006 and, if not, to indicate the measures taken or contemplated with a view to its repeal or amendment.***

Belarus

(Ratification: 1956)

The Committee notes the information contained in the Government's report, the conclusions of the Committee on Freedom of Association in its review of the measures taken by the Government to implement the recommendations made by the Commission of Inquiry (345th Report, approved by the Governing Body at its 298th Session) and the discussion that took place in the Conference Committee on the Application of Standards in June 2007. The Committee also takes note of the reports of the missions carried out in Belarus in January 2007 (to participate in a seminar for judges and court prosecutors' officers) and June 2007 (in response to the request made by the Conference Committee on the Application of Standards in 2007). The Committee further notes the comments made by the International Trade Union Confederation (ITUC) on the application of the Convention in law and in practice. Finally, the Committee notes from the Government's report that consultations relating to the recommendations of the Commission of Inquiry were held in Geneva in February and May 2007 between the Government's representatives and the Office.

The Committee recalls that all of its outstanding comments have raised issues directly relating to the recommendations of the Commission of Inquiry.

Article 2 of the Convention. The Committee recalls that in its previous comments it had noted that Presidential Decree No. 605 on certain issues of state registration of public associations and their unions (confederations) of 6 October 2006, abolished the Republican Registration Commission. It further noted that responsibility for registration now lies with the Ministry of Justice, departments of justice of the regional executive councils and the Minsk City Executive Committee, and requested the Government to keep it informed of the manner in which registration is carried out by these authorities, as well as of any practical obstacles noted in relation to the right of workers to form and join organizations of their own choosing. The Committee regrets that no information was provided by the Government in this respect, except for an indication that in 2006–07, four out of six trade unions affiliated to the Radio and Electronic Workers' Union (REWU), which submitted applications for registration, were registered. The Committee understands that two organizations remain unregistered. Furthermore, the Committee notes from the conclusions of the Committee on Freedom of Association contained in its 345th Report, that no progress had been made in respect of the Commission's recommendations to register the primary-level organizations that were the subject of the complaint. The Committee further notes that the non-registration of primary trade organizations has led to the denial of registration of three regional organizations of the Belarusian Free Trade Union (BFTU) (organizations in Mogilev, Baranovichi and Novopolotsk-Polotsk). ***The Committee therefore expresses the firm hope that the Government will take all necessary measures for the immediate re-registration of these organizations both at the primary and the regional level so that these workers may exercise their right to form and join organizations of their own choosing without previous authorization. It once again further requests the Government to keep it informed of the process of registration before such bodies and to provide information on the number of organizations registered and those denied registration.***

The Committee notes the Government's indication that in order to improve legislation and practice with regard to the establishment and registration of trade unions, a draft trade union law has been prepared with the participation of the social partners and the assistance of the ILO. With the adoption of that law, Presidential Decree No. 2 of 1999 will cease to have effect. The Committee takes note of the draft law on trade unions in its May 2007 version and wishes to raise the following points.

The Committee notes that the draft provides for a simplified procedure for the establishment of trade unions at the enterprise level for unions without legal personality, which would simply be placed in the register (recorded), as opposed to those with legal personality, which must be registered. However, the practical distinction in Belarus between trade unions with and those without legal personality is not sufficiently clear to the Committee. The Committee must once again recall that, when legislation makes the acquisition of legal personality a prerequisite for the existence and functioning of organizations, the conditions for acquiring legal personality must not be such that they amount to a de facto requirement for previous authorization to establish an organization, which would be tantamount to calling into question the application of *Article 2* (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 76). ***The Committee therefore requests the Government to provide full details on the envisaged distinction between unions with legal personality and those without, as well as on the impact that this distinction would have upon the functioning of trade unions.***

The Committee further notes that the draft proposes to maintain the 10 per cent membership requirement to be registered at the enterprise level (section 15 of the draft law). ***Recalling that for a number of years it has been requesting the Government to amend this minimum membership requirement, the Committee requests the Government to take the necessary measures to lower this requirement, which it considers too high, particularly in large enterprises.***

The Committee also notes that the legal address requirement is maintained for all those enterprise-level trade unions wishing to register, as well as for all higher-level trade unions. Those trade unions at the enterprise level not seeking legal personality would need to provide a contact address. The Committee notes that the draft does not provide for a clear definition of "contact address" and "legal address". In this respect, the Committee recalls that the Commission of Inquiry had noted that the requirement of legal address has created obstacles to trade union registration due, among other reasons, to the absence of clear rules on what may be an appropriate location for an organization's legal address if the location with a qualified legal address is not provided by the employer. ***In light of the frequency with which requests for registration at all levels had been denied on the basis of an unacceptable legal address, the Committee requests the Government to take the necessary measures to ensure that any new legislation allows registration of all workers' organizations requesting registration on the basis of simplified requirements concerning the provision of a valid address, regardless of the level.***

In addition, the Committee notes that the draft law maintains a strong link between representativeness and the rights of trade unions, which had been previously criticized by the Committee, as well as by the Committee on Freedom of Association. The Committee considers that the extent of such privileges to representative unions could unduly influence the choice of organization by workers and compromise the right of workers to establish and join organizations of their own choosing (see General Survey, op. cit., paragraphs 98 and 104). The Committee further considers that the granting of such extensive privileges to representative unions combined with the uncertainty around the status that may be obtained by unions without legal personality could give rise to undue influence on the choice made by workers of the organization they wish to join. The Committee refers to the

conclusions of the Committee on Freedom of Association contained in paragraph 93 of its 345th Report, where the latter recalled that on several occasions, it had advised the Government against introducing changes to the trade union legislation in respect of representativeness. It considered that before establishing the notion of representativeness, the Government should ensure an atmosphere in which trade union organizations, whether within or outside the traditional structure, are able to flourish in the country. **The Committee, like the Committee on Freedom of Association, urges the Government to abandon this approach and to ensure that the new law on trade unions will fully and truly ensure freedom of association and the rights of all workers to form and join organizations of their choosing.**

The Committee notes that the registration (recording) procedure provided for in Chapter 3 of the draft law appears to be excessively detailed. The Committee considers that while member States remain free to provide such formalities on their legislation as appears appropriate to ensure the normal functioning of occupational organizations, the registration formalities should not impair the guarantees laid down by the Convention in practice (see General Survey, op. cit., paragraph 74). The Committee recalls that the Commission of Inquiry considered that the main problem encountered by trade unions during the registration process was the application of the legislation by the registering authorities in practice. The Committee considers that with an overly regulated registration procedure, there is a risk that the registration authorities could easily find a pretext for not registering a union. In particular, pursuant to section 21 of the draft law, the state registration may be postponed in the case of "shortcomings in the preparation of documents", which may be broadly interpreted by the registration authorities. The Committee recalls that problems of compatibility with the Convention arise when competent administrative authorities make excessive use of their discretionary powers and are encouraged to do so by the vagueness of the relevant legislation (see General Survey, op. cit., paragraph 75). **The Committee therefore requests the Government to ensure that registration formalities are not such as to give rise, in practice, to impediments to the guarantees laid down in the Convention.**

The Committee notes the Government's indication that it had carried out consultations on the proposed draft with the social partners under the auspices of the Council for the Improvement of Legislation in the Social and Labour Spheres (Council of Experts). All interested parties, including the representatives of the Federation of Trade Unions of Belarus (FPB) and the Congress of Democratic Trade Unions (CDTU), had an opportunity to express their views on the new Law. An ILO mission, which visited Belarus in June 2007, took part in a meeting of the Council of Experts. The Government states that during the examination of the draft law on trade unions, the ILO representatives expressed the view that it would not be helpful at the present stage to introduce amendments to legislation which are not supported by all the parties involved in social dialogue. The Government adds that it was emphasized, in particular, that the text of the Trade Unions Act, as drawn up by the Government, raises a number of important and difficult questions (for example, the representativeness of trade unions), which will inevitably require time for further examination. In this regard, the ILO mission proposed that the Government consider the possibility of an alternative approach: not adopting the new law for the time being but focusing on the key issue, namely, registration of trade unions. The results of the ILO mission in Minsk were subsequently discussed by the Government. In the light of the mission's recommendations, the decision has been taken to continue with efforts to improve trade union legislation with a view to achieving consensus between the parties. The Committee notes, however, from the mission report, the serious concerns raised by the mission in respect of: (i) the issue of registration, (ii) the difference between trade unions with legal personality and those without, and (iii) the issue of representativeness. **The Committee expresses the firm hope that the future draft law on trade unions will be further developed in full consultation with all the trade unions concerned and that the final law will be in full conformity with the provisions of the Convention. The Committee requests the Government to transmit a copy of the draft trade union law as soon as it has been finalized so that it may assess its conformity with the Convention.**

Article 3 of the Convention. The Committee notes that according to section 41(3) of the draft law on trade unions, officials of the relevant registration authorities and local executive and management are entitled to request and obtain information on questions relating to the statutory activities of trade unions and to examine their documents and decisions. It is not clear to the Committee whether the control over trade union activity could be conducted at any time at the discretion of the competent authorities. In this respect, it considers that supervision should be limited to the obligation of submitting periodic financial reports or to cases where there are serious grounds for believing that the actions of an organization are contrary to its rules or the law (which should not infringe upon the principles of freedom of association). Similarly, there is no violation of Convention No. 87 if such verification is limited to exceptional cases, for example, in order to investigate a complaint, or if there have been allegations of corruption. Both the substance and the procedure of such verifications should always be subject to review by the competent judicial authority affording the necessary guarantees of impartiality and objectivity. Problems of compatibility with the Convention arise when the law gives the authorities powers of control, which go beyond the principles set forth in the previous paragraph, for example, if the administrative authority has the power to examine the books and other documents of an organization or conduct an investigation and demand information at any time (see General Survey, op. cit., paragraphs 125 and 126). **The Committee requests the Government to ensure that the draft law is in conformity with the above principle.**

The Committee notes with regret that no information has been provided in respect of the steps taken to amend the Law on Mass Activities and sections 388, 390, 392 and 399 of the Labour Code, and to ensure that National Bank employees may have recourse to industrial action, without penalty. The Committee must therefore once again recall that it has been asking the Government to amend these provisions for several years now. **Considering that the abovementioned legislative provisions are not in conformity with the right of workers to organize their activities and programmes free from interference by the public authorities, the Committee reiterates its previous requests and asks the Government to keep it informed of the measures taken in this respect.**

Articles 3, 5 and 6 of the Convention. The Committee regrets that no information has been supplied by the Government in respect of the measures taken to amend section 388 of the Labour Code, which prohibits strikers from receiving financial assistance from foreign persons, and Decree No. 24 concerning the use of foreign gratuitous aid, so that workers' and employers' organizations may effectively organize their administration and activities and benefit from assistance from international organizations of workers and employers. The Committee notes the Government's indication that Decree No. 24 does not prohibit receiving foreign aid, including from international trade unions, but only provides for conditions of its use and for the procedure of its registration. The Government reiterates that the provision in the Decree for dissolution of a trade union in case of violation has never been used; thus there is no basis for amending the existing procedure of receiving foreign aid. The Committee must recall that it does not consider that the fact that the dissolution provision has not been used can lead to the conclusion that trade union activities have not been hindered, as the mere existence of this prohibition and its legal consequences are sufficient to hinder trade unions from using financial assistance in this manner. **The Committee must therefore reiterate that restrictions on the use of foreign aid for legitimate trade union activities is contrary to the right of national workers' and employers' organizations to receive financial assistance from international workers' and employers' organizations in pursuit of these aims and once again requests the Government to take the necessary measures to amend both Decree No. 24 and section 388 of the Labour**

Code so that workers' organizations are not prohibited to use such aid to support industrial action or any other legitimate activity.

The Committee considers that the current situation in Belarus remains far from ensuring full respect for freedom of association and the application of the provisions of the Convention. **Noting the indications made by the Government in its report that it would continue with its efforts to implement the recommendations of the Commission of Inquiry and would actively involve the social partners and seek cooperation with the Office in that process, the Committee expresses the firm hope that the Government will take the necessary steps for the full implementation of the recommendations of the Commission of Inquiry without delay and will ensure that any new legislation in the field of trade union rights is in full conformity with the provisions of the Convention.**

It further expresses the firm hope that any acts of interference by the public authorities in the internal activities of trade unions will be publicly condemned.

The Committee requests the Government to respond to the comments made by the ITUC dated 3 October 2007.

[The Government is asked to supply full particulars to the Conference at its 97th Session.]

Bulgaria

(Ratification: 1959)

The Committee notes the Government's report. The Committee further notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 28 August 2007 that refer to matters already raised by the Committee.

Article 3 of the Convention. Right of workers' and employers' organizations to organize their activities freely without interference by the public authorities. 1. The Committee recalls that, on previous occasions, it had requested the Government to amend section 11(2) and (3) of the Collective Labour Disputes Settlement Act; section 11(2) provides that the decision to strike shall be taken by a simple majority of the workers of the enterprise or the unit concerned, whereas section 11(3) stipulates that the duration of the strike must be declared. The Committee takes note of the Government's statement that no amendments to these provisions have been made. **In these circumstances, the Committee once again requests the Government to indicate the measures presently being taken or envisaged to amend section 11(2) of the Collective Labour Disputes Settlement Act to ensure that, in strike ballots, only the votes cast would be counted and the quorum would be fixed at a reasonable level, as well as to amend section 11(3) of the Act so as to eliminate the obligation to notify the duration of a strike.**

2. Previously, the Committee had asked the Government to amend section 51 of the Railway Transport Act of 2000, which provides that, where industrial action is taken under the Act, workers and employers must provide the population with satisfactory transport services of no less than 50 per cent of the volume of transportation that was provided before the strike. The Committee notes the Government's indication that the Ministry of Transport had expressed the will to amend section 51 of the Act, and had proposed a modification providing that in case of a strike, the employees and the employers "shall be obliged, by a written agreement signed before the start of the strike, to assure 50 per cent of the implementation of the confirmed schedule for the movement of the trains on the day of the action". The Committee observes, in this respect, that the proposed modification preserves the 50 per cent requirement contained in section 51 of the Railway Transport Act, which, as the Committee had previously pointed out, may considerably restrict the right of railway workers to undertake industrial action. The Committee had also recalled that since the establishment of a minimum service restricts one of the essential means of pressure available to workers to defend their economic and social interests, workers' organizations should be able to participate in defining such a service, along with employers and public authorities. **Noting the Government's statement that the proposed text was still being discussed by the competent institutions, the Committee once again requests the Government to take the necessary measures so as to ensure that workers' organizations may participate in negotiations on the definition and organization of a minimum service and that, where no agreement is possible, the matter will be referred to an independent body.**

3. The Committee had previously referred to the provision of compensatory guarantees for workers in the energy, communications and health sectors, whose right to strike was denied under section 16(4) of the Collective Labour Disputes Settlement Act. In this respect, the Committee notes the Government's statement that, by the amendment to the Collective Labour Disputes Settlement Act, SG No. 87/27.10.2006, the prohibition on strikes in these sectors has been repealed; workers in the energy, communications and health sectors now enjoy the right to strike. **The Committee notes this information with interest and requests the Government to transmit a copy of SG No. 87/27.10.2006 repealing the ban on strikes with its next report.**

4. With regard to the restricting of the exercise of the right to strike by civil servants, pursuant to section 47 of the Civil Servant Act, the Committee takes note of the Government's indication that the Ministry of the State Administration and the Administrative Reform (MSAAR) maintains the position that the denial of the right to strike to civil servants is reasonable, as the interruption of their work would place the functioning of the State in danger and bear negative consequences for all sectors of public life. The Government adds that it was nevertheless considering possible legislative amendments to overcome the existing restrictions on the right to strike of civil servants, in accordance with its international obligations. **The Committee notes this information and expresses the hope that the Government would take the necessary measures to amend section 47 of the Civil Servant Act, so as to effectively guarantee the right to strike to all civil servants who cannot be considered to be exercising authority in the name of the State. The Committee requests to be kept informed of the measures taken in this respect.**

Colombia

(Ratification: 1976)

The Committee takes note of the Government's report. It also notes the communication addressed by the Ministry of Social Welfare to the Director-General of the ILO which was read out in the Conference Committee on the Application of Standards in 2007. In it, the Ministry reaffirms its commitment to the Tripartite Agreement on Freedom of Association and Democracy, signed by the Government and representatives of the employers

and workers in Geneva on 1 June 2006, and expresses its resolve to further the implementation of the Agreement. The Government also notes the Director-General's reply, indicating that the Office will provide all possible assistance for effective implementation of the measures announced and proposing that a high-level mission, appointed by himself, should be sent by the International Labour Office to identify new needs with a view to ensuring effective application of the Tripartite Agreement and the technical cooperation programme. The Committee further notes the numerous cases concerning Colombia currently before the Committee on Freedom of Association.

The Committee notes the comments on the application of the Convention submitted on 28 August 2007 by the International Trade Union Confederation (ITUC) and those from the Single Confederation of Workers (CUT), the General Confederation of Labour (CGT), the Confederation of Workers of Colombia (CTC) and the Confederation of Pensioners of Colombia (CPC) in a communication of 28 May 2007, and those of 31 August 2007 from the CUT which refer to matters the Committee has been raising, particularly acts of violence against trade union leaders and trade unionists including killings, abductions, attempts on their lives and disappearances. They likewise refer to the serious impunity surrounding these acts; the use of associated work cooperatives so that workers are unable to form and join unions; the arbitrary refusal to register new trade union organizations or new statutes or executive boards of unions; and the prohibition on strikes and certain services other than essential services.

Situation of violence and impunity

Regarding the acts of violence against trade union members and leaders, the ITUC states that most of such acts are associated with industrial disputes. It again observes that paramilitary groups view the trade union movement as sympathetic to guerrillas and the extreme left and that this makes it very vulnerable. According to the ITUC, the efforts made by the Government to ensure the security of trade union leaders are insufficient. In 2006, 78 murders were reported, the education sector being the most affected, with a total of 49 murders. The ITUC also refers to numerous threats and attacks. The Colombian central organizations, for their part, refer to systematic anti-union violence, alleging the involvement of several state institutions that have links with paramilitary groups and drug traffickers responsible for the murders of several well-known trade union leaders. They further state that in most cases, responsibility for the killings can be attributed to paramilitary groups. According to the ITUC, although to a lesser extent, the guerrillas have also participated significantly in acts of violence against trade unionists.

The Committee notes that in responding, the Government refers to the protective measures adopted under the protection programme set up in 1997. It adds that the programme's budget has been consistently increased, and provides a detailed list of the number of protection measures authorized, pointing out that at present, 25.25 per cent of such protection goes exclusively to the trade union movement in the form of reinforcement of their headquarters, escorts, armoured cars and bulletproof vests, among other protective measures. Furthermore, a policy for the protection and security of democracy has been devised to provide effective protection for the rights of Colombians which is being implemented in coordination with all government bodies, with the result that the number of homicides has dropped, including the killings of trade unionists. In view of the fact that education is the sector most affected by the murders, the Government states that in cooperation with the Colombian Federation of Educators (FECODE), a national working party on teachers under threat has been set up in which the Ministry of Social Welfare, the Ministry of National Education, the Ministry of the Interior and Justice, the national police and the Presidential Human Rights Programme participate. Under the latter programme, numerous teachers have been relocated. The Government states that there were 18 murders in 2007, and reiterates its resolve to reduce this figure to zero.

The Committee notes with concern that members of trade unions continue to be the target of serious acts of violence because of their union membership. The Committee notes that the Government made significant efforts to ensure protection for trade union members and leaders and for trade union headquarters. It nonetheless observes that the number of persons being protected has declined and considers that the protection effort needs to be strengthened. Consequently, it points out once again that a truly free and independent trade union movement can develop only in a climate of respect for fundamental human rights (see General Survey on freedom of association and collective bargaining, 1994, paragraph 26) and that employers' and workers' organizations can carry on their activities freely and meaningfully only in a climate free from violence. **Accordingly, the Committee again urges the Government to take the necessary steps to ensure the right to life and security of trade union leaders and members so that they may fully exercise the rights guaranteed by the Convention. With regard to protective measures in particular, the Committee requests the Government to take the necessary steps to provide for all trade unionists who so request, measures for their protection which are adequate and which command their trust.**

As to the measures against impunity, the Colombian central unions acknowledge the efforts of the Attorney-General to secure progress in the investigation of serious human rights violations against trade unionists, though they emphasize that only a minute percentage of investigations reach the trial or sentencing stage.

The Committee notes the Government's statement that in the context of the commitment made under the Tripartite Agreement, on 15 September 2006 the Government and the Attorney-General signed Inter-administrative Agreement No. 15406 to further the investigation of violations of the human rights of trade unions, the aims of which are: (1) to devise strategies to clarify the facts; (2) to identify and punish the perpetrators and accomplices; (3) to prevent offences that abuse the human rights of trade unions by adopting the necessary institutional, national and local plans and programmes. To this end, the Attorney-General has appointed 13 public prosecutors, with a group of criminal police investigators and a technical investigation unit comprising 78 persons, plus 24 lawyers to back up the investigations. The investigations are devoted in particular to the murders reported in the context of Case No. 1787, currently before the Committee on Freedom of Association. The Government adds that the Higher Council of the Judiciary appointed three dedicated judges to hear cases referred by the Attorney-General. The Government has sent a long list of investigations (48) that ended with the conviction of the perpetrators of acts of violence against trade union leaders. The sentences were pronounced between June 2002 and the beginning of 2007.

While observing that since 2002 the number of sentences imposed continues to be quite modest, the Committee notes the efforts made by the Government, and acknowledged by the trade union organizations, to further the investigation of abuses of the human rights of trade unionists. **In these circumstances, the Committee requests the Government to continue to take the measures within its reach to secure progress in investigations into acts of violence against the trade union movement. It expresses the firm hope that the measures adopted recently in connection with the appointment of new prosecutors and judges will lead to an improvement in combating the impunity situation and shed light on the acts of violence against trade union leaders and members, and enable the perpetrators to be captured.**

In previous comments the Committee asked the Government to keep it informed of the manner in which Act No. 975 on Justice and Peace is applied, particularly in cases involving trade union leaders and members. The Committee notes in this connection that the Constitutional Court reached a decision on the challenges to the Act: it declared the Act enforceable but ruled that some of its provisions were unconstitutional and unenforceable. **Observing that the Government has not sent the information requested, the Committee repeats its request.**

Practical and legislative matters pending

The Committee has been commenting, in some instances for many years, on the following matters:

– various types of contractual arrangements, such as associated work cooperatives and service, civil or commercial contracts which are a cover for actual employment relationships and are used to carry out functions and work that are within the normal activities of the establishment, and under which workers may not form or join trade unions. The Committee notes the Government's response to the effect that: (a) Decree No. 4588 of 2006 has been issued and provides that cooperatives may not be used as a means of labour intermediation and that where they are used improperly, simulating activities of temporary service enterprises, this denies workers the guarantees of the Labour Code, and that Circular No. 0036 of 2007 determines the scope of the abovementioned Decree; (b) the Supervisory Authority for Economic Solidarity investigates and sanctions any departure from the social purpose of associated work cooperatives, while the Ministry of Social Welfare determines when there shall be labour intermediation and when there is non-compliance with comprehensive social security standards; and (c) the Special Unit for the Inspection, Monitoring and Control of Labour carried out 1,067 visits to associated work cooperatives, and 961 investigations were opened as a result of which penalties were imposed on 118 associated work cooperatives found to have been misused for the purpose of labour intermediation. The Committee points out that *Article 2 of the Convention* provides that workers and employers, without distinction whatsoever, shall have the right to establish and join organizations of their own choosing without previous authorization. The Committee reiterates that when workers in cooperatives or those covered by other types of civil or commercial contracts have to perform work within the normal activities of the establishment in the context of a relationship of subordination, they should be treated as employees in a real employment relationship and should therefore enjoy the right to join trade unions. **Consequently, the Committee once again asks the Government to take the necessary steps to ensure that full effect is given to Article 2 of the Convention so that all workers without distinction whatsoever enjoy the right to establish and join organizations.**

– The arbitrary refusal to register new trade union organizations, new trade union rules or the executive committee of a trade union at the discretion of the authorities for reasons that go beyond the express provision of the legislation. The Committee notes the Government's statement that a resolution has been issued (No. 1651 of 2007) amending sections 2, 3 and 5 of resolution No. 1875 of 2002 in order to speed up the procedure for entering trade union organizations in the register. The Committee observes that one of the grounds for denying registration set out in Decree No. 1651 of 2007 is "that the trade union organization has been established not to guarantee the fundamental right of association but to secure labour stability". The Committee reminds the Government that *Article 2 of the Convention*, guarantees the right of workers and employers to establish organizations "without previous authorization" from the public authorities and that regulations governing the constitution of organizations are not in themselves incompatible with the provisions of the Convention provided that they are not equivalent to a requirement for previous authorization and do not constitute such an obstacle that they amount in practice to a prohibition (see General Survey, op. cit., paragraphs 68 and 69). The Committee further considers that the administrative authority should not be able to deny registration of an organization merely because it considers that it might devote itself to activities that go beyond normal trade union activities or that it might not be able to fulfil its functions. **In these circumstances, the Committee requests the Government to take steps to amend this provision of Decree No. 1651 of 2007 and to make sure that the administrative authority does not have discretionary powers that are inconsistent with Article 2 of the Convention and that it registers new organizations or executive committees, as well as amendments to rules, without undue delay.**

– The prohibition on the calling of strikes by federations and confederations (section 417(i) of the Labour Code). The Committee repeats once again that higher-level organizations ought to be able to resort to strikes in the event of disagreement with the Government's economic and social policy. **The Committee requests the Government to take steps to amend section 417(i) of the Labour Code.**

– The prohibition of strikes, not only in essential services in the strict sense of the term, but also in a very broad range of services which are not necessarily essential (section 430(b) as it pertains to transport, (d), (f), (g) and (h); section 450(1)(a) of the Labour Code and Decrees Nos 414 and 437 of 1952; 1543 of 1955; 1593 of 1959; 1167 of 1963; 57 and 534 of 1967) and the possibility to dismiss trade union leaders who have intervened or participated in an unlawful strike (section 450(2) of the Labour Code), even when the unlawful nature of the strike is a result of requirements that are contrary to the principles of association. The Committee notes that the Government acknowledges that section 430 is not consistent with the provisions of the Convention and states that the Ministry has seldom declared strikes to be unlawful and that such decisions are reviewed by the State Council. Moreover, the Committee notes with interest that the Government has transmitted a copy of a draft law submitted to Congress, providing that the illegality of a suspension or of a collective agreement will be decided by a labour court judge. **Mindful that the Government acknowledges the need to amend some of these provisions and that it had presented a draft law to Congress providing for several amendments to the Labour Code, the Committee asks it to take the necessary steps to avail itself of the fact of the draft law's presentation to Congress to amend all the legal provisions on which it has commented, and invites it to seek technical assistance from the Office.**

– The authority of the Minister of Labour to refer a dispute to arbitration when a strike exceeds a certain period – 60 days – (section 448(4) of the Labour Code). The Committee takes due note of the Government's indications of the submission to Congress of a draft law that amends this section, providing that the parties may agree to a conciliation mechanism or arbitration to resolve their dispute, as well as the fact of the intervention of the subcommittee of the committee of consultation on wage policy and labour. However, the Committee notes that the draft law provides that if a definitive solution cannot be found, both or one of the parties may petition the Ministry of Social Welfare to convene an arbitration tribunal. The Committee reiterates that compulsory arbitration to end a strike, except when at the request of both parties, is acceptable only in instances where the strike may be restricted, or even prohibited, i.e. in disputes in the public service involving public servants exercising authority in the name of the State or in essential services in the strict sense of the term, namely services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. **The Committee requests the Government to take the necessary steps to amend this principle in keeping with the principle noted above.**

Observing that it has been making comments for many years, the Committee expresses the firm hope that the Government will take the

necessary steps without delay to amend the legislative provisions so as to align them with the Convention. The Committee further hopes that the high-level mission undertaken in November 2007 will be useful in assisting the Government in its efforts to comply with the Convention. It requests the Government to keep it informed of any developments in this respect.

The Committee is addressing a request on other matters directly to the Government.

Egypt

(Ratification: 1957)

The Committee notes the Government's report as well as its reply to the comments submitted by the International Confederation of Free Trade Unions (ICFTU, now ITUC – the International Trade Union Confederation) in 2006 on the application of the Convention. It further notes the comments submitted by the ITUC in a communication of 28 August 2007, which mainly refer to matters previously raised by the Committee as well as to acts of government interference in union elections and violent intervention by security forces against trade union members participating in the elections. **The Committee requests the Government to transmit its observations on the ITUC's allegations.**

The Committee recalls that for several years its comments have been referring to the discrepancies between the Convention and the national legislation – i.e. the Trade Union Act No. 35 of 1976, as amended by Act No. 12 of 1995, and the Labour Code No. 12 of 2003 – on the following points:

Article 2 of the Convention. The institutionalization of a single trade union system under Act No. 35 of 1976 (as amended by Act No. 12 of 1995), and in particular sections 7, 13, 14, 17 and 52. The Committee notes that the Government indicates that the trade union structure is one the workers themselves had chosen upon the realization that disparate trade union set-ups are ineffective and do not constitute a pressure group aimed at meeting their interests. In these circumstances the Committee once again recalls that Act No. 35, and in particular sections 7, 13, 14, 17 and 52, are at variance with Article 2 of the Convention since trade union unity, directly or indirectly imposed by law, runs counter to the standards expressly laid down in the Convention (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 91). **The Committee requests the Government to amend sections 7, 13, 14, 17 and 52 of Act No. 35 of 1976 (as amended by Act No. 12 of 1995) so as to secure the right of workers to establish and join organizations of their own choosing at all levels outside the existing trade union structure.**

Article 3. The control granted by law to higher level trade union organizations, and particularly the Confederation of Trade Unions, over the nomination and election procedures to the executive committees of trade unions (sections 41, 42 and 43 of Act No. 35, as amended by Act No. 12). The Committee recalls that procedures for the nomination and election to trade union office should be fixed by the rules of the organization concerned, without any interference by public authorities or by the single trade union central organization designated by the law. Legislative provisions can require, in a manner compatible with the Convention, that organizations specify in their statutes and rules the procedure for appointing their executive bodies, and rules ensuring the proper conduct of the election process. Furthermore, if any supervision is deemed necessary, it should be exercised by a judicial authority (see General Survey, op. cit., paragraphs 114 and 115). Finally, the Committee would like to point out that any removal or suspension of executive bodies which is not the result of an internal decision of the trade union, a vote by members or normal judicial proceedings, seriously interferes in the exercise of the trade union office to which officers should be freely elected by members of their trade union. Legislative provisions which permit the appointment of temporary administrators by the single central organization are incompatible with the Convention. Measures of this kind should only be possible through judicial proceedings (see General Survey, op. cit., paragraphs 122 and 123). **The Committee thus expresses the firm hope that the Government will take the necessary measures to amend the legislation so as to ensure that each workers' organization is able to elect its representatives in full freedom in accordance with Article 3 of the Convention. It requests the Government to keep it informed of the measures taken or envisaged in this regard.**

The control exercised by the Confederation of Trade Unions over the financial management of trade unions (sections 62 and 65 of Act No. 35, as amended by Act No. 12). The Committee notes the Government's statement that the funding structure in place does not contravene any international convention or law, and is the main source of funding for trade unions at the international level. The Committee nevertheless recalls that it had previously pointed out that workers' organizations should have the right to organize their administration without any interference from public authorities, which means, among other things, that they should enjoy autonomy and financial independence. The control granted by the law to a single central organization constitutes, as such, interference with the free functioning of workers' organizations, contrary to Article 3. **The Committee therefore once again requests the Government to take the necessary measures to ensure that section 62, which provides that the Confederation shall determine the financial rules of trade unions and obliges lower level unions to pay a certain percentage of their income to higher level organizations, and section 65, which provides that the Confederation shall control all trade union activities, are amended so that workers' organizations have the right to organize their administration, including their financial activities, without interference, in accordance with Article 3 of the Convention.**

Right to strike. The Committee notes the Government's statement that strikes are prohibited at strategic undertakings, as a legitimate and necessary safeguard to protect public safety and security; the Government adds that the restrictions placed by the law on the holding of strikes are measures similarly aimed at ensuring public security and the country's economic welfare. In this respect, the Committee recalls that the right to strike may be restricted or prohibited in the public service only for public servants exercising authority in the name of the State, or in essential services in the strict sense of the term (that is, services the interruption of which would endanger the life, personal safety or health of the whole or part of the population). **In these circumstances, the Committee once again requests the Government to take the necessary measures to amend the legislation concerning:**

- the removal from office of the executive committee of a trade union which has provoked work stoppages or absenteeism in a public service or community services (section 70(2)(b) of Act No. 35 of 1976);
- the requirement for the prior approval of the Confederation of Trade Unions for the organization of strike action (section 14(i) of the same Act);
- restrictions on the right to strike and recourse to compulsory arbitration in services which are not essential in the strict sense of the term

(sections 179, 187, 193 and 194 of the Labour Code); and

- penalties for breaches of section 194 of the Labour Code (section 69(9) of the Code).

The Committee is also addressing a request directly to the Government.

Equatorial Guinea

(Ratification: 2001)

The Committee notes that the Government's report has not been received. It notes the comments from the International Trade Union Confederation (ITUC) dated 28 August 2007 concerning legislative issues which are under examination and denouncing once again the administrative authority's refusal to register a number of trade unions, including the Trade Union of Workers of Equatorial Guinea (UST), the Independent Services Union (SIS), the Teachers' Trade Union Association (ASD) and the Agricultural Workers' Organization (OTC). The Committee recalls that it noted that, owing to the lack of a trade union tradition, there were still no workers' unions operating in the country. The Committee expresses its concern at the circumstances described above and reminds the Government that, under the provisions of *Article 2 of the Convention*, all workers without distinction shall have the right to establish trade union organizations of their own choosing. **The Committee requests the Government to register without delay the trade union organizations the registration of which was refused and keep it informed of the measures taken or envisaged to ensure that workers are able to establish organizations of their own choosing.**

With reference to its previous comments, the Committee recalls that it asked the Government to:

- amend section 5 of Act No. 12/1992, which provides that sectoral employees' organizations shall bring together employees of two or more enterprises engaged in similar activities, so as to allow the establishment of enterprise trade unions;
- amend section 10 of Act No. 12/1992, which provides that for an occupational association to obtain legal personality it must, inter alia, have 50 employees as a minimum, in order to reduce the number of workers required to a reasonable level;
- confirm that, as a result of the revision of the Fundamental Act in 1995 (Act No. 1 of 1995), the right to strike is recognized in public utilities and is exercised in the conditions laid down by law;
- provide information on the services deemed to be essential, and on how the minimum services to be ensured are determined;
- state whether public servants who do not exercise authority in the name of the State enjoy the right to strike.

The Committee requests the Government to take the necessary steps to amend the legislation in order to bring it into full conformity with the provisions of the Convention and reply to the requests for information. The Committee requests the Government to keep it informed of all measures taken in this respect. Finally, the Committee points out to the Government that it may seek technical assistance from the Office.

[The Government is asked to supply full particulars to the Conference at its 97th Session and to reply in detail to the present comments in 2008.]

Guatemala

(Ratification: 1952)

The Committee notes the Government's report and its reply to the comments of the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation), of 31 August 2005, and the Trade Union Confederation of Guatemala (UNSITRAGUA) of 26 August 2006. The Committee also notes the comments made by the ITUC, dated 28 August 2007, which refer to legislative matters and issues relating to the application of the Convention in practice which have already been raised by the Committee and, particularly, threats and harassment against a trade union leader, the attempted murder of a leader of the teaching sector and the kidnapping for two hours of a trade union leader. **The Committee requests the Government to provide its comments in this respect.**

The Committee also notes the comments made by the Guatemalan Trade Union Movement, which groups together many trade union organizations (CTC, CGTG, CUSG, CNOC, CNSP, FENASTEG, FESEBS, FESTRAS, FESOC, FNL, SITRADOCSA, SITRADEORSA, SITRAPDEORSA and UNSITRAGUA), dated 27 August 2007. The Committee further notes the various cases that are being examined by the Committee on Freedom of Association, some of which relate to serious allegations concerning the murder of a trade union leader. The Committee also notes the conclusions of the technical assistance mission which visited the country from 26 to 28 February 2007.

Acts of violence against trade unionists

The Committee recalls that in previous observations it noted acts of violence against trade unionists and requested the Government to provide information on developments in this respect. The Committee notes that the Government provides information supplied by the Office of the Special Investigator into crimes against journalists and trade unionists of the Office of the Public Prosecutor concerning complaints relating to acts of violence against trade unionists. In accordance with this information, seven complaints were made in 2007, compared with 37 in 2006 and 43 in 2005. In addition, two rulings have been handed down, one in 2004 and another in 2006, with one person convicted in each case. There have also been cases of settlements through conciliation and 13 cases prepared and awaiting examination by the courts. In this respect, the Committee notes the conclusions of the technical assistance mission which emphasized the existence of situations of anti-union violence against trade unionists, including death threats, acts of intimidation and even the murder of a trade union leader in 2007. According to the information received by the mission, 17 trade

unionists are benefiting from official security measures. In this respect, the mission welcomed the fact that, at its request, the Government provided protection measures for the Secretary-General of the Union of Workers of the Quetzal Port Enterprise, and the headquarters of the union. The Committee notes that the Office of the Public Prosecutor provided information to the mission on the situation with regard to complaints and criminal proceedings relating to crimes against trade unionists. The Committee notes that, in its conclusions, the mission indicated that the complaints made only lead in very few cases to the identification and punishment of those responsible. In this respect, while noting certain protection measures for trade unionists, the Committee once again expresses deep concern at the acts of violence against trade union leaders and members, and in particular deeply regrets the murder of a trade union leader in 2007. It recalls that trade union rights can only be exercised in a climate that is free of violence. **The Committee expresses the firm hope that the Government will take the necessary measures to guarantee full respect for the human rights of trade unionists and will continue providing protection measures to all trade unionists who so request. The Committee also asks the Government to take the necessary measures without delay to conduct the investigations with a view to identifying those responsible for acts of violence, prosecuting and penalizing them in accordance with the law. The Committee requests the Government to keep it informed of any development in this respect.**

Legislative problems

The Committee recalls that for many years it has been commenting on the following provisions which raise problems of conformity with the Convention:

- restrictions on the establishment of organizations in full freedom (the need to have half plus one of those working in the occupation to establish industry trade unions, under section 215(c) of the Labour Code), delays in the registration of trade unions or refusal to register them. In this respect, the Committee notes the indication by the technical assistance mission in its conclusions that “the legislation in force raises obstacles to the adequate development of trade unionism, starting with the impossibility in practice to establish industry unions, in view of the requirement in law for such organizations only to be accepted when their founders demonstrate that they represent 50 per cent plus one of the workers in the sector, which is clearly impossible to achieve”. The mission also referred to the lack of detailed statistics on trade unions and higher-level organizations;
- restrictions on the right to elect trade union leaders in full freedom (the need to be of Guatemalan origin and to be a worker in the enterprise or economic activity in order to be elected a trade union leader, under sections 220 and 223 of the Labour Code);
- restrictions on the free financial administration of trade union organizations under the Basic Act on supervision by the tax administration, which in particular allows inspections without prior notice. In this respect, the Committee notes that the technical assistance mission indicated in its conclusions that over the past eight years only one inspection of trade union accounts has been carried out and that financial investigations are exclusively based on disparities detected through information technology;
- restrictions on the right of workers’ organizations to organize their activities freely (under section 241 of the Labour Code, strikes are declared not by a majority of those casting votes, but by a majority of the workers); the possibility of imposing compulsory arbitration in the event of a dispute in the public transport sector and in services related to fuel, and the need to determine whether strikes for the purpose of inter-union solidarity are still prohibited (section 4(d), (e) and (g) of Decree No. 71-86, as amended by Legislative Decree No. 35-96 of 27 March 1996); labour, civil and penal sanctions applicable to strikes involving public servants or workers in specified enterprises (sections 390(2) and 430 of the Penal Code and Decree No. 71-86). The Committee notes the emphasis placed by the technical assistance mission on the fact that there have not been any legal strikes since the 1970s. Indeed, according to the mission, “the problem lies in the excessive judicial basis of labour relations law, which in other countries is a matter for the labour administration and not the judiciary. Rulings by judges tend to hold sway when collective solutions are being sought and there is an absence of typical trade union action. It noted accordingly that the last lawful strike was held in 1975 and that for over ten years there has not been any type of strike”.

With reference to these matters, the Committee notes the Government’s indication that the technical assistance mission was extremely useful. The Government reports that following the mission tripartite meetings were held in the Tripartite Legal Reform Subcommittee, the pending issues were reviewed and a priority was established among the issues. A number of meetings have been held and the proposals made by the Committee have been reviewed, some of which had already achieved consensus in 2001. These issues include the amendment of section 390 of the Penal Code. The Government requests continued technical assistance in this respect.

In general terms, the Committee notes that the technical assistance mission also found that “the basis of the Guatemalan problem in the field of freedom of association and collective bargaining lies in the existence of a labour law system which, in both substantive and procedural terms, prevents and raises obstacles to the appropriate development of trade union activity and accordingly to collective bargaining and, as indicated by the ILO supervisory bodies, is in objective violation of Conventions Nos 87 and 98. Without the reform of the system, it is very difficult to propose an appropriate solution, particularly since both the social partners and the Government are imbued with a culture that follows very closely procedures arising out of this legal system”. The Committee observes with concern that the serious problems on which it has been commenting for many years continue to persist and that, despite the tripartite discussion at the national level and the technical assistance provided on various occasions, there has not been significant progress. The Committee considers that a reform of existing legislation is needed in order for the guarantees expressed in the Convention. **The Committee strongly hopes that the new Government, with the assistance of the mission which will be held at the end of April in 2008, will show the political will to resolve these issues. The Committee requests the Government to provide information in its next report on any positive developments in relation to the various issues raised.**

Other matters

Export processing sector. The Committee previously requested the Government to provide information on any complaints relating to violations of trade union rights in the export processing sector over the past two years, and on their outcome. In this respect, the Committee notes that the Government attaches information provided by the General Directorate of Labour according to which there are seven active trade union organizations. The Government also forwards information supplied by the general labour inspectorate relating to complaints of violations of Conventions Nos 87 and 98 between July 2006 and June 2007, of which one in 2006 related to the export processing sector. In 2007, there have not been complaints relating to

the export processing sector. The Government indicates that since the establishment of the Export Processing Inspection Unit in 2003, the latter is responsible for addressing all types of complaints and labour disputes in the sector. Two workshops have been held and it is coordinating with the CGTG the organization of workshops addressing the subject of trade union rights. The Committee notes the Government's indication that technical and financial assistance has been requested from the ILO Subregional Office in San José in Costa Rica to hold monthly tripartite seminars on freedom of association and collective bargaining in the export processing industry. The Committee welcomes this initiative and hopes that the necessary technical assistance will be provided. **In this regard, noting that in their latest communication the trade union organizations refer to significant problems relating to trade union rights, the Committee requests the Government to take the necessary measures to give full effect to the Convention in export processing zones and to continue providing information in this respect.**

Civil Service Bill. In its previous observation, the Committee noted a Civil Service Bill which, according to the UNSITRAGUA and the National State Union Workers' Federation (FENASTEG), requires a percentage that is too high to establish unions and restricts the right to strike. The Committee requested the Government to keep it informed of legislative developments in this respect. In this connection, the Committee notes the Government's indication that the legislative initiative proposing amendments to the Civil Service Act was the subject of broad consultation and has received one favourable and another unfavourable opinion in the various commissions of the Congress of the Republic. The Government indicates that it requested technical assistance from the Office to assess and make the necessary recommendations and proposals on the compatibility of this legislative initiative with Conventions Nos 87 and 98. **The Committee expresses the firm hope that, with the contribution of the requested technical assistance, the Civil Service Bill will be in full conformity with the provisions of the Convention. It requests the Government to keep it informed on this subject.**

Situation of many workers in the public sector who do not benefit from trade union rights. The Committee notes that, according to the technical assistance mission, there are a high number of workers classified as temporary, daily or occasional and that these classifications are not set out in the law, but in the General State Budget, as indicated in the Manual of Budget Classifications for the public sector in Guatemala. These workers (they are under contracts under item 029 and others of the budget), who should have been recruited for specific or temporary tasks, are engaged in ordinary and permanent functions and often do not benefit from trade union rights and other employment benefits apart from wages, and are not covered by the social security nor by collective bargaining where it exists. In this connection, the Committee recalls that, in accordance with *Article 2 of the Convention*, all workers, without distinction whatsoever, with the sole possible exception of the armed forces and the police, shall have the right to establish and to join organizations of their own choosing. **In this respect, the Committee requests the Government to take the necessary measures to ensure that all workers in the public sector, including those engaged under item 029 of the general state budget, benefit from the rights and guarantees set out in the Convention. The Committee requests the Government to keep it informed on this subject.**

Tripartite National Committee. Finally, the Committee previously requested the Government to examine in the Tripartite National Committee the issues raised by UNSITRAGUA in 2005. In this regard, the Committee notes the Government's indication that, due to the new composition of the Tripartite Committee on International Labour Affairs and the failure to appoint one of its members, it has not been possible to make progress in the work assigned to the tripartite subcommittees and councils. The pending issues raised by UNSITRAGUA will be examined in the context of the Legal Reform Subcommittee, which has just started to meet again; the pending agenda will be reviewed and it has been agreed on a tripartite basis that this issue will be reexamined by the Tripartite Committee on International Labour Affairs. The Government is awaiting the communication from UNSITRAGUA to update the list of pending cases. It is also hoped to address the cases raised by UNSITRAGUA, in relation to which the Committee on Freedom of Association has recommended that investigations be undertaken, in the context of the Tripartite Committee. In this connection, the Committee notes that, according to the technical assistance mission, the Tripartite Committee requires technical assistance to improve its operation. The mission noted that the Tripartite Committee plays a valuable role in social dialogue and in slowing down undesirable legislative initiatives and draft texts, as well as in examining and resolving collective disputes, but that it does not succeed in putting forward joint proposals in relation to most of the pending problems. The Committee also notes the appreciation expressed by the mission that the Government (and the Labour Commission of the Congress) have requested additional technical assistance from the ILO to overcome the pending problems. **The Committee requests the Government to continue keeping it informed of the work of the Tripartite Committee on International Labour Affairs, as well as that of the Legal Reform Subcommittee and the mechanism for rapid intervention in cases. The Committee invites the Government to take the necessary measures in order to ensure that the issues raised by the Guatemalan Trade Union Movement in its communication of 27 August 2007 are also examined by the Tripartite Committee.**

Japan

(Ratification: 1965)

The Committee takes note of the Government's report as well as its response to the comments made by the International Confederation of Free Trade Unions (ICFTU, now ITUC – International Trade Union Confederation) dated 10 August 2006; the Japanese Trade Union Confederation (JTUC-RENGO) dated 28 August 2006; the Japan Federation of Prefectural and Municipal Workers' Unions (JICHIOREN) and the National Network of Firefighters (FFN) dated 13 April 2007 with regard to the issues previously raised by the Committee including the public service system reform and the right to organize of firefighters. It further notes the communication by the ITUC dated 27 August 2007 with regard to difficulties in trade union organizing due to an increase in precarious forms of employment and subcontracting, including for migrant workers and the communication of JTUC-RENGO dated 19 October 2007. **The Committee requests the Government to provide its observations on the latest comments by the ITUC and the JTUC-RENGO.**

1. *Denial of the right to organize of firefighting personnel.* The Committee recalls its long-standing comments concerning the need to recognize the right to organize for firefighting personnel.

The Committee takes note of the Government's report which reiterates its previous position to the effect that the services and functions of the fire defence in Japan correspond to those of the police and therefore fall under the exception of *Article 9 of the Convention*. In 1997 a system of fire defence personnel committees was created, allowing for the participation of fire defence personnel in decisions over their terms and conditions of employment. On 15 October 2004, eight years since the establishment of the system, certain improvements were agreed between the Minister of Internal Affairs and Communications and the representative of the JICHIOREN on the practices of the fire defence personnel committees, including

with regard to the timing of the sessions of the committees (to be held in the first half of the fiscal year, from April to September, in order to allow enough time for budget allocations), the provision of feedback to employees who submitted opinions to the committees, the communication of summaries of the deliberations and opinions of the committees and the creation of a "liaison facilitator" system to provide explanations to the personnel (improvements introduced in the Order on the organization and operation of the fire defence personnel committees under article 14(5), paragraph 4, of the Fire Defence Organization Law).

The Committee notes that, according to the comments communicated by JICHIROREN and FFN, following a survey conducted in eight fire defence departments to which FFN officers belong so as to evaluate the implementation of the above improvements, it was revealed that no real progress had been achieved with regard to the right to organize of firefighters. In particular, committee meetings were scarce (held once a year), employees did not receive proper feedback, the "opinion coordinators" did not function properly and many opinions submitted by the employees had been dismissed as not falling under the committee deliberations, thus demonstrating overall the limited role that these committees could play. The Committee recalls that in previous comments, these organizations had indicated that, although they considered the fire defence personnel committees as an advancement in providing an opportunity to staff to state their own opinions, they also considered that these committees were not equivalent to giving personnel the right to organize and that the law needed to be amended in this respect.

The Committee notes from the Government's report that by March 2007, nearly 5,000 opinions annually and 60,000 in total had been discussed in almost all (99.6 per cent) of fire defence headquarters across the country, and each year about 40 per cent of the opinions were found to be appropriate for adoption and of those, more than half were implemented by the fire chief. These opinions concerned for instance, measures to counter smoking, the introduction of counselling as a means to counter stress, the improvement of the office environment such as nap rooms for those on shift, etc. Almost 80 per cent of the opinions discussed have been submitted through liaison facilitators. In a recent notification the Government invited all local authorities to fully implement the relevant discussions and the liaison facilitator system. The Committee further takes note of the information provision and training measures to ensure the full implementation of the system.

The Committee once again recalls that as early as 1973, it had stated that it "does not consider that the functions of fire defence personnel are of such a nature as to warrant the exclusion of this category of workers under *Article 9 of the Convention*" and hoped that the Government would take "appropriate steps to ensure that the right to organize is recognized for this category of workers" (ILC, 58th Session, Report III(4A), page 122). ***The Committee therefore once again requests the Government to indicate in its next report the additional legislative measures taken or contemplated in order to ensure that fire defence personnel are guaranteed the right to organize.***

2. *Prohibition of the right to strike of public servants.* The Committee takes note of the interim conclusions and recommendations reached by the Committee on Freedom of Association in Cases Nos 2177 and 2183 (329th Report, paragraphs 567–652, and 331st Report, paragraphs 516–558) to the effect that public sector employees, like their private sector counterparts, should enjoy the right to strike, with the possible exceptions of public servants exercising authority in the name of the State and workers employed in essential services in the strict sense of the term. Moreover, public employees who may be deprived of this right should be afforded appropriate compensatory guarantees (329th Report, paragraph 641, and 331st Report, paragraph 554). The Committee recalls that in its previous comments it had referred to the detailed comments of the Fact-Finding and Conciliation Commission on Freedom of Association which stressed the importance "... in circumstances where strikes are prohibited or restricted in the civil service or in essential services within the strict meaning of the term, of according sufficient guarantees to the workers concerned in order to safeguard their interests" (ILC, 63rd Session, 1977, Report III(4A), page 153).

The Committee recalls that it has expressed concern in the past at the lack of progress in this regard, given that the Government has been confined ever since the Fact-Finding and Conciliation Commission on Freedom of Association took place (ILC, 64th Session, 1978, Report III(4A), page 143), to noting that the Supreme Court of Japan maintained throughout its judgments that the prohibition of strikes by public servants is constitutional. ***Noting that the Government's report once again repeats its previously stated position, the Committee once again asks the Government to indicate in its next report the measures taken or envisaged to ensure that the right to strike is guaranteed to public servants who are not exercising authority in the name of the State and to workers who are not working in essential services in the strict sense of the term, and that the others (e.g. hospital workers) benefit from sufficient compensatory guarantees in order to safeguard their interests, namely adequate, impartial and speedy conciliation and arbitration procedures, in which the parties have confidence and can participate at all stages, and in which the awards, once made, are binding and fully and promptly implemented.***

3. *Reform of the civil service.* The Committee notes that in Cases Nos 2177 and 2183 the Committee on Freedom of Association requested that the Government, as well as the complainants National Confederation of Trade Unions (ZENZOREN) and JICHIROREN make efforts with a view to achieving rapidly a consensus on the reform of the public service and on legislative amendments addressing the issues raised above and many others.

The Committee takes note of the comments made by JTUC-RENGO and the ICFTU to the effect that on 24 December 2005, the Government adopted an "Essential Policy for Administrative Reform" which represented a major switch from the previous policy of the General Principles for Civil Service System Reform in that it provided for "frank dialogue and adjustment with the parties concerned" in order to achieve the implementation of a personnel management system based on merit and the fair management of re-employment in the context of reforms of overall employment costs; it also provided for "a broad review of the public service system, including the fundamental labour rights of civil servants and the National Personnel Authority system, the way of setting salaries for civil servants" and treatment based on merit and performance evaluations, taking into account public awareness and progress in reforms of the existing salary system. Pursuant to this policy, government-labour consultations were held on three occasions between January and May 2006 and the two parties agreed that the best way to develop industrial relations and discuss the issue of fundamental labour rights of public service employees was to establish a "Special Examination Committee" consisting of 17 members including three representatives from trade unions, in addition to representatives from private enterprises, academia and the mass media. At the first meeting of the committee held on 27 July 2006, it was agreed that a meeting would be held once a month to discuss: (a) the scope of public work for a simple and efficient government; (b) the proper classification structure and job descriptions for workers engaged in public work; and on the basis of these (c) the proper way of developing industrial relations, including the issue of fundamental labour rights of public employees.

The Committee also takes note of the information provided by the Government on this point, to the effect that until May 2007, the Special Examination Committee had held ten meetings until May 2007 and had approved a note by its chairperson according to which "the issue of labour–

employer relations in the public sector, including the fundamental labour rights of public employees, should be re-examined with an eye towards reform". Moreover, the Government submitted two bills to the Diet aimed, inter alia, at introducing an ability- and performance-based personnel management system for public employees at the national and local levels respectively. It also adopted a Cabinet Decision on civil service reform according to which the Government shall continue to examine the fundamental labour rights of public employees taking into consideration the discussions taking place at the Special Examination Committee and further exchanges of views with concerned parties such as employees' organizations.

The Committee takes note of this information and wishes to stress once again that the reform process which will establish the legislative framework of industrial relations in the public sector for many years to come is a particularly appropriate opportunity to hold full, frank and meaningful consultations with all interested parties on all the issues which create difficulties with the application of the Convention and whose legal and practical problems have been raised by workers' organizations over the years. The Committee trusts that the Government will vigorously pursue these consultations in order to find mutually acceptable solutions to these difficulties and to bring the law and practice into full conformity with the provisions of the Convention and asks it to provide information on the progress made in its next report.

Zimbabwe

(Ratification: 2003)

The Committee notes the discussion held on the application of the Convention in the Conference Committee in June 2007 and, in particular, that it had decided to mention the case of Zimbabwe in a special paragraph of its report. The Committee further notes the Government's indication that the Government of Zimbabwe is prepared to host the Office with a view to receiving technical assistance to deal with the issues raised by the Committee. The Committee regrets that the Government refuses to accept the high-level technical assistance mission in the terms requested by the Conference Committee in June 2006. ***The Committee expresses the hope that the high-level technical assistance mission will be undertaken in the very near future.***

The Committee also notes Cases Nos 1937, 2027 and 2365 examined by the Committee on Freedom of Association concerning serious allegations of violation of trade union rights, including allegations of arrest, detention and assaults of trade union leaders and members, attacks on trade union premises, deportation of and refusal of entry to foreign trade unionists, etc. (see 344th Report).

The Committee notes the Government's reply to the comments of the Zimbabwe Congress of Trade Unions (ZCTU) dated 1 September 2006. The Committee notes that the Government disagrees with the ZCTU's allegation that it continued to enact legislation meant to paralyse the right to freedom of association and states that all laws in Zimbabwe are subject to a transparent and democratic law-making process.

As regards the matters raised concerning the Public Order and Security Act (POSA), in the Government's opinion, it serves no purpose to continue debating this issue as it was exhaustively dealt with in the Government's various communications to the ILO. ***Referring to its previous request to take the necessary measures to ensure that the POSA is not used to infringe upon the right of workers' organizations to express their views on the Government's economic and social policy, the Committee urges the Government to ensure that no other charges are pending against trade unionists under the POSA for the exercise of legitimate trade union activity.***

The Government further states that the ZCTU's allegation that the Criminal Law (Codification and Reform) Act of 2006 criminalizing public meetings and gatherings is misleading. According to the Government, the penal sanctions provided for by this Act relate to illegal gatherings and public meetings; the citizens of Zimbabwe are free to exercise their constitutional rights. The Committee notes from Case No. 2365 examined by the Committee on Freedom of Association that a number of trade union leaders and members have been charged under the Criminal Law (Codification and Reform) Act in connection with their participation in the demonstration in September 2006. ***The Committee agrees with the findings and recommendations of the Committee on Freedom of Association and urges the Government to drop the charges brought for reasons connected to their trade union activities against trade unionists and to abstain from resorting to measures of arrest and detention of trade union leaders or members for reasons connected to their trade union activities.***

With regard to the arrest of Mr W. Chibebe in August 2006, the Government indicates that Mr Chibebe has a pending court case on allegations of assaulting a fellow worker (police officer) on duty during the currency reform exercise. The Committee notes from the examination of Case No. 2365 that the Committee on Freedom of Association concluded that a number of procedural irregularities respecting the case against Mr Chibebe took place. ***The Committee therefore requests the Government to provide full and detailed information respecting the arrest of Mr Chibebe and to transmit the text of any court judgment rendered in this regard.***

The Committee notes that by its communication dated 28 August 2007, the International Trade Union Confederation (ITUC) submitted further comments concerning the application of the Convention in law and in practice. The Committee notes that the ITUC comments refer to the legislative issues already raised by the Committee and to serious allegations concerning arrests, assaults and police violence against trade union leaders and members. In this respect, the Committee has, on numerous occasions, stressed the interdependence between civil liberties and trade union rights emphasizing that a truly free and independent trade union movement can only develop in a climate of respect for fundamental human rights. ***The Committee requests the Government to provide its observations thereon.***

The Committee requests the Government, in the context of the regular reporting cycle, to send for examination at the Committee's next session, to be held in November–December 2008, its comments on all the issues relating to the legislation and the application of the Convention in practice raised in its previous observation and direct request (see 2006 direct request, 77th Session).

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

Georgia

(Ratification: 1993)

The Committee notes the Government's report. It further notes the comments of the International Trade Union Confederation (ITUC) and of the Georgian Trade Union Confederation (GTUC) which refer to the adoption of the Labour Code without prior consultation with trade unions and insufficient protection against acts of anti-union discrimination and interference, and insufficient regulation of collective bargaining matters.

The Committee notes the Government's statement that representatives of trade unions and employers' organizations were involved in the discussion of the Labour Code.

Articles 1 and 3 of the Convention. Protection against acts of anti-union discrimination. Acts covered. The Committee had noted that section 11(6) of the Law on trade unions and section 2(3) of the new Labour Code prohibited, in very general terms, anti-union discrimination, and did not appear to constitute sufficient protection against anti-union discrimination: (i) at the time of recruitment of workers; and (ii) at the time of termination of their employment.

(i) *Recruitment.* The Committee had noted that, pursuant to section 5(8) of the Labour Code, the employer was not required to substantiate his/her decision for not recruiting the applicant. Considering that the application of this section in practice might result in placing on a worker an insurmountable obstacle when proving that he/she was not recruited because of his/her trade union activities, the Committee requested the Government to amend section 5(8) of the Code. The Committee welcomes the Government's indication that discussions are taking place on reformulating this provision. **The Committee expects that this provision will be soon amended so as to provide adequate protection against anti-union discrimination at the time of hiring.**

(ii) *Termination of employment.* The Committee had noted that, according to sections 37(d) and 38(3) of the Code, the employer had a right to terminate a contract at his/her initiative with his/her employee provided that the employee was given one month's pay, unless otherwise envisaged by the contract. While the Government refers to the general prohibition of anti-union discrimination provided for in section 11(6) of the Law on trade unions, in light of the absence of explicit provisions banning dismissals by reason of union membership or participating in union activities, as noted above, the Committee considers that the legislation is unclear as to the regulation of cases of anti-union dismissals and does not offer sufficient protection against anti-union dismissals as called for by *Articles 1 and 3* of the Convention. **The Committee requests the Government to amend its legislation so as to ensure that there is a specific prohibition of anti-union dismissals. The Committee requests the Government to keep it informed of the measures taken or envisaged in this respect.**

Means of redress and sanctions. With regard to the Committee's previous request to provide for sufficiently dissuasive sanctions in cases of anti-union discrimination, the Committee notes the Government's statement that section 42 of the Code of Administrative Violations, punishes violations of labour legislation and labour protection rules by a penalty equivalent to a minimum of 100 times the labour remuneration and that the same violation committed within one year following the imposition of an administrative penalty is punishable by a penalty equivalent to 200 times the labour remuneration. **The Committee requests the Government to indicate the relevant provisions regulating the procedure under the Code of Administrative Violations, its duration and the possibilities of means of redress available to workers, victims of acts of anti-union discrimination, including dismissals, transfers, downgrading, etc. (particularly, considering the GCTU's allegation of absence of procedures of redress in the national legislation).** The Committee further notes that the Government indicates that, according to section 142 of the Criminal Code, "violations of the equality based on membership of any public association" is punishable by imprisonment for a period of up to two years. The Committee observes, however, that the Criminal Code (1999) at its disposal does not refer to discrimination based on membership of an association. **It requests the Government to provide clarifications in this respect.**

Article 2. Protection of workers' organizations against acts of interference by employers. The Committee had previously noted that Georgian legislation prohibited acts of interference from employers in trade union activities. However, no express provisions for rapid appeal procedures, coupled with effective and dissuasive sanctions against acts of interference, existed in legislation. **The Committee once again requests the Government to take the necessary measures in order to adopt specific legislative provisions in this respect.**

Article 4. Collective bargaining. The Committee had previously noted that according to section 13 of the Labour Code, the employer (unilaterally) is authorized to specify the duration of a business week, the daily schedule, shifts, the duration of breaks, the time and place of remuneration payment, the duration of and the procedure for granting a leave and unpaid leave, the rules for complying with labour conditions, the type and the procedure for work-related incentives and responsibilities, the procedures for consideration of complaints/applications and other special rules subject to the specifics of the business of the organization. The Committee had further noted Chapter XII of the Code (sections 41–43), which concerns collective labour relations. Under section 41(1), "a collective contract shall be concluded between an employer and two or more employees". According to section 42(1) and (3), for the purposes of concluding, changing or terminating a collective contract, or for the purpose of protecting the employees' rights, the unions of employees act through their representatives, defined as any physical person. Furthermore, in accordance with section 43(2), an employee may conclude individual and/or several collective contracts with one employer. Pursuant to subsections (4) and (5) of the same section, if one of the parts of the contract is annulled on the initiative of either party, this could cause the termination of labour relations pursuant to the Labour Code; and the existence of collective contracts does not limit the right of the employee or the employer to terminate the contract. The Committee considers that sections 13 and 41–43 read together are in contradiction with the notion of collective agreements in the sense of Convention No. 98, i.e. agreements regulating terms and conditions of employment negotiated between employers or their organizations and workers' organizations; moreover, the legislation seems to put in the same position collective agreements concluded with trade union organizations and agreements between an employer and non-unionized workers (sections 41–43). Furthermore, the Committee considers that with the Law on trade unions containing one general provision on the right of trade unions to collective bargaining, and the Law on collective contracts and agreements repealed, it is clear that collective bargaining is not sufficiently regulated (section 41 even stipulates that collective agreements follow the same principles as individual agreements). The

Committee notes that the Government recognizes the need to improve the legislation, as Georgia does not have a collective agreement tradition and there are not too many collective agreements concluded in practice. **Considering that the provisions of the new Labour Code do not promote collective bargaining as called for by Article 4 of the Convention, the Committee requests the Government to take the necessary measures, either by amending the Labour Code or by adopting specific legislation on collective bargaining, so as to promote collective bargaining and to ensure the regulation by legislative means of the right of employers' and workers' organizations to bargain collectively in full conformity with Article 4 of the Convention. The Committee requests the Government to keep it informed of the measures taken or envisaged in this respect.**

The Committee notes the Government's indication that the Ministry of Labour, Health and Social Affairs has prepared draft amendments to the Labour Code so as to bring it into closer conformity with international labour standards; the draft amendments shall be submitted to the Parliament pursuant to the procedure provided for in the national legislation. **The Committee hopes that all legislative modifications requested above will be reflected in the draft amendments to the Labour Code and requests the Government to keep it informed of the developments in this regard. The Committee recalls that the technical assistance of the Office is at its disposal.**

Iraq

(Ratification: 1962)

The Committee notes the Government's report and the draft Labour Code of 2007. The Committee notes with interest that this draft legislation, which was drafted with the technical assistance of the ILO, applies to a significant extent the provisions of the Convention. It further notes the comments submitted by the International Trade Union Confederation (ITUC), which refer to serious violations of freedom of association and collective bargaining in practice, including instances of anti-union violence and the issuance of a directive prohibiting companies in the oil sector from cooperating with members of trade unions. **The Committee requests the Government to submit its observations thereon.**

Previously, the Committee had taken note of the allegations made by the ITUC in 2006 concerning serious cases of violence and other violations of freedom of association. In this respect, the Committee notes the Government's statement that it has not set any conditions impeding the setting up of trade unions in Iraq, but rather recognizes all trade union formations without distinction and strives to ensure their independence. The Government further states that certain trade union leaders had fallen victim to terrorist operations and that, although a climate of violence remained the general situation in all sectors of activity, it remained committed to eliminating this serious problem. The Committee, aware of the ongoing process of reconstruction and the climate of violence in the country, takes due note of the above information.

Articles 1 and 3 of the Convention. In its previous comments, the Committee had requested the Government to include in the legislation provisions guaranteeing adequate protection for workers against any acts of anti-union discrimination. In this regard, the Committee notes with interest that several provisions of the draft Code provide for protection against anti-union discrimination. Section 41(1) of the draft Labour Code provides that union membership or participation in union activities shall not constitute valid reasons for termination. Under section 39 of the draft Code, a worker whose employment has been terminated has the right to challenge his or her termination before the Employment Termination Committee or before the labour courts, within a period of 15 days after receiving notification of termination. Section 41(2) of the draft Code provides, moreover, that the Employment Termination Committee and the courts may order reinstatement and back pay in cases of unjust termination; where the worker does not demand reinstatement, or where reinstatement is not feasible, the Employment Termination Committee and the courts may order compensation in an amount at their discretion, provided that such compensation is sufficiently dissuasive so as to punish the unjust termination.

The Committee notes that section 139 of the draft Labour Code also affords protection from acts of discrimination, for limited time periods, to trade union founders and trade union presidents and workers' representatives, respectively. Section 139(1) provides that any dismissal and any measure short of dismissal whereby a trade union founder has been prejudiced shall be deemed to be anti-union discrimination, and shall be prohibited from the date of the lodging of an application for trade union registration until six months after the trade union has been registered. Similarly, section 139(2) states that protection from anti-union discrimination shall be granted to trade union presidents and workers' representatives for a period beginning 30 days before the election of the individuals concerned, if notice of their candidature had been given to the employer, and ending either 30 days after the election – if they had not been elected – or six months after the end of the performance of their duties as elected union officials. The Committee further notes that section 139(6) limits the scope of the protection established under section 139(2) to five workers in enterprises employing less than 50 workers, to seven workers in enterprises employing from 50 to 100 workers, and to two additional protected workers for every additional 100 workers employed in the enterprise. Finally, the Committee notes that under section 139(3) all acts of anti-union discrimination shall be deemed to be null and void, and employers found liable for such an offence shall be subject to a fine of 100–500,000 dinars.

The Committee notes, however, that the protections of section 139 do not extend throughout the full course of employment, including at the time of recruitment, and apply only to trade union founders, presidents and workers' representatives. The Committee additionally notes that sections 41 and 139 do not set out time frames for the completion of anti-union discrimination proceedings, and that, although section 41 states that compensation amounts "sufficiently dissuasive so as to punish dismissals" may be ordered, section 139 does not expressly provide for remedies to fully compensate victims of anti-union discrimination.

As regards adequate protection against acts of anti-union discrimination, the Committee recalls that such protection applies equally to trade union members and former trade union officials as to current trade union leaders, and covers not only dismissals but all measures of anti-union discrimination (transfers, demotions, and any other prejudicial acts). The Committee recalls moreover that the protection provided for in the Convention covers both the time of recruitment and the period of employment, including the time of work termination. Finally, the Committee recalls that the existence of general provisions prohibiting acts of anti-union discrimination is not enough if they are not accompanied by effective and rapid procedures to ensure their application in practice. Hence, the importance of *Article 3* of the Convention, which provides that "machinery appropriate to national conditions shall be established, where necessary, for the purpose of ensuring respect for the right to organize ..." as defined in *Articles 1 and 2* of the Convention. Such protection against acts of anti-union discrimination may thus take various forms adapted to national legislation and practice, provided that they prevent or effectively redress anti-union discrimination (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 202–224). **The Committee requests the Government to take the necessary measures to amend the draft Labour Code so as to ensure for**

trade union members and representatives adequate protection against acts of anti-union discrimination, in accordance with the principles outlined above.

Article 4 of the Convention. The Committee notes with interest that section 137(1) of the draft Labour Code provides that trade unions shall be entitled to represent their members in relation to any matter involving their collective interests, and to engage in collective bargaining. It additionally notes with interest that under section 141(1) collective bargaining may take place at all levels. The Committee further notes that section 142 establishes a duty to bargain in good faith when a request to open collective negotiations has been submitted by a registered union representing no less than 50 per cent of the workers employed at the establishment or enterprise concerned, or where a request to open collective negotiations has been jointly submitted by several registered trade unions if the latter collectively represent no less than 50 per cent of the workers to whom the collective agreement is to apply. In this connection, the Committee recalls that problems may arise when the law stipulates that a trade union must receive the support of 50 per cent of the members of a bargaining unit to be recognized as a bargaining agent: a majority union which fails to secure this absolute majority is thus denied the possibility of bargaining. The Committee considers that under such a system, if no union – or group of unions, as provided for in section 142 – covers more than 50 per cent of the workers, collective bargaining rights should be granted to all the unions in the unit concerned, at least on behalf of their own members (see General Survey, op. cit., paragraph 242). **The Committee requests the Government to take the appropriate steps to amend section 142 of the draft Labour Code accordingly.**

Articles 1, 4 and 6. The Committee had previously noted that Act No. 150 of 1987 concerning public servants does not contain any provisions ensuring that the guarantees provided for by the Convention apply to public servants and employees not engaged in the administration of the State. The Committee notes that section 2 of the draft Labour Code includes “workers listed as officials in state and public sector departments” within the scope of the draft Code’s provisions, but excludes “workers listed as civil servants and civil pensioners” from them. In this respect, the Committee recalls that *Article 6* authorizes to exclude public servants engaged in the administration of the State from the scope of the Convention and that, in defining this exception, a distinction must be drawn between, on the one hand, public servants who by their functions are directly employed in the administration of the State (government ministry officials, for example) and who may be excluded from the scope of the Convention and, on the other hand, all other persons employed by the Government, by public enterprises or by autonomous public institutions, who should benefit from the guarantees provided for in the Convention (see General Survey, op. cit., paragraph 200). **In the light of the above, the Committee asks the Government to indicate the specific categories of workers covered by the term “civil servants and civil pensioners” in section 2 of the draft Labour Code, and to ensure that the draft Code includes a provision recognizing the application of the Convention’s guarantees to all public servants not engaged in the administration of the State.**

The Committee expresses the hope that the Government will take the appropriate measures to bring the draft legislation into full conformity with the Convention and requests it to transmit a copy of the Labour Code upon its adoption.

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

Indonesia

(Ratification: 1999)

Article 1(a) of the Convention. Use of forced labour as a punishment for expressing views opposed to the established political, social or economic system. 1. In its previous comments, the Committee noted that sentences of imprisonment (which involve compulsory prison labour under articles 14 and 19 of the Criminal Code and articles 57(1) and 59(2) of the Prisons Regulations) may be imposed under articles 107(a), 107(d) and 107(e) of the Law concerning the amendment to the Criminal Code in relation to crime against the state's security (No. 27/1999), on any person who disseminates or develops the teachings of Communism/

Marxism-Leninism orally, in writing or through any media, or establishes an organization based on such teachings, or establishes relations with such an organization, with a view to replacing Pancasila as the State's foundation.

The Committee recalled that *Article 1(a)* of the Convention prohibits the use of forced or compulsory labour as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. In this respect, it refers to paragraph 154 of its 2007 General Survey on the eradication of forced labour, in which it observed that the Convention does not prohibit punishment by penalties involving compulsory labour of persons who use violence, incite to violence or engage in preparatory acts aimed at violence, but that sanctions involving compulsory labour fall within the scope of the Convention where they enforce a prohibition of the expression of views or of opposition to the established political, social or economic system, whether such prohibition is imposed by law or by a discretionary administrative decision.

The Committee notes that once again the Government's report does not contain any information in reply to its comments on this point. ***The Committee trusts that the Government will take the necessary measures to bring articles 107(a), 107(d) and 107(e) of Law No. 27/1999 into conformity with the Convention and that it will provide information in its next report on the progress achieved in this respect.***

2. The Committee noted previously that Act No. 9/1998 on freedom of expression in public imposes certain restrictions on the expression of ideas in public during public gatherings, demonstrations, parades, etc., such restrictions being enforceable with criminal sanctions (articles 15, 16 and 17 of the Law). It requested the Government to indicate these sanctions, supplying copies of the relevant texts, and to provide information on the application of the above Law in practice, including copies of court decisions defining or illustrating its scope, so as to enable the Committee to assess its conformity with the Convention. The Committee notes that once again the Government's report does not contain a reply on this point. ***The Committee trusts that the Government will provide the information requested in its next report.***

3. The Committee noted previously the indication in the Government's report that Presidential Decree No. 11 of 1963 on the eradication of subversive activities, which contained provisions punishing the distortion, undermining or deviation from the ideology of Pancasila State or the broad policy lines of the State, was no longer in force. ***Noting that the Government's report does not contain a reply to its previous comments on this matter, the Committee once again requests the Government to indicate in its next report whether this Decree has been formally repealed and, if so, to supply a copy of the repealing text.***

4. In its previous direct requests, the Committee requested the Government to provide a copy of the latest updated and consolidated text of the Criminal Code. It notes the Government's indication that the new Criminal Code is still in the process of finalization. The Committee further notes the information contained on the Internet site of the Constitutional Court (<http://www.mahkamahkonstitusi.go.id>), concerning certain sections of the Criminal Code. According to this information, the Constitutional Court, in its ruling on Case No. 6/PUU-V/2007, found articles 154 and 155 of the Criminal Code to be contrary to the Constitution of 1945. These articles establish the penalty of imprisonment (involving compulsory labour) for up to seven years and four and a half years, respectively, for a person who publicly gives expression to feelings of hostility, hatred or contempt against the Government (article 154) or who disseminates, openly demonstrates or puts up a writing containing such feelings, with the intent to give publicity to the contents or to enhance the publicity thereof (article 155). In its ruling, the Constitutional Court found that the qualification of a punishable offence formulated in articles 154 and 155 of the Criminal Code requires the fulfilment of the element of a prohibited act, without being linked to the consequence of such acts. Consequently, the formulation of the two articles may lead to abuse of power since they can be easily interpreted according to what the ruler wishes. According to the Constitutional Court, a citizen intending to criticize or to express opinions concerning the Government, which constitutes a constitutional right guaranteed by the 1945 Constitution, may easily be qualified by the ruler as expressing feelings of hostility, hatred or contempt against the Government due to the uncertainty of the criteria in the formulation of articles 154 and 155. Such uncertainty makes it difficult to distinguish a criticism or expression of opinions from such feelings of hostility, hatred or contempt against the Government, since a prosecutor does not need to prove whether or not a statement or opinion expressed by a person has actually caused or provoked hatred or hostility among the public. The Committee further notes that, in ruling No. 013-022/PUU-IV/2006, the Constitutional Court found that it was inappropriate for Indonesia as a republic based on the sovereignty of the people and which upholds the human rights as set forth in the 1945 Constitution, to maintain articles 134, 136bis and 137 of the Criminal Code (respecting deliberate insults against the President or the Vice-President), since they negate the principle of equality before the law, diminish freedom of expression and opinion, freedom of information and the principle of legal certainty. Accordingly, in the view of the Constitutional Court, the new draft text of the Criminal Code must also exclude provisions that are identical or similar to those of articles 134, 136bis and 137 of the Criminal Code.

Furthermore, the Committee has noted the cases of several persons convicted recently to heavy sentences of imprisonment, involving compulsory labour, for the peaceful expression of their political opinions, their peaceful support to an independence movement, or for the simple fact of having raised a separatist flag in the eastern provinces of Papua and West Irian Jaya, under the above provisions of the Criminal Code and article 106, under which a maximum sentence of imprisonment of 20 years may be imposed for an attempt to separate part of the territory of the State.

In view of the above and of the incidence that these provisions of the Criminal Code may have on the application of the Convention, the Committee expresses its deep concern and hopes that the Government will take into account the rulings of the Constitutional Court in the context of the adoption of the new Criminal Code. It requests the Government to provide a copy of the Code as soon as it has been adopted.

In the meantime, it requests the Government to indicate the manner in which articles 106, 134, 136bis, 137, 154 and 155 of the Penal Code are applied in practice, with copies of any court rulings issued thereunder.

Article 1(d). *Recourse to compulsory labour as a punishment for having participated in strikes.* In its 2005 direct request, the Committee noted that under article 139 of the Manpower Act (No. 13 of 2003), read in conjunction with article 185 of the same Act, restrictions on the right to strike in enterprises that serve the public interest are enforceable with sanctions of imprisonment for a term of up to four years (which involves compulsory prison labour). With reference to paragraph 185 of its 2007 General Survey on the eradication of forced labour, the Committee recalls that, to be compatible with the Convention, penalties involving compulsory labour for participation in strikes may only be applied in respect of essential services in the strict sense of the term (that is, only those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population). The Committee observed previously that certain kinds of services listed in the explanatory notes to article 139 of the Manpower Act (such as the railway service) do not meet these criteria. The Committee also refers to the observation that it is making under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), particularly on the need to remove certain restrictions on the right to strike and to amend provisions establishing disproportionate penal sanctions. The Committee notes the Government's statement in its last report that there is no plan to amend these provisions. ***The Committee trusts that the Government will take the appropriate measures to amend these provisions of the Manpower Act so as to limit their scope to essential services in the strict sense of the term and to ensure that no penalty involving compulsory labour can be imposed on persons participating in strikes. While awaiting this amendment, the Committee once again requests the Government to provide information on the effect given in practice to articles 139 and 185, including copies of court decisions defining or illustrating their scope.***

The Committee is also addressing a request directly to the Government on other matters.

[The Government is asked to supply full particulars to the Conference at its 97th Session.]

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

Czech Republic

(Ratification: 1993)

1. *Legislative developments.* The Committee notes that under section 16(1) of the new Labour Code (Act No. 262/2006), the employer is required to ensure equal treatment of employees in respect of working conditions, remuneration, vocational training and career advancement. Section 16(2) provides that all forms of discrimination in labour relations shall be prohibited. For the purposes of the new Labour Code, the definitions of the different forms of discrimination contained in the future Anti-Discrimination Act apply. According to the Government's report, the current draft Anti-Discrimination Act will cover direct and indirect discrimination based on race, ethnic background, nationality, sex, sexual orientation, age, health impairment, religion and belief.

2. However, the Committee recalls that section 1(4) of the previous Labour Code prohibited discrimination based on sex, sexual orientation, racial or ethnic origin, nationality, citizenship, social background, family background, language, health condition, age, religion or confession, property, marital or family status, family responsibilities, political or other conviction, membership of or activity in political parties or movements, trade union or employers' organizations. The Committee notes with concern that the new Labour Code, in conjunction with the future Anti-Discrimination Act would appear to restrict considerably the protection from discrimination in employment and occupation available under the previous Labour Code, not even providing protection from discrimination on the basis of all the grounds contained in the Convention. **The Committee therefore requests the Government to ensure that the legislation continues to provide a high level of protection against discrimination in employment and occupation on all the grounds listed in the Convention, i.e. race, colour, sex, religion, political opinion, national extraction or social origin, as well as the additional grounds previously covered, and to provide information on the specific steps taken to this end.**

3. In this context the Committee also notes the concerns expressed by the Czech-Moravian Confederation of Trade Unions according to which the draft Anti-Discrimination Act currently before Parliament did not provide for a strong involvement of the State in the protection against discrimination through its various inspections bodies. In the Committee's view, it is equally important that the future legislation allows individual victims of discrimination to bring complaints and obtain redress, and that it also permits the competent bodies and institutions to address discrimination and to promote equality in a proactive and coordinated manner. **The Committee requests the Government to provide information on the following:**

(a) **the measures taken to make the new anti-discrimination legislation, once adopted, known among workers and employers, as well as the public officials and judges responsible for its enforcement;**

(b) **the measures taken to assist victims of discrimination, particularly the Roma, in bringing complaints concerning employment discrimination;**

(c) **the discrimination cases dealt with by the competent bodies, including the courts and the labour inspectorate, under the Labour Code, the Employment Act, as well as the future Anti-Discrimination Act according to the different grounds of discrimination (facts, rulings, remedies provided or sanctions imposed).**

4. *The situation of the Roma in employment and occupation.* The Committee notes that the Government undertook in 2006 an "analysis of socially excluded Roma neighbourhoods, and of the absorption capacity of entities operating in this field". The results of the analysis, which confirmed the existence of social exclusion of the Roma throughout the Czech Republic, are currently under evaluation. The Committee also notes that the Government plans to create a new agency to combat social exclusion and to prepare a comprehensive programme for the integration of the Roma. While the Committee notes that the Government's report contains an update on measures taken to promote the access of the Roma to education, the Committee regrets that no information has been provided with regard to the specific measures taken to promote the access of members of the Roma community to employment. **The Committee, therefore, requests the Government to provide detailed information on the specific measures taken and results achieved in promoting equal access of Roma men and women to employment, including self-employment and employment in the public service. In this regard, the Government is requested to provide information on the relevant measures taken under the envisaged comprehensive programme for the integration of the Roma.**

5. The Committee remains concerned that the absence of data on the status of the Roma in employment and occupation may be a serious obstacle to assessing their situation and the impact of the programmes and schemes implemented to improve their situation. The Committee notes that under Act No. 101/2000 on the Protection of Personal Data, ethnic or racial origin is considered as "sensitive data" which can be collected and processed only under certain conditions, including with the consent of the individual concerned. The Government reiterates that the 2001 census data are the only official data currently available concerning the situation of the ethnic minorities, including the Roma. However, the Committee is aware that the usefulness of the 2001 census data concerning the Roma is questionable due to the significant discrepancy between the number of persons having identified themselves as Roma and the estimated size of the Roma population. **The Committee requests the Government to take all measures necessary to explore options with regard to creating the conditions required for the collection of data on the situation of the Roma in employment and occupation, in accordance with the recognized principles of data protection and human rights.**

6. The Committee recalls its previous comments on the need to step up efforts to combat prejudices and discrimination against the members of the Roma community and to build trust between the Roma and other parts of the society. It notes that there are a number of initiatives and projects to promote multicultural awareness and anti-racism among students and teachers. **The Committee requests the Government to continue to provide such information, as well as information on the measures taken or envisaged to promote racism-free workplaces, in cooperation with workers' and employers' organizations.**

7. *Discrimination on the basis of political opinion.* The Committee recalls that Act No. 451 of 1991 (Screening Act), which lays down certain political prerequisites for holding a range of jobs and occupations, mainly in the public service, had been the subject of representations under article 24 of the

ILO Constitution (in November 1991 and June 1994) and the Governing Body invited the Government to repeal or modify the provisions in the Screening Act that were incompatible with the Convention. Following the rejection by Parliament of a proposal to repeal the Act in 2003, the legislation remains in force unchanged, contrary to the Convention. The Committee is concerned that despite the time that has elapsed since the Governing Body's decision on this matter, this situation remains unresolved. In its report, the Government merely states that no changes had occurred during the reporting period. **Noting from the Government's report that new legislation regulating civil service employment is being prepared, the Committee urges the Government to ensure, in this context, that the provisions of the Screening Act that are contrary to the Convention are modified or repealed, in accordance with the Governing Body's report.**

The Committee is raising other matters in a request addressed directly to the Government.

[The Government is asked to supply full particulars to the Conference at its 97th Session and to report in detail in 2008.]

Dominican Republic

(Ratification: 1964)

1. *Discrimination on grounds of colour, race and national extraction.* In its previous observation, the Committee examined a communication of 2005 from the International Confederation of Free Trade Unions (ICFTU), now International Trade Union Confederation (ITUC), according to which, between the end of July and mid-August of that year, 2,000 persons were detained by the police, the Dominican army or migration officials, and were deported to Haiti because of their colour or their inability to speak Spanish, and that during the deportation process they had no opportunity either to demonstrate that they were legal immigrants, or to recover their documents or contact the diplomatic authorities of their country, nor were they allowed to claim payment of wages due. The Committee also noted the indication in the ICFTU's report that even some Dominican nationals were deported, as they were taken for Haitians. The Committee recalls that in June 2004 the Conference Committee on the Application of Standards noted the Government's determination to investigate the allegations made in the complaints and to improve the supervision of its laws against discrimination. The Committee nevertheless notes that in its latest report the Government does not provide information on the action taken for this purpose and confines itself to stating that there is no discrimination against Haitian citizens, whether they are legal or illegal. However, the Committee notes the report submitted by the United Nations Independent Expert on the situation of human rights in Haiti (E/CN.4/2006/115), according to which the forced repatriation of Haitians from the Dominican Republic occurs frequently in violation of the guarantees provided for under Dominican immigration legislation (Act No. 95 and Regulation No. 275) and the Agreement concluded between the two Governments in December 1999, and without taking into account the recommendations of the Inter-American Commission on Human Rights calling for each individual case to be heard by an independent judicial authority. In view of the above, the Committee welcomes the fact that the Government accepted the request of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, to visit the country in October 2007 together with the Independent Expert on minority issues (Human Rights Council, A/HRC/4/19/Add.1). The Committee notes that the Independent Expert and the Special Rapporteur will present their findings and recommendations to a forthcoming session of the Human Rights Council. **The Committee requests the Government to provide information on the measures adopted or envisaged to implement the recommendations relating to this visit with a view to preventing and eliminating discrimination on grounds of race, colour and national extraction. The Committee urges the Government to adopt the necessary measures to ensure that full effect is given in practice to the principle of non-discrimination on grounds of race, colour and national extraction and to provide information in this respect. The Committee once again requests the Government to provide information on the progress achieved in clarifying the situation with regard to the cases of illegally deported Haitians and Dominicans referred to by the ICFTU and to provide the information requested in 2004 by the Committee on the Application of Standards.**

2. *Promoting and guaranteeing the application of the Convention in practice. Discrimination on the ground of sex.* The Committee recalls the ICFTU's communication indicating the persistence of cases of discrimination based on gender, including pregnancy testing and sexual harassment, as the authorities are not ensuring the effective application of the legislation that is in force. The Committee notes that, according to the Government's report, the labour inspection services and the Gender Department are continually calling for complaints to be lodged where there has been sexual harassment. The Committee also notes that 58,394 regular inspections were carried out by the Government during the course of 2006. The Committee notes the Government's indication that, despite the measures adopted to improve information to workers on their rights, the national inspection services and the labour courts have not received any complaints of sexual harassment. The Committee emphasizes that the absence of complaints is not necessarily an indication that sexual harassment does not take place. The Committee further expresses its continued concern with regard to pregnancy testing as a requirement to obtain or keep a job in export processing zones, and notes that the Government's report does not provide information on the measures taken in practice to prevent and eliminate these types of discriminatory practices against women. **The Committee requests the Government to take proactive measures to prevent, investigate and penalize sexual harassment and the requirement of pregnancy testing as a condition for obtaining or maintaining employment, in collaboration with employers' and workers' organizations, and to keep it informed in this respect. The Committee asks the Government to provide information on measures to support and protect victims of sexual harassment and pregnancy testing, education and training provided regarding sexual harassment and pregnancy testing including measures to assist labour inspectors to detect violations in this regard. Please also provide information on the intensification of supervisory activities in export processing zones and on whether such action has been taken in cooperation with employers' and workers' organizations. The Committee further requests the Government to continue providing information on any cases of sexual harassment reported by the labour inspectorate and on court rulings in relation to sexual harassment.**

3. *Application of the legislation. HIV testing.* In its previous comments, the Committee noted the information supplied by the ICFTU that men and women workers were required as a matter of course to undergo HIV testing, often against their will and in breach of the principle of confidentiality, in order to be hired or to keep their jobs. The Committee also noted the information indicating that the problem principally affects women workers in export processing zones and the tourist industry, and the allegations of the ICFTU that the authorities do not enforce the prohibition of such testing. **The Committee regrets that the Government has not provided information in this respect and, therefore, hopes that it will make every effort to provide information in its next report on the following points: (a) the measures adopted to guarantee the confidentiality of complaints made relating to violations of the prohibition of HIV testing; (b) the measures adopted to protect workers who lodge complaints; (c) the measures that ensure the enforcement of the prohibition by labour inspectors; (d) information, awareness-raising and training activities on subjects relating to the problem, particularly for officials and employees in the labour inspectorate and their impact in practice; and (e) complaints or**

charges that are made for violations of this prohibition and, where appropriate, the outcome of the cases, accompanied by the related administrative or court decisions.

The Committee is raising other matters in a request addressed directly to the Government.

Islamic Republic of Iran

(Ratification: 1964)

1. The Committee notes the Government's report, as well as the discussion that took place in the Conference Committee on the Application of Standards in June 2006, the resulting conclusions of the Conference Committee, and the report of the technical assistance mission that took place in October 2007.

2. *National equality policy.* The Committee notes the Conference Committee's request that the Government provide a mid-term assessment in its report to this Committee on the steps taken to bring all its relevant legislation and practice into line with the Convention by no later than 2010, as this would mark the end of the period covered by the Fourth Economic, Social and Cultural Development Plan (the Plan). The Plan provides guiding principles for the drafting of laws and policies. Articles 100 and 101 stress the importance of human rights. Article 100 requires the Government to formulate a "Charter of Citizenry Rights", encompassing a number of principles, including "securing freedom and security needed for the development of the social organizations in the area of preservation of the rights of women and children" and "propagating the unification and respectability concepts toward social groups and different ethnic groups in the national culture". Article 101 requires the Government to prepare a national plan for the development of "meritorious work" on the basis of a number of principles, including "prohibition of discrimination in employment and profession". Article 130 empowers the judiciary to take measures towards the elimination "of all types of discrimination – gender, ethnic and group – in the legal and judicial [field]".

3. The Committee also notes the findings of the technical assistance mission that annual monitoring and evaluation reports required under article 157 of the Plan have been prepared, and that translated summaries will be provided to the Committee. The mission also notes that the Plan does not seem to have been well publicized as there was generally little awareness of its contents beyond certain government departments. The Government also refers to the Charter of Women's Rights adopted in 2004. ***The Committee requests the Government to provide information on the status of the adoption of the Charter of Citizenry Rights and of the National Plan foreseen under articles 100 and 101, and any measures taken to implement article 130. The Committee looks forward to receiving the translated summaries of the evaluation reports prepared, and any other information on the implementation of the Plan in practice, and the results achieved with respect to furthering equality in employment and occupation. Please also provide information on any measures taken or envisaged to raise awareness of the Plan, in particular with respect to equality rights. The Committee also requests the Government to provide a copy of the Charter of Women's Rights, to clarify how the Charter and the Plan interrelate, and to provide information on any measures taken to implement the provisions of the Charter.***

4. *Equal opportunity and treatment for men and women.* The Committee notes the various initiatives to which the Government refers in its report aimed at improving women's access to employment and occupation, in particular through increasing access to universities and technical and vocational training, establishing women's cooperatives, and promoting women's entrepreneurship. The Government emphasizes the importance of supporting women's entrepreneurship, and to this end refers to a number of measures, including the establishment of the Women's Entrepreneurship Guild, easing requirements for women to access loans and grants to start a business, designing a data bank for women's entrepreneurship, and technical assistance provided by the ILO. The various initiatives of the Centre for Women and Family Affairs regarding skill development, women's cooperatives and entrepreneurship are also enumerated. According to the figures provided in the Government's report, in 2006, 55 per cent of the new students admitted to state universities were women, with representation in all faculties. Women's participation in vocational and technical training has also increased. In the public Technical and Vocational Training Organization (TVTO), in 2006, a number of women undertook training in financial and business affairs, "wood industries" and civil engineering, though the largest proportion of women were concentrated in the area of information technology. ***The Committee welcomes the information regarding the number of women trained through the TVTO in a range of disciplines, and requests the Government to continue providing updated information in this regard. Given that the large majority of women are trained through private institutes, please also provide information on the participation rate of women and men in the various disciplines of technical and vocational training in institutes that are privately run. The Committee would also like to receive information regarding how the education and training received by women translates into employment opportunities once they have completed the courses. The Committee also requests information on the activities of the Women's Entrepreneurship Guild, as well as other initiatives to promote women's entrepreneurship. The Committee would also appreciate continuing to receive information on the activities of the Centre for Women and Family Affairs.***

5. The Committee notes that while the level of women's participation in the labour market remains low, it has increased from 12.2 per cent in 2003 to 13.8 per cent in 2006, and the unemployment rate for women has decreased from 19.6 per cent in 2002 to 17 per cent in 2006, according to official government figures collected by the ILO. The Government has provided some general statistics in the report regarding the rate of employment of women and men. The Committee understands from the report of the technical assistance mission that the national statistical centre and the bureau of statistics have considerable data available, disaggregated by sex, on the employment situation in the country, but that much of it is not available to the public. However, the relevant tables have been requested by the mission team. ***The Committee hopes that detailed statistics on the number of women and men in public and private sector employment, disaggregated by category and level of employment, will be provided without delay, to allow the Committee to make an accurate assessment of the extent of progress made in the situation of women in accessing higher level and non-traditional jobs.***

6. The Government acknowledges that the existing imbalance in women's participation in the labour market in comparison with that of men, "is a direct result of cultural, religious, economic and historical factors". The Government also raises the issue of the difficulty of women balancing work and family responsibilities. The Committee notes the findings of the mission also pointing to the difficulty for women in taking on increasing work responsibilities, without any decrease in their family responsibilities. Some measures exist, such as a legal requirement for childcare facilities at or near the workplace, and a reduced working day. They are, however, available only to women, thus reinforcing the assumption that women are solely

responsible for caring for children. Many women are unable to benefit from the measures because they are often not provided in practice, and also due to the fact that a large proportion of women are hired under temporary contracts. With respect to awareness raising, the Committee notes that the Ministry of Labour and Social Affairs has held a number of workshops in labour offices since 2005, on the issue of discrimination, addressing over 1,000 participants, and on "women's labour", with over 19,000 participants. **The Committee requests the Government to continue providing information on measures taken to improve awareness, access and enforcement of equality and non-discrimination rights and policies, as well as on protections and benefits aimed at balancing work and family responsibilities. The Committee asks the Government to consider extending the special measures for workers with children to men as well as women.**

7. Noting the findings of the mission regarding the prevalence of discriminatory job advertisements, the Committee asks the Government to provide information on measures taken or envisaged to prohibit such practice. Further to its 2002 general observation, the Committee again requests the Government to provide information on measures taken or envisaged to prevent and prohibit sexual harassment in employment and occupation.

8. *Discriminatory laws and regulations.* The Government indicates that it has taken steps to involve law makers more closely on the issue of the need to amend or repeal discriminatory laws and regulations, and that it is constantly seeking the assistance of the social partners and non-governmental organizations in processes and negotiations that will hopefully lead to the revision of the laws and practices that are in contradiction with the Convention. However, the Committee notes that none of the provisions to which the Committee has been referring for a number of years, as set out below, have yet been amended or repealed.

9. The Committee notes the finding of the mission team that there was general acknowledgement that section 1117 of the Civil Code and the discriminatory provisions in social security regulations need to be repealed. According to the report of the mission, section 1117 of the Civil Code, which allows a husband to bring a court action preventing his wife from taking up a job or profession, has a negative impact in practice on the ability of women to enter the workforce. Attempts in the past to have this provision repealed have been unsuccessful and new initiatives have been launched; however, the report of the mission states further that "it remains to be seen whether these initiatives will be successful". There are also a number of initiatives under way with the aim of amending the provisions of the social security regulations that favour the husband over the wife in terms of pension and child benefits, as these provisions give rise to considerable difficulties for women. With respect to the administrative rules restricting the employment of wives of government employees, the Committee regrets to note that once again the Government has provided no information on this matter. The Committee also notes that according to the mission report, there appears to be a legal barrier to being hired after the age of 30, thus impeding women who take career breaks for reasons of maternity or caring for young children from re-entering the labour market. **Noting that the Committee has asked the Government over many years to repeal legal and administrative provisions that are not in conformity with the Convention, and noting further the urgency expressed by the Conference Committee with respect to this matter, the Committee urges the Government to repeal the relevant provisions without delay, and to inform the Committee of the concrete steps taken in this regard. Please also provide information on any legal obstacles to applying for jobs after the age of 30, and on any measures taken or envisaged to amend or repeal such provisions.**

10. With respect to women's access to the judiciary, from the Government's report, it appears that Decree No. 55080 of 1979 changing the status of female judges from judicial to administrative, thus preventing them from issuing verdicts, remains in force. The Government stresses, however, that due to recent reforms in the judiciary, women now occupy a range of judicial positions, including assistant prosecutor, remand judges, adviser to the court of appeal, adviser to the family court, and judge of guardianship and minors. The Government goes on to note that a new Bill has been introduced to elevate women as adviser judges in other types of cases, and that granting them full authority "is being seriously looked into". The Committee notes from the report of the mission that statistics on the number of men and women in the judicial system and their rank have been requested. **The Committee urges the Government to take the necessary measures to ensure that there are no obstacles in law or in practice to women having access on an equal footing with men to all positions in the judiciary and with the same powers, and asks the Government to provide details of the measures taken in this regard. Please also provide details of the content and status of the most recent Bill regarding women in the judiciary that has been introduced, as well as statistics on the number of women and men at each level of the judiciary.**

11. Regarding the obligatory dress code for women and the imposition of sanctions in accordance with the Act on administrative infringements, the Committee has for a number of years raised concerns that this could have a negative impact on the employment of non-Islamic women in the public sector. The Committee has also raised similar concerns regarding the disciplinary rules for university and higher education institutes students. **In the absence of any information in the Government's report on this issue, the Committee urges the Government to provide detailed information on the manner in which the abovementioned administrative and disciplinary rules regarding the dress code are being applied in practice with respect to education and employment, including information on the number of violations of the dress code and the sanctions imposed. The Committee must also again repeat its request for information on the status, contents and objectives of a bill concerning the dress code that was forwarded to Parliament in 2004.**

12. *Discrimination on the basis of religion.* The Committee notes from the report of the mission that a clear distinction is made in law and practice between recognized and unrecognized religious minorities. Recognized religious minorities have reserved seats in Parliament, are entitled to apply for positions in the public sector, and there is a quota system for hiring teachers from recognized religious minorities. However, the report of the mission goes on to state that the situation with respect to unrecognized religious minorities, and in particular the Baha'i appears to be very serious, "and there is no indication that the situation will change in the near future". They cannot apply for public sector positions, and under the circular of the Presidential High Screening Board, cannot be hired as teachers. The Committee notes the Government's statement that statistics pertaining to the employment of the Baha'i and other religious and ethnic minorities are not collected "because of the likely misinterpretation such an attempt may cause among the minorities of Iran".

13. With reference to the Baha'i, the Committee notes from the report of the mission, that out of a university population of 3.6 million students, the Government could identify only 23 Baha'i. The mission also learned that the Baha'i are not permitted to attend TVTO training. They have also been denied their pension entitlement on the express ground of being Baha'i, though the mission was informed that some measures are being taken to ensure that these pension entitlements are paid. The Committee notes the information from the mission that there appears to be "a general and deeply

rooted climate of intolerance against the Baha'i that has a negative impact on their equality of opportunity and treatment in education, employment and occupation". The Committee also notes the circular referred to by the Special Rapporteur on freedom of religion or belief on increasing the surveillance of the Baha'i, as well as her reference to an increasing media campaign against the Baha'i faith (Human Rights Council, A/HRC/4/21/Add.1, 8 March 2007, paragraphs 181–183). **The Committee is deeply concerned that the climate of intolerance against the Baha'i is a serious obstacle to their equality of access and opportunities to education, training, employment and occupation, and urges the Government to take active and effective measures to promote respect and tolerance for unrecognized religious minorities. The Committee urges the Government to ensure that all circulars or other government communications relating to limiting activities of the Baha'i in education, training, employment or occupation, are withdrawn without delay, and to take proactive measures to address the existing discrimination against the Baha'i. The Committee must also reiterate its previous comment on the practice of "gozinesh", and requests information on this practice, and on the status of the Bill that had been before Parliament asking for a review of this practice.**

14. *Ethnic minorities.* The Committee had previously requested the Government to provide statistics referred to by the Government on the increasing number of public sector positions filled by members of ethnic minorities. The Committee welcomes the information provided by the Government on the number of political positions occupied by ethnic minorities. The Committee notes from the report of the mission that members of ethnic minority groups are excluded from some positions on the ground of national security. **The Committee again asks the Government to provide information on the employment situation of ethnic minority groups, including the Azeris, the Kurds and the Turks, in particular the statistics on their employment in the public sector, and information on any efforts taken to ensure equal access and opportunities to education, employment and occupation for members of these groups. Please also provide information on the positions from which members of ethnic minorities are excluded on the ground of national security.**

15. *Dispute settlement and human rights mechanisms.* The Committee notes that there are a number of potential avenues for bringing complaints of discrimination, including the National Commission on Human Rights, the Islamic Commission on Human Rights, Parliamentary Article 98 Commission, the courts and the dispute settlement boards. The Committee notes that the National Commission on Human Rights was established in December 2005, and is mandated to deal with the rights of minorities. The Committee notes from the report of the mission that there appears to be a lack of awareness of the various bodies and procedures, and in some cases fear of victimization may be an obstacle to lodging a complaint. The issue of accessibility of the procedures, in particular for those alleging religious discrimination, was also raised. **The Committee requests the Government to provide information on the number and nature of complaints lodged with the various dispute settlement and human rights bodies and the courts, including their outcome. The Committee also requests the Government to take measures to raise awareness of the existence and mandate of the various bodies, and to ensure the accessibility of the procedures for all groups.**

16. *Social dialogue.* The Government in its report stresses its strong commitment for constructive dialogue with the social partners and intensifying its cooperation with the ILO regarding implementation of the Convention. However, the Committee is concerned that in the context of the present freedom of association crisis in the country, as described in the report of the technical assistance mission, meaningful social dialogue on these issues at the national level is not currently possible. The Committee also notes that while some steps have been made towards meeting the objective of bringing the relevant legislation and practice into line with the Convention, much still remains to be done. **The Committee requests the Government to intensify its efforts to bring its legislation and practice into conformity with the Convention, in order to be able to demonstrate tangible results by 2010.**

Minimum Age Convention, 1973 (No. 138)

Zambia

(Ratification: 1976)

The Committee notes the Government's report.

Article 2, paragraph 3. Age of completion of compulsory schooling. The Committee had previously observed that basic education is not compulsory in Zambia, but once a child is enrolled, attendance at school is compulsory. It had noted the International Trade Union Confederation's (ITUC) allegation that 25 per cent of primary-school age children do not receive any schooling and that in 1999 less than 29 per cent of children reached the secondary school level. It had requested the Government to provide information on the situation of children who were not enrolled in school and therefore were not obliged to attend school, and to indicate what measures were taken or envisaged to ensure that these children were not admitted to employment or work in any occupation below 15 years of age.

The Committee notes the Government's information that it is making tremendous efforts to ensure that the minimum age for admission to employment is not less than the minimum age of completion of compulsory schooling. It notes the Government's statement that primary education has been declared free and there is current political commitment to gradually expand free education to grade 12. In addition, a number of bursary schemes for orphaned and vulnerable children are in place, and the Ministry of Education has instituted a return to school policy for pregnant teenage girls. Moreover, the Government is providing skills training to children being withdrawn from the streets as well as from child labour. The Committee also notes that, according to the information available at the Office, in 2005 the Government of Zambia continued to implement its universal primary education programme called the "Basic Education Sub-Sector Investment Programme" (BESSIP), which specifically targets working children. The Committee welcomes the measures adopted by the Government. ***It encourages the Government to continue taking measures to increase school attendance – including through the introduction of compulsory schooling – and to reduce school drop-outs, so as to prevent the engagement of these children in child labour. It requests the Government to continue providing information on measures taken to this end and results achieved. The Committee also requests the Government to provide statistical information on attendance and drop-out rates at school.***

Part V of the report form. Application of the Convention in practice. The Committee had previously noted the ITUC's allegation that child labour in Zambia is almost non-existent in the formal economy. However, children are reported to work in the unregulated economy, often in dangerous or harmful work. According to the ITUC, children are mostly found in agriculture, domestic service, small-scale mining operations, stone crushing and pottery.

The Committee notes the Government's information that the first child labour survey was carried out by the Zambian Government in 1999. It indicated that over half a million children were working. Agriculture accounted for over 80 per cent of these children, but children were also found working in fisheries, domestic labour, the urban informal sector (transport and small workshops), mining and quarrying. With regard to agriculture, children were primarily found working on smallholder farms as family labourers, but also in large-scale farming operations. It also notes the Government's information that it is currently finishing its first National Labour Force Survey, which will include child labour and serve to update the 1999 survey. The Committee also notes the Government's information that extracts from the inspection section within the Ministry of Labour and Social Security have not yet been comprehensively documented since the child labour component was only recently introduced in the integrated inspection form. However, with the support of ILO/IPEC, cases of working children have been detected and a number of these children have been withdrawn from labour. In particular, under the Capacity Building Project (CBP), 3,643 children were found working, of which 2,017 were withdrawn and 1,626 prevented. During the Baseline Survey of Child Labour Prevalence in Commercial Agriculture (COMAGRIC project), 1,542 children were found working, of which 699 were withdrawn and 1,411 prevented. The Committee takes due note of this information. It nevertheless observes that a large number of children under the age of 15 continue to work in the informal economy. ***The Committee strongly encourages the Government to renew its efforts to progressively improve this situation. It also requests the Government to supply a copy of the National Labour Force Survey, as well as extracts from the reports of inspection services, when available, information on the number and nature of contraventions reported and penalties applied.***

The Committee is also addressing a direct request to the Government concerning certain other points.

Croatia

(Ratification: 1991)

1. The Committee recalls the grave concerns it expressed in its observation in 2005 regarding the application of the Convention in Croatia and, in particular, the situation at the Salonit-Vranjic factory site. It also recalls the discussion that took place at the Conference Committee in June 2006 and that the Conference Committee, in its conclusions, invited the Government to accept, as a matter of urgency, a high-level direct contacts mission with a view to verifying the situation "in situ" and to follow up on this case. The Committee notes that the Government accepted this invitation.

2. The Committee is in receipt of the report of the high-level direct contacts mission (the mission) undertaken by the Office from 2 to 6 April 2007 in Croatia as a follow-up to the conclusions of the Conference Committee in June 2006. It notes that the purpose of the mission was to review the national situation regarding activities involving exposure of workers to asbestos in the course of work; to seek information regarding past and present exposure of workers to asbestos at the Salonit-Vranjic factory site and on past and present pollution of the general environment by asbestos released therefrom; and to review the measures taken and envisaged in both law and practice for an effective application of the Convention including, in particular, the measures taken to consult with the social partners on such measures.

3. In addition to the reports submitted by the Government in 2006 and the communications submitted by the Association of the Workers Affected by Asbestosis, Vranjic (the Association), the Committee has examined the report of the mission, the numerous written documents and other material made available to the mission by the Government and government officials, organizations representing workers occupationally exposed to asbestos, in particular at the Salonit-Vranjic factory and the Association, as well as the conclusions of the mission.

4. The Committee welcomes the fact that the mission could be efficiently carried out in full cooperation with the Government and all relevant line ministries, in particular the Ministry of Economy, Labour and Entrepreneurship (MELE) and the social partners, and that arrangements were made to facilitate the meetings between the members of the mission and other relevant stakeholders including, in particular, workers occupationally exposed to asbestos, inter alia, at the Salonit-Vranjic factory site.

5. The Committee notes that, according to statements made in the context of the mission, the Government's ambition is to ensure the full application of Convention No. 162, as well as to align Croatia's legislation with the requirements of the *acquis communautaire*. The Government recognizes that there is a need to review the provisions on health protection, employment and social protection, and to build institutional and other capacities to be able to do so. The Government also shares the view that it is urgent to find a solution to the problems of the Salonit-Vranjic workers, in particular with regard to pension rights and the resolution of their claims for compensation, including a mechanism to provide funds for the settlement of those claims, as Salonit-Vranjic has gone bankrupt, and that the claims of the workers at the factory would have to be paid from the state budget, as Salonit-Vranjic had formerly been a state-owned company. The Committee also notes the Government's statement that, while its aim is to obtain the best possible pensions for all the workers and not only those suffering from asbestos-related diseases, any such solutions depend on clearance from the Ministry of Finance. Against this background, the Committee particularly welcomes MELE's undertaking at the conclusion of the mission, to consider whether current financial decisions could be reconsidered so as to make financial provision for the resolution of these issues, and that MELE invited the other ministries concerned to do the same. The Committee also welcomes the undertaking by MELE to give further consideration to a possible partial solution to this urgent and serious problem.

6. The Committee deeply regrets, however, that it is not in a position to verify whether these intentions have been translated into concrete action and to carry out a detailed examination of the issues raised in its 2005 observation as the Government has not, as requested, submitted any report to the ILO on the action taken by it since the mission. **Against this background, the Committee strongly urges the Government to make immediate efforts to take the actions and measures detailed in the conclusions of the mission, and to give top priority to resolving the cases of workers suffering from asbestosis and other related diseases. It is imperative to allocate the necessary personnel and financial resources so that the various measures can be effectively implemented. The conclusions of the mission, in their relevant parts, are reproduced below.**

Legislative provisions pending

The mission was informed that the following legislative provisions concerning the diagnostic, medical care and reimbursement claims of those suffering from diseases caused by asbestos were pending and had not yet been submitted to the Croatian ECOSOC and Parliament:

(a) *Draft Law on mandatory health-care oversight of workers professionally exposed to asbestos.* This draft legislation proposes a methodology for follow-up on the medical status of workers exposed to asbestos, a board for follow-up of these cases and another board responsible for the implementation of the diagnostic procedure.

(b) *Draft Rules on health-care oversight of workers professionally exposed to asbestos and the diagnostic criteria for determining a list of professional diseases caused by asbestos* (important issue of concern: the criteria used for diagnosis).

(c) *Draft Law on reimbursement of the insurance claims of workers professionally exposed to asbestos.* This draft Law will regulate the recognition of claims by workers for diseases caused by asbestos, the procedure to be followed and the body responsible for administering claims. The draft Law will also provide for an alternative dispute settlement mechanism that will be more expeditious and will allow for out-of-court settlement in respect of claims filed by workers occupationally exposed to asbestos.

(d) *Draft Law on conditions for acquiring the right to an old-age pension for employees who are professionally exposed to asbestos.* This draft sets out special conditions for acquiring an old age pension in the case of workers who have been exposed to or who have become ill from asbestos and whose employment has been terminated due to redundancies or as a result of the closure of the business due to the ban on asbestos.

(e) *Draft Regulation on the manner and procedures for managing waste containing asbestos.*

Legislative measures

The mission was informed that the above five proposed legislative measures were pending due to budgetary constraints or were awaiting budgetary analysis. The mission noted that the legislative approach taken is fragmented, instead of being a single integrated legislative framework. This might make it difficult for the workers concerned to know and understand each of these legislative texts. However, the mission was aware that these various texts have been under discussion for some time. The mission proposed that the legislative texts should include provisions on sanctions to enhance enforcement and should also contain expedited and affordable appeal procedures.

The mission considered that the various legislative measures were long overdue and that it was now urgent to take them forward based on tripartite consultation and that they should be submitted to Parliament without delay. Failure to implement these measures would fall short of full compliance with Convention No. 162 by Croatia and leave unprotected the workers who have been exposed to asbestos, many of whom have already died, are dying or ill. The five pending legislative provisions have been discussed and promised for a long time and they can no longer be delayed. These measures need to be taken this year (2007) (they were promised last year). Justice delayed is justice denied.

Institutional measures

The mission met and discussed with all the relevant line ministries and they were all very forthcoming with information. The mission was also aware that working groups and coordination bodies have been set up in the past to take forward various legislative and practical measures. The mission remained, however, concerned by what continued to be major gaps in coordination, both within ministries and between them. This probably reflected competencies and institutional issues which needed to be addressed. Reporting of occupational diseases has been a major and important area where the consequences of this lack of clear lines of authority or reporting have had a major impact, particularly on the lives of individuals. It is now urgent that there be put in place clear and transparent criteria for diagnosing occupational diseases and clear lines of reporting of occupational diseases from the enterprise via the local and on to the national level. The absence of clarity in this area has had an irreparable impact on the reliability of data and statistics concerning persons affected by asbestos-related diseases. The mission did not meet the Ministry of Finance, a key ministry for taking forward almost all of these measures which could avoid or reduce the delay currently being experienced. The mission, however, also understood that it is also an issue of priority for each of the line ministries concerned in the allocation of their own resources.

Urgent measures for workers affected by asbestos at Salonit-Vranjic and Azbest

The mission had the opportunity to visit the site of the Salonit-Vranjic factory and to benefit from a first-hand view of the current conditions prevailing, as well as information on the working methods and procedures of the factory when it was operational. The mission's assessment is that, in view of the working methods of the factory, there is no room for doubt that the workers of that factory have been exposed to asbestos and that their disease is occupational. Considering that the age group of many of the workers affected by asbestosis today is above 50 and most of them had worked for more than 25 years in plants producing asbestos products, that they are ill, that the companies they have worked for have been closed or gone bankrupt, that most of them have not been able to benefit from an invalidity pension under the applicable legislation, and that every day their health situation further deteriorates, it has become not only urgent but also imperative that action be taken without delay to ensure that these workers benefit from appropriate care and protection, as well as compensation. The mission urged the Government to take action without delay, particularly since the workers who currently benefit from contracts with the Environment Fund are expected to cease receiving further benefits at the end of April 2007. It is now urgent that the draft Law on conditions for acquiring the right to old-age pensions for employees who have been professionally exposed to asbestos are submitted to ECOSOC and subsequently to Parliament for adoption. The mission considered this to be the first action to be prioritized. An alternative would be the urgent adoption of a special decree providing for the specific situation of the workers concerned.

The mission also recommended that action be stepped up as a matter of urgency to decontaminate the premises and to rehabilitate them prior to their use for any other activity, so that workers who are employed in those premises can benefit from a safe and healthy working environment. The mission also emphasized the urgency in view of the asbestos waste stored on the site and its impact more generally on the environment and the community living in the area. This measure should also be applicable to all other sites where asbestos products have been produced and other waste disposal sites where asbestos products have been deposited.

Judicial measures

Paying due regard to the principle of the separation of powers and the independence of the judiciary as essential for the rule of law, it is nonetheless important that legal claims for asbestos-related diseases be heard expeditiously and judicial decisions handed down in a timely manner. The situation of these workers does not permit lengthy hearings. It is for this reason that the mission also recommended that the adoption of the draft Law on reimbursement of the insurance claims of workers professionally exposed to asbestos be prioritized.

Preventive measures

In more general terms, the mission also highlighted the importance of prevention and the need for a comprehensive safety and health prevention plan. The mission recommended the adoption of a national policy on OSH on the basis of the ILO Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). More specifically, in the case of asbestos, an awareness-raising campaign should be launched targeting workers in sectors where asbestos products may be encountered, in particular, the construction, ship repair, ship scrapping and port sectors. The Office for Social Partnership should play a key role in this area, as well as in the adoption of the national policy on OSH. This would allow for the involvement of employers' and workers' organizations in promoting OSH.

ILO action

The International Labour Office remains ready and willing to continue to assist the Government to comply fully with Convention No. 162 and, more specifically, in implementing the various measures referred to above. It is willing to provide technical assistance concerning legislative reviews, training and capacity building for the tripartite constituents in the field of OSH and, in particular, as regards Convention No. 162. In the latter area, the training would cover criteria for determining occupational disease caused by asbestos in line with the most up to date ILO guidelines in the field. The ILO Office in Budapest would continue to be in close cooperation with the Government.

7. *The Committee hopes that the Government will take the necessary measures to give effect to the recommendations made by the mission and to ensure full compliance with the Convention.*

[The Government is asked to supply full particulars to the Conference at its 97th Session and to reply in detail to the present comments in 2008.]

Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180)

United Kingdom

(Ratification: 2001)

Further to its previous direct request, the Committee notes the observations submitted in 2005 by the Trades Union Congress (TUC) in relation to the first report communicated by the Government of the United Kingdom on the application of the Convention. These observations have been transmitted to the Government for any comments it wished to make. In the absence of a reply, the Committee draws the Government's attention to the following points.

Article 1, paragraphs 2 and 3 of the Convention. Commercial maritime fishing. Whilst recognizing that the United Kingdom has implemented EC Directive 2000/34, the TUC noted that this Convention has not been applied to commercial maritime fishing. The TUC considered that the consultations held on the implementation of EC Directive 2000/34 with national fishing federations were not sufficient, since they only represented skippers or fishing vessel owners. In its view, it was not sustainable to argue that the Convention needs not be applied to commercial maritime fishing because there is an EC Directive making provisions for those employed in the fishing industry.

The Committee points out that, according to the Convention, the competent authority shall apply the provisions of this Convention to commercial maritime fishing to the extent it deems practicable, after consulting the representative organizations of fishing vessel owners and fishers. **The Committee requests the Government to indicate: (i) whether consultations on the subject have been held with the representative organizations of both fishing vessel owners and fishers; and (ii) if so, whether the application of the provisions of the Convention to commercial maritime fishing was deemed impracticable.**

Article 2, subparagraph (d). Definition of "seafarer". The TUC indicated that persons undergoing training on a sail training vessel and persons who have no emergency safety responsibilities on a sail training vessel are not defined as seafarers and are thus exempt from the Merchant Shipping (Hours of Work) Regulations 2002. The TUC found the exclusion of such persons unacceptable.

The Committee recalls that the Convention applies to every seagoing ship, whether publicly or privately owned, which is registered in the territory of any Member for which the Convention is in force and is ordinarily engaged in commercial maritime operations (*Article 1, paragraph 1*). In the event of doubt as to whether or not any ships are to be regarded as engaged in commercial maritime operations for the purpose of the Convention, the question shall be determined by the competent authority after consulting the organizations of shipowners and seafarers concerned (*Article 1, paragraph 3*). **The Committee asks the Government to indicate, whether or not it considers sail training vessels as ordinarily engaged in commercial maritime operations, and whether the organizations of shipowners and seafarers concerned have been consulted before such determination has been made.**

Article 2, subparagraph (e). Definition of "shipowner". The TUC referred to the rationale for not defining the term "shipowner" in the Hours of Work Regulations and instead making specific reference to the "employer", namely that the shipowner may not necessarily have direct responsibility for the employment of some or all of the seafarers engaged on a ship and may therefore not be in a position to control their hours of work or rest. The TUC pointed out that provision for this concern is made in the Convention, in that reference is made both to "the owner of the ship" and "any other organization or person, such as the manager or bareboat charterer, who has assumed the responsibility for the operation of the ship from the shipowner". The TUC cautioned that the absence of reference to the term "shipowner" has the potential to remove responsibility from the owner of the ship.

The Committee notes that, while the term "shipowner" is not used in the Hours of Work Regulations, its section 2 defines, in addition to the word "employer", the term "company" in the manner provided for under *Article 2, subparagraph (e)*. According to section 4 of the Regulations, it shall be the duty of a *company*, an employer of a seafarer and a ship master to ensure that a seafarer is provided with at least the minimum hours of rest.

Article 4. Normal working hours' standard for seafarers. The TUC contested the assertion of the Government that it was not required to apply *Article 4* through national legislation. This Article was particularly important because seafarers should have no less rights than other workers, in that their normal working hours should be based on an eight-hour day with one day of rest per week and rest on public holidays (i.e. 48 hours per week). The TUC further noted that *Article 4* may also have implications for the enforcement of the statutory minimum paid annual leave regulation.

The Committee points out that, according to this Article of the Convention, ratifying Members acknowledge that the normal working hours' standard for seafarers, like that for other workers, shall be based on an eight-hour day with one day of rest per week and rest on public holidays. **While the Committee considers that this Article does not necessarily call for legislative measures laying down the normal working hours of seafarers, it requests the Government to indicate by what means it is ensured that the admissible minimum of ten hours of rest per day and 77 hours of rest per week retains an exceptional character.**

Article 5, paragraphs 1 and 2. Minimum hours of rest. Considering that the phrases "in any 24-hour period" and "in any 7-day period" used in the Convention were key to the proper enforcement of the rest period regulations, the TUC criticized that the Government had not yet provided any operational guidance to shipowners or trade unions as to the proper interpretation of these regulations, which was compromising their application and enforcement. **The Committee asks the Government to indicate supporting measures taken or envisaged to ensure a proper understanding of the relevant regulations and facilitate the application of the fixed limits on hours of rest in practice.**

Article 5, paragraph 5. Safeguard. The TUC found that, in the absence of a collective agreement or arbitration award, no provision was made by the competent authority to determine such provisions to ensure the seafarers concerned have sufficient rest. The TUC disagreed with the Government's statement that provisions of this paragraph are covered by section 5 of the Hours of Work Regulations of 2002. According to section 5(3) of the Regulations, the prescribed musters, firefighting and lifeboat drills shall be conducted in a manner which minimizes the disturbance of rest periods and

does not induce fatigue. Section 5(4) provides that a seafarer who is on call on board ship shall have an adequate compensatory rest period if his normal period of rest is disturbed by call-outs to work.

The Committee notes that these provisions essentially repeat *paragraphs 3 and 4 of Article 5*, already binding through ratification. Section 5(3) and (4) of the Hours of Work Regulations essentially constitutes framework legislation for further concrete measures to be taken, as required by *Article 5, paragraph 5*, which calls for further implementing measures through either collective agreements or arbitration awards, or in their absence, through government determination. For example, while *Article 5, paragraph 4*, does not require compensatory rest periods of identical length for time spent on call-outs, guidance as to “adequate compensatory rest” is necessary. ***The Committee, therefore, asks the Government to specify concrete measures taken to ensure that the prescribed musters, firefighting and lifeboat drills shall be conducted in a manner which minimizes the disturbance of rest periods and does not induce fatigue (Article 5, paragraph 3), and that seafarers required to work during their normal period of rest are given an adequate compensatory rest period (Article 5, paragraph 4).***

Article 5, paragraph 6. Exceptions to the limits on hours of rest. The TUC indicated that the Government had introduced the concept of “workforce agreements”, whereas the Convention only allowed for exceptions to the limits on hours of rest by means of collective agreements. The TUC requested clarification from the Government as to whether workforce agreements can only be put in place where there already are collective agreements.

According to section 6 of the Hours of Work Regulations, the Maritime and Coastguard Agency (MCA) may authorize a collective agreement or workforce agreement permitting exceptions to the limits in section 5(1) and (2). The term “workforce agreement” is qualified in schedule 1 as an agreement that is to be signed between the employer and the duly elected representatives of the workforce, and that applies to all of the “relevant members of the workforce”, i.e. employees employed by a particular employer, excluding any employee whose terms and conditions of employment are provided for, wholly or in part, in a collective agreement. It appears, therefore, that workforce agreements are not negotiated between employers or employers’ organizations and workers’ organizations, and are not collective agreements. The Committee points out that, according to *Article 5, paragraph 6*, the only instruments that may permit exceptions to the limits set out in *paragraphs 1 and 2* of this Article of the Convention, are collective agreements authorized or registered in accordance with this provision of the Convention. ***The Committee requests the Government to take the necessary measures to ensure that there are no exceptions to the determined minimum hours of rest other than those permitted by duly authorized collective agreements.***

Article 13. Responsibility of the shipowner. The TUC felt that sections 4, 7 and 9 of the Hours of Work Regulations and section 5 of the Merchant Shipping (Safe Manning, Hours of Work and Watchkeeping) Regulations 1997 failed to address the explicit obligation placed upon the shipowner in this provision of the Convention, which could lead to the shipowner escaping all responsibility with respect to manning.

According to section 5(1) of the Safe Manning, Hours of Work and Watchkeeping Regulations, it is the duty of the company to ensure that in relation to every ship of 500 gt or more a safe manning document is in force, and that the manning of the ship is maintained at all times to at least the levels specified in the document. Section 4 of the Hours of Work Regulations provides that it is the duty of a company, an employer of a seafarer and a ship master to ensure that a seafarer is provided with at least the minimum hours of rest. *Article 13* requires the shipowner to ensure that the master is provided with the necessary resources for the purpose of compliance with obligations under this Convention. ***The Committee asks the Government to indicate by what means it is ensured that the shipowner, as defined in Article 2, subparagraph (e), has the basic responsibility to enable the master, in terms of resources, to implement the requirements of the Convention concerning hours of rest and manning.***

Article 15, subparagraph (b), and Part V of the report form. Inspection. The TUC found that the current inspection and enforcement regime was inadequate and that the flag State and port State control inspections were not appropriate to satisfy the requirements of the Convention. It found the Government’s indication, that details were not yet available on the specific number and nature of infringements under the Regulations, unacceptable. ***Further to its previous comments under Article 9, the Committee requests the Government to give a general appreciation of the manner in which the Convention is implemented and enforced in the United Kingdom. Please supply information on the practical application of the Convention, in particular relevant extracts from inspection reports and the number and nature of infringements reported.***

Article 15, subparagraph (c). Complaints procedures. The TUC stated that, while consultations had been held as regards the draft implementing Regulations, consultations with respect to the procedures to investigate complaints relating to any matter contained in the Convention were inadequate. ***Further to its previous comments under this provision of the Convention, the Committee asks the Government to indicate the consultations held on the matter, in conformity with this provision of the Convention.***

[The Government is asked to reply in detail to the present comments in 2008.]

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

Mexico

(Ratification: 2000)

The Committee notes the Government's report.

Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and traffic of children for commercial sexual exploitation. 1. Federal legislation. In its previous comments, the Committee noted the observations of the International Trade Union Confederation (ITUC) reporting the trafficking of young girls within the country and abroad for the purposes of sexual exploitation, including forced prostitution. The Committee noted that, according to a study carried out in six Mexican cities with the support of UNICEF, around 16,000 boys and girls were victims of commercial sexual exploitation. It noted that a study carried out by ILO/IPEC, the Secretariat for Labour and Social Assistance and the National Social Sciences Institute corroborated the figures referred to above and added that around 5,000 children were the victims of this form of exploitation solely in the Federal District of Mexico. The Committee noted that reforms of the legislation were in progress and requested the Government to provide information in this respect.

The Committee notes with satisfaction the Decree of 27 March 2007 which amends, supplements and repeals certain provisions of the Federal Penal Code, the Code of Penal Procedure and the Federal Act to Combat Organized Crime in relation to the sexual exploitation of children. In particular, it notes that sections 205 and 205bis of the Penal Code penalize the trafficking of persons under 18 years of age for sexual and economic exploitation. The Committee also notes that the Government is participating in the ILO/IPEC project entitled "Support for the Prevention and Elimination of the Commercial Sexual Exploitation of Children (CSEC) and the Protection of CSEC Victims in Mexico" and that progress has been achieved in the context of its implementation. It however observes that, although the Government has taken several measures to combat the sale and trafficking of children for commercial sexual exploitation, the problem still exists in practice. In this respect, it refers to the concluding observations of the Committee on the Rights of the Child on the third periodic report of Mexico of June 2006 (CRC/C/MEX/CO/3, paragraph 64), in which it indicated that it remained concerned about the extent of the sexual exploitation, trafficking and abduction of children in the country. The Committee of Experts, however, notes a communication of the Special Rapporteur on the sale of children, child prostitution and child pornography, who visited the country from 4 to 14 May 2007, indicating that there is a consensus between the public authorities and civil society organizations that the sexual exploitation of children and the trafficking of minors for this purpose constitute a serious problem which has to be addressed. The Committee appreciates the measures adopted by the Government to prohibit and eliminate this worst form of child labour and it considers these measures as an affirmation of the political will to develop strategies to combat this problem. ***It strongly encourages the Government to redouble its efforts to ensure the protection of children under 18 years of age against sale and trafficking for sexual exploitation, including prostitution. Furthermore, the Committee requests the Government to provide information on the effect given in practice to the new provisions, including statistics on the number and nature of the infringements reported, the investigations undertaken, prosecutions, convictions and the penal sanctions applied.***

2. State legislation. The Committee notes the studies provided by the Government on the penal legislation respecting the commercial sexual exploitation of children. It notes that, according to the information contained in the ILO/IPEC activity reports for 2007 on the project "Support for the Prevention and Elimination of the Commercial Sexual Exploitation of Children (CSEC) and the Protection of CSEC Victims in Mexico", draft amendments to the Penal Codes in the states of Baja California, Guerrero and Chihuahua have been approved. ***The Committee hopes that the draft amendments to the Penal Codes will be adopted in the near future and requests the Government to provide information on any progress achieved in this respect.***

Clause (b). Use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances. The Committee notes with interest that the Decree of 27 March 2007 contains provisions penalizing the following crimes: acting as an intermediary for the prostitution of persons under 18 years of age (sections 206 and 206bis); pornography involving persons under 18 years of age (sections 202 and 202bis); and sexual tourism involving persons under 18 years of age (sections 203 and 203bis). ***It requests the Government to provide information on the effect given to these provisions in practice, including statistics on the number and nature of the violations reported, investigations undertaken, prosecutions, convictions and the penal sanctions applied.***

Clause (c). Use, procuring or offering of a child for illicit activities. The Committee noted previously the ITUC's indication that children were engaged in begging. It requested the Government to provide information on the effect given to section 201 of the Federal Penal Code which penalizes the incitement of persons to engage in begging. ***Noting the absence of information, the Committee once again requests the Government to provide information in this respect, particularly with regard to the application of sanctions in practice, and to provide, among other information, reports on the number of convictions.***

Article 7, paragraph 1. Sanctions. With reference to its previous comments, the Committee notes the detailed information provided by the Government concerning the Internet Police Unit. It notes in particular that, between January 2005 and June 2007, over 2,500 sites containing child pornography were deactivated. ***It encourages the Government to pursue its efforts in this respect.***

Article 7, paragraph 2. Effective and time-bound measures. The Committee notes the detailed information provided by the Government in its report on the measures taken to combat the sexual commercial exploitation of children. It notes in particular the training activities for officials of the public authorities (labour inspection, police forces, immigration service), the awareness-raising campaigns for the population and the publication of educational materials.

Clauses (a) and (b). Preventing children from being engaged in the worst forms of child labour and assistance for the removal of children from these worst forms. 1. Commercial sexual exploitation. With reference to its previous comments, the Committee notes that, according to the information contained in the ILO/IPEC activity reports for 2007 on the project "Support for the Prevention and Elimination of the Commercial Sexual Exploitation of Children (CSEC) and the Protection of CSEC Victims in Mexico", measures have been taken to prevent 245 children from being engaged in this worst

form of child labour or to remove them from this activity since 2005. It also notes that around 90 children have been reintegrated into the school system and over 980 children have benefited from the project since the beginning of its activities. Furthermore, the Committee notes the information provided by the Government concerning the measures taken for the rehabilitation and social integration of child victims, the assistance provided to their families and the number and location of reception centres in the various states of the country. **The Committee requests the Government to continue providing information on the measures adopted in the context of the implementation of the ILO/IPEC project with a view to: (1) preventing children under 18 years of age from becoming victims of commercial sexual exploitation; and (2) providing the necessary and appropriate direct assistance for the removal of children from this worst form of child labour and for their rehabilitation and social integration. Furthermore, it requests the Government to provide information on the specific medical and social follow-up programmes formulated and implemented for the victims of this worst form of child labour.**

2. *Education.* In its previous comments, the Committee noted the indication by the ITUC that 1.7 million children of school age are unable to receive education as poverty makes it imperative for them to work. The ITUC added that, in the case of indigenous children, access to education is difficult as teaching is normally provided only in Spanish and many indigenous families only speak their mother tongue. The Committee noted the efforts made by the Government, particularly in the context of the implementation of the "Opportunities" programme developed by the Ministry of Social Development, which provides children and young persons living in poverty with full and free access to education and to health services.

The Committee takes due note of the information provided by the Government that over 5,290,000 children benefited from the "Opportunities" programme in 2005 and 2006 and that it hopes to increase the number of grants provided at the secondary and higher levels to cover 1.24 million girls and 1.18 million boys for the school year 2006–07. The Committee however notes that, in its concluding observations of June 2006 (CRC/C/MEX/CO/3, paragraph 56), the Committee on the Rights of the Child expressed concern at continuing low school enrolment rates, especially among migrants and indigenous children, and at the high drop-out rates, especially among rural, indigenous and migrant children. **Considering that education contributes to preventing the engagement of children in the worst forms of child labour, the Committee strongly encourages the Government to redouble its efforts to increase the school enrolment rate and to reduce the drop-out rate, particularly for rural, indigenous and migrant children. It requests the Government to provide information on the results achieved.**

3. *Tourism.* The Committee notes the information contained in the 2007 activities report of ILO/IPEC on the project "Support for the Prevention and Elimination of the Commercial Sexual Exploitation of Children (CSEC) and the Protection of the CSEC Victims in Mexico" that over 800 professionals in tourism have been covered by awareness raising concerning the commercial sexual exploitation of children, including sexual tourism. **As the country benefits from a certain level of tourism, the Committee encourages the Government to continue its awareness-raising activities for actors directly linked to the tourist industry.**

Clause (d). Children at special risk. 1. *Children in agricultural work and marginal urban activities.* The Committee previously noted the ITUC's indication that the majority of children who work are engaged in agriculture or informal urban activities. The Committee notes the information provided by the Government on the results achieved in the context of the implementation of the programme to prevent and eliminate child labour in the marginal urban sector and the Programme to promote the rights of girls and boys, daily child workers in the agricultural sector and the prevention of child labour (PROCEDER) in 2005 and 2006. In particular, it notes that, in the context of the Programme on marginal urban activities, over 132,000 child workers and 162,700 children at risk have benefited from the programme, of whom 10,976 have received an educational grant from the System for the Integral Development of the Family (DIF), and 1,121 have received a DIF training grant. It further notes that, in the context of the PROCEDER programme, over 557,475 children have benefited directly from the programme, 2,873 children have received an education grant and 24 schools and a rehabilitation centre have been constructed. **The Committee encourages the Government to continue its efforts to protect these children from the worst forms of child labour.**

2. *Street children.* The Committee previously noted the study of the DIF, which showed that 114,497 children under 17 years of age worked and lived in the streets and that, solely in the city of Mexico, which was not covered by the study, there are 140,000 young persons working in the streets. The study added that 90 per cent of the children working in the streets did so on their own account and provided for the subsistence of their families. The Committee notes the information provided by the Government relating to the results obtained in the context of the implementation of the Programme of Prevention and Assistance to girls, boys and young persons living in the streets. It notes that, between 2001 and 2007, around 189,620 children have benefited from this programme. However, it notes that, according to the concluding observations of the Committee on the Rights of the Child in June 2006 (CRC/C/MEX/CO/3, paragraph 68), although the number of street children has fallen in recent years, it remains high and the measures adopted to prevent this phenomenon and protect the children involved are inadequate. **The Committee therefore requests the Government to redouble its efforts to ensure that young persons under 18 years of age working on their own account, such as street children, are not engaged in hazardous types of work. It also requests the Government to continue providing information on the impact of this programme and the results achieved.**

Article 8. International cooperation. 1. *"Programme OASIS".* Further to its previous comments, the Committee notes the information provided by the Government concerning the cooperation between the United States and Mexico in the context of the "Programme OASIS", it notes that a "Programme OASIS" conference was held in San Antonio, Texas, in August 2007 and that the authorities of the two countries have agreed to strengthen their cooperation to punish those responsible for the unlawful trafficking of persons, particularly children, and to extend the programme to other frontier points. **The Committee requests the Government to indicate (1) the number of persons who are charged and found guilty as a result of the implementation of this programme; and (2) the number of child victims of trafficking intercepted in frontier areas.**

2. *Border between Mexico and Guatemala.* With reference to its previous comments, the Committee notes the information provided by the Government that the National Institute for Migration (INM) in 2006 made over 1,522 complaints concerning the unlawful trafficking and smuggling of persons. Between January and March 2007, the INM made over 353 complaints, of which 39 were referred to the courts; of these, 26 have been set aside and 462 are under examination. **The Committee requests the Government to provide information on convictions and the penalties imposed as a result of the complaints made by the INM against persons working in networks engaged in the unlawful trafficking and smuggling of children.**

The Committee is raising other matters in a request addressed directly to the Government.

**PART TWO****THIRD ITEM ON THE AGENDA: INFORMATION AND REPORTS
ON THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS****Report of the Committee on the Application of Standards***Contents*

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PART TWO

OBSERVATIONS AND INFORMATION CONCERNING PARTICULAR COUNTRIES

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

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

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

The **Worker members** emphasized that the obligation to submit reports due constituted the fundamental element on which the supervisory mechanism of the ILO rested. The observance of this obligation was indeed essential to prevent governments that neglected their reporting duties from gaining an undue advantage, as well as to permit the supervisory bodies to proceed with the examination of national laws and practices. It was therefore appropriate to insist upon the respect of this obligation, so that the member States concerned could take the necessary measures in this regard.

The **Employer members** indicated that any form of non-compliance with the obligation to submit reports, which was a key element of the ILO supervisory system, involved a serious failure of that system. Those member States which most flagrantly violated these obligations eluded examination by this Committee. The situation was even more serious when it came to the submission of first reports. Similarly, the failure to submit instruments to the competent authorities was a clear indication of a lack of commitment on the part of the government concerned. The essence of the activity of this Committee, and in general of the supervisory mechanisms on compliance with ILO standards, was the establishment of dialogue between member States and the Organization, through the submission of reports.

One should not forget that the willingness of States to collaborate with the Organization was equal to and even more important than the application of the Conventions. Without this prerequisite, the whole system of follow-up and supervision would be pointless. The slight progress observed in the last years was not satisfactory. Two years ago, this Committee insisted on taking a new approach to cases of failure to submit reports. The report of the Committee of Experts on the Application of Conventions and Recommendations should provide a better understanding of the reasons for such a failure, a global analysis of these reasons and more information on the circumstances of each country.

It was necessary to examine various strategies, including assistance from the member States which complied with their standards-related obligations and regular direct contacts with ILO standards specialists, which were necessary in certain cases. In this respect, the efforts of the Office were appreciated even though the results had been limited. Weak administrative structures and certain exceptional circumstances linked to catastrophes were elements which could contribute to understanding the difficulties of States in complying with the submission of reports. On the contrary, the lack of coordination among various competent units of the State, changes in governments or technical difficulties in the submission of reports could not be considered as elements justifying these failures.

Finally, they repeated that beyond any information or explanation which helped to understand the particular circumstances of each country, it was necessary to demonstrate in some way a serious commitment to establishing dialogue through the submission of reports.

A **Government representative of Denmark** regretted that the local authorities of the Faeroe Islands, which had the status of a “self-governing community”, had not submitted the reports due under article 22 of the ILO Constitution for the third consecutive year. Nevertheless, she was pleased to inform the Committee that in August 2007 the local authorities had accepted the list of 22 Conventions by which they were bound. The local authorities had therefore also accepted the reporting obligation related to these Conventions, and had in February 2008 informed the Government that they would prepare the reports due for 2007. However, the local authorities had full autonomy in the area of public welfare and labour and the Government could neither instruct them in this area nor fulfil the reporting obligations on their behalf. She emphasized that the Government would assist the local authorities as best as possible to enable them to fulfil their reporting obligations in the coming years.

A **Government representative of the Solomon Islands** noted that the failure to comply with reporting obligations was due to the difficult situation his country had been facing. Recent steps had been taken to strengthen the country’s labour institutions, notably by reinforcing the division of the Ministry of Labour dealing with ILO matters, and providing one officer from the Ministry with training on standards and reporting at the International Training Centre of the ILO. Substantial allocations had been made in the budget to ensure the revision of laws so as to take account of relevant standards. Given these measures taken in response to the challenges encountered in performing the reporting obligations, he was confident that the pending reports would be submitted soon.

A **Government representative of the United Kingdom** apologized on behalf of the non-metropolitan territories of Anguilla, Bermuda, British Virgin Islands, Gibraltar, Montserrat and St Helena, which had been unable to meet fully the timetable for responding to the requests under article 22 of the ILO Constitution. The Government went to great lengths to try to ensure that all non-metropolitan territories met their reporting obligations in full and within the ILO timetable. In December 2007 at a meeting of the Overseas Territories Consultative Council, the Government emphasized to chief ministers and their counterparts from the non-metropolitan territories the importance it placed on meeting commitments to the maintenance and development of international human rights and international reporting obligations.

Failure to submit the reports was not due to any lack of political commitment on the part of the territories but to limited capacity, given that the non-metropolitan territories were for the most part very small and largely autonomous island administrations with limited human and financial resources. Heavy reporting schedules could place a considerable burden on even the largest of administrations. For the smallest of them, disruption in work schedules as a result of having to recruit or retrain staff in the event of retirement, sickness or bereavement, as had been the case in Montserrat and St Helena, stretched their resources. The Government worked closely with the non-metropolitan territories concerned to address the problem, and had recently been approached by some of them in

relation to the possibility of having ILO technical assistance on their reporting obligations.

In addition to this, work was currently underway to have a number of fundamental ILO Conventions extended to the non-metropolitan territories. Earlier this month, the Government had written to the ILO to request the extension of Convention No. 182 to one of them. The Government would continue to do all it could to ensure that it and its non-metropolitan territories met their reporting obligations in full and on time.

A Government representative of Somalia indicated with respect to the country's failure to supply reports for the past two years or more on the application of ratified Conventions, the failure to submit instruments to the competent authorities and the failure to supply reports on unratified Conventions and Recommendations (paragraphs 25, 76 and 87 of the report of the Committee of Experts), that his country was still unstable and not in a condition to meet its reporting obligations. However, once the situation improved, all obligations would be discharged and the reports would be submitted on time, as required. The ILO had already provided training on reporting to one officer who would be able to fully perform this task once the situation improved.

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

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

In these circumstances, the Committee expressed the firm hope that the Governments of Bolivia, Cape Verde, Denmark (Faeroe Islands), Sierra Leone, Somalia, Solomon Islands, Tajikistan, Togo, Turkmenistan and the United Kingdom (Anguilla, St Helena), which to date had not presented reports on the application of ratified Conventions, would do so as soon as possible, and decided to note these cases in the corresponding paragraph of the General Report.

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

A Government representative of Saint Kitts and Nevis indicated that Conventions Nos 87 and 98 were enshrined in the Constitution and law of his country and that the principles and ideals of these Conventions had been actively put into practice since the 1940s. The reports pertaining to these Conventions were being prepared and would be submitted before the deadline of 1 September. He conveyed the sincere apologies of his Government for the delay in complying with the reporting obligations, which was due to a number of circumstances beyond the Government's immediate control.

A Government representative of Gambia conveyed his Government's apologies for not fulfilling its reporting obligations. This was due to capacity problems in terms of staffing at the unit of the Ministry of Employment responsible for ILO issues. Despite these problems, the Ministry had recently managed to send a report on Convention No. 29.

A Government representative of The former Yugoslav Republic of Macedonia indicated that the report on Convention No. 182 was nearly ready and that although it had not yet been possible to submit it, the submission should be forthcoming by the end of the current session of the Conference. His Government had recently resumed communication with the ILO supervisory bodies after an interruption of nine years by submitting reports on Conven-

tions Nos 29, 87, 98, 100, 105, 111 and 135. The Government was firmly committed to addressing the backlog in reporting and meeting its constitutional obligations. It had engaged in continued dialogue with the ILO, especially the Subregional Office in Budapest, and had received substantive assistance through a national tripartite seminar and the training of one person at the International Training Centre of the ILO so as to strengthen reporting capacities. It was hoped that all pending reports would be submitted this year.

With regard to the failure to supply reports on unratified Conventions and Recommendations noted in paragraph 25 of the report of the Committee of Experts, the speaker indicated that his Government intended to focus as a priority on the submission of reports with regard to the application of ratified Conventions, before being able to report on unratified Conventions and Recommendations.

A Government representative of Uganda expressed her Government's deep regret for the failure to fulfil reporting obligations and added that she had just submitted the report on Convention No. 138 along with four other reports. The remaining 19 were being prepared and would be provided by the deadline of 1 September. The failure to report was due to resource problems, but the recent expansion of the Department of Labour to include three additional departments would lead to the strengthening of the unit responsible for reporting to the ILO. The Government was firmly committed to strengthening its capacities in this area. Strengthening labour ministry institutions was a key outcome of one of the components of the Uganda Decent Work Country Programme, which concerned the strengthening of the social dimensions of regional integration in East Africa for a fair globalization.

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

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

- since 1992: Liberia (Convention No. 133);
- since 1994: Kyrgyzstan (Convention No. 111);
- since 1995: Kyrgyzstan (Convention No. 133);
- since 1998: Equatorial Guinea (Conventions Nos 68, 92);
- since 1999: Turkmenistan (Conventions Nos 29, 87, 98, 100, 105, 111);
- since 2002: Gambia (Conventions Nos 105, 138), Saint Kitts and Nevis (Conventions Nos 87, 98), Saint Lucia (Convention No. 182);
- since 2003: Dominica (Convention No. 182), Gambia (Convention No. 182), Iraq (Conventions Nos 172, 182);
- since 2004: Antigua and Barbuda (Conventions Nos 122, 131, 135, 142, 144, 150, 151, 154, 155, 158, 161, 182), Dominica (Conventions Nos 144, 169), The former Yugoslav Republic of Macedonia (Convention No. 182);
- since 2005: Antigua and Barbuda (Convention No. 100), Liberia (Conventions Nos 81, 144, 150, 182);
- since 2006: Albania (Convention No. 171), Dominica (Conventions Nos 135, 147, 150), Georgia (Convention No. 163), Kyrgyzstan (Conventions Nos 17, 184), Nigeria (Conventions Nos 137, 178, 179).

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

A Government representative of Barbados acknowledged the failure of his Government to submit information in reply to comments made by the Committee of Experts. A lack of human resources capacity, the need to retrain new staff members following the transfer of several officials, and a delay in receiving inputs from the relevant stake-

holders were responsible for this failure. He assured the Committee that a mechanism had been put into place to ensure that the Government fulfilled its reporting obligations for the present year – a recurrence of the failure to submit information was not anticipated.

A Government representative of Cambodia thanked the Office for the continued technical assistance it has provided. The Government had made great progress as a result of this assistance; it hoped to be able to thoroughly fulfil its reporting obligations in the next two years.

A Government representative of Congo indicated that, in 2007, his Government transmitted to the Office 18 of the 29 requested reports. As for the comments of the Committee of Experts, they were only received at the beginning of May 2008, shortly before the beginning of the Conference. Hence, there was not enough time to supply the requested complementary information. A team was currently working to prepare the required replies, and the Government had committed itself to forwarding these replies to the Office before 1 September 2008, after duly consulting the social partners and gathering their observations.

A Government representative of Ethiopia stated that her Government had consistently sought constructive engagement with the ILO supervisory bodies and took its reporting obligations extremely seriously. It was surprised, therefore, that the Committee of Experts' report indicated that it had failed to submit any replies. Following a consultation with the Office regarding this matter, the Government now understood that, although reports respecting Conventions Nos 87 and 98 had been received, those Conventions were cited in paragraph 35 of the General Report due to the insufficiency of the information contained in those replies. The Government had therefore not defaulted in its obligation to supply information to the Committee of Experts. It would, however, continue to address any concerns raised with respect to its reporting obligations and incorporate them into communications to be sent to the Committee of Experts as soon as possible. As concerned Convention No. 156, the Government would provide the relevant report as soon as possible.

A Government representative of France expressed her Government's regret at not having been able to meet the deadline for replying to the Committee of Experts' comments. As regards the territory of Réunion, the current internal organizational structure led to regularly observed problems as far as the dispatch of scheduled reports for overseas territories was concerned. In this respect, the Government had undertaken a process of revising these procedures in cooperation with the authorities concerned with a view to remedying the present malfunctions and respecting deadlines in the future. In addition, as far as the application of Conventions Nos 98 and 111 to crews of ships registered in the French Southern and Antarctic Territories, the Government undertook to forward the information requested in the near future. She concluded by saying that a law of 3 May 2005 subjected the crews of the ships concerned to the French international register, thus putting an end to the existence of a maritime register for this territory.

A Government representative of Gambia expressed regret at his Government's failure to submit the replies requested by the Committee of Experts. The Government would continue to solicit the technical assistance of the Office, as it had last year, so that the Labour Ministry's reporting capacity could be strengthened.

A Government representative of the Solomon Islands acknowledged his Government's failure to submit replies to the comments of the Committee of Experts. This failure was due to the difficult situation the Government had experienced, and was continuing to endure. Nevertheless, steps were being taken to address this matter: new staff had been trained and financial resources had been allo-

cated to allow the Government to fulfil its reporting obligations.

A Government representative of Ireland apologized for the non-submission of several reports to the Committee of Experts. He explained that his department had been extremely busy in preparing for the review of the ten-year National Social Partnership, which would last until 2016, and that the importance accorded to the National Social Partnership Agreement required that his department give absolute priority to this task. The Government intended to fulfil its reporting obligations in full in the future.

A Government representative of Lesotho acknowledged his Government's failure to submit reports in the previous year. The Government's lack of capacity was to blame for the non-submissions. In this respect, the Government had, at every opportunity, consistently been requesting the technical assistance of the Office to aid it with its reporting obligations: the last training concerning reporting was provided in 2001, and the staff who were trained had since moved on or assumed new responsibilities. He indicated that a special request for training had been made to the ILO Office in Harare in 2005. The training did not take place, as the relevant specialist was not available, and furthermore that specialist has since left the Harare Office. He urged the ILO to fill the specialist post, so that the Government could receive the required training on reporting and thereby fulfil its reporting obligations.

A Government representative of Mali expressed her Government's regret at not having fulfilled its obligation to communicate scheduled reports as well as replies to the Committee of Experts' observations. Nevertheless, reports under the Night Work of Young Persons (Industry) Convention, 1919 (No. 6), the Labour Inspection Convention, 1947 (No. 81), the Equal Remuneration Convention, 1951 (No. 100), the Abolition of Forced Labour Convention, 1957 (No. 105), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), had already been sent electronically and there were doubtless technical reasons why the ILO had not received them. The Government had undertaken to provide new copies by the end of the Conference at the latest.

A Government representative of Nigeria stated that two factors were responsible for his Government's failure to submit first reports on the Conventions cited in paragraph 31 of the General Report. Firstly, the desk officers in the newly created National Maritime Administration and Safety Agency (NAMASA) lacked the capacity to report on the Maritime Labour Convention. Secondly, the Department of Policy Analysis, Research and Statistics (PARS) of the Federal Ministry of Labour had just assumed responsibility for the submission of all reports under articles 19 and 22 of the ILO Constitution; there had been no reporting delays while this responsibility laid with the Trade Union Services and Industrial Relations Department. He stated that technical assistance from the Office would be required to permit the newly posted desk officers to report on Conventions Nos 137, 178 and 179, and that the Government would be submitting a request for such assistance in due time.

As concerned the failure to submit the replies requested by the Committee of Experts, the Trade Union Services Department mentioned above had indeed supplied reports on a reasonable number of the Conventions cited in paragraph 35 of the General Report; reports on three Conventions were outstanding, and they would soon be submitted by the PARS Department. He indicated that the Government's reporting obligations would systematically be fulfilled once the capacity of the responsible officers had been sufficiently developed, and reiterated the need for the technical assistance of the Office.

A Government representative of Uganda stated that a report had, in fact, been submitted on Convention No. 162. As reporting on Conventions required that information be obtained from several line ministries, there was a great

need for support to establish a mechanism to coordinate the inputs of the various ministries. Nevertheless, the Government would submit and finalize the reports requested for the present year in a timely manner.

A Government representative of the Democratic Republic of the Congo expressed his bitterness at having to justify the difficulties met in the communication of reports. Organizational difficulties existed due to the fact that ILO documents belatedly reached the Ministry of Labour because they first passed through the Ministry of Foreign Affairs. As for the elaboration of reports, the lack of sufficient trained staff prevented the reports from being provided on time. In this regard, the ILO should set up a tripartite programme to strengthen human resource capacities to ensure the timely preparation of these reports. As for failing to supply replies to the comments of the Committee of Experts, notably last year, some elements of reply were provided. Finally, as for reports on Conventions that were not ratified, five reports were provided last year, and the Government committed itself to supplying all overdue reports before the end of this Conference session.

A Government representative of the United Kingdom stated that his previous comments concerning paragraph 25 applied equally to paragraph 35 of the General Report.

A Government representative of Saint Kitts and Nevis stated that this was the first time his Government had participated in the International Labour Conference since gaining membership in 1996. The Government fully subscribed to the ILO's principles and values, and as such had ratified all eight core Conventions as well as one priority Convention. He expressed regret for the Government's failure to fulfil its constitutional reporting obligations in a timely fashion. This delay was due not to a lack of interest on the Government's part but rather to the limited resources at its disposal, which posed a considerable challenge to its ability to discharge its reporting duties fully. He assured the Committee that the processes necessary to address this matter had been initiated, and that the reports requested for the present year would be duly delivered. He indicated that the Government intended to request technical assistance from the Office to aid it in its reporting obligations, and concluded by affirming his Government's commitment to tripartism and the values upheld by the ILO.

A Government representative of Zambia acknowledged his Government's failure to submit the replies requested by the Committee of Experts. He explained that the Ministry of Labour and Social Security had undergone restructuring during the period 2003–06 in order to permit the Department of Labour to address effectively the emerging challenges related to labour administration. Further to this restructuring process, new staff had been hired who lacked sufficient knowledge of and training on ILO reporting procedures. He assured the Committee that measures would soon be taken to ensure the submission of reports to the Committee of Experts in a timely manner.

The Committee took note of the information provided and of the explanations given by the Government representatives who had taken the floor. The Committee underlined the vital importance, to permit ongoing dialogue, of clear and complete information in response to observations of the Committee of Experts. It recalled that this was one element of the constitutional obligation to supply reports. In this respect, the Committee expressed serious concern at the large number of cases of failure to supply information in response to the observations of the Committee of Experts. The Committee recalled that Governments could request technical assistance from the Office to overcome any difficulty that might occur in responding to the observations of the Committee of Experts.

The Committee requested the Governments of Afghanistan, Antigua and Barbuda, Barbados, Belize, Bolivia, Cambodia, Cape Verde, Chad, Congo, the Democratic Republic of Congo, Equatorial Guinea, Ethiopia, France (Réunion, French Southern and Antarctic Territories), Gambia, Guinea, Guinea-Bissau, Guyana, Haiti, Iraq, Ireland, Jamaica, Kyrgyzstan, Lesotho, Liberia, Malaysia (Sabah), Mali, Mongolia, Nigeria, Pakistan, Saint Kitts and Nevis, Seychelles, Sierra Leone, Sudan, Solomon Islands, Tajikistan, Togo, Uganda, United Kingdom (Anguilla, Bermuda, British Virgin Islands, Gibraltar, Montserrat and St Helena) and Zambia, to make all efforts to transmit as soon as possible the required information. The Committee decided to note these cases in the corresponding paragraph in the General Report.

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

Armenia. Since the meeting of the Committee of Experts, the Government has sent the first reports on Conventions Nos 111 and 176.

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

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

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

Equatorial Guinea. Since the meeting of the Committee of Experts, the Government has sent one of the reports due concerning the application of ratified Conventions.

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

France (French Guiana). Since the meeting of the Committee of Experts, the Government has sent replies to most of the Committee's comments.

France (Guadeloupe). Since the meeting of the Committee of Experts, the Government has sent replies to most of the Committee's comments.

France (Martinique). Since the meeting of the Committee of Experts, the Government has sent replies to most of the Committee's comments.

France (St Pierre and Miquelon). Since the meeting of the Committee of Experts, the Government has sent replies to most of the Committee's comments.

Gambia. Since the meeting of the Committee of Experts, the Government has sent the first report on the application of Convention No. 29.

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

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

Liberia. Since the meeting of the Committee of Experts, the Government has sent some of the reports due concerning the application of ratified Conventions.

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

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

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

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

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

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

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

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

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

B. Observations and information on the application of Conventions

Convention No. 29: Forced Labour, 1930

INDIA (ratification: 1954)

A Government representative said that the commitment of his Government to eradicate the bonded labour system was evident from its ratification of the Convention in 1954 and the enactment of the Bonded Labour Abolition System Ordinance in 1975 and the adoption of the Bonded Labour System (Abolition) Act in 1976 (BLSA). Institutional mechanisms had been established for the identification and rehabilitation of bonded labour and for the punishment of offenders. There had also been much action in practice, with the identification of 287,555 bonded labourers and the rehabilitation of 267,593 of them, as well as measures to provide employment opportunities which prevented people from falling into bondage. In recognition that bondage tended to occur primarily due to economic deprivation, various schemes had been introduced, such as the National Rural Guarantee Scheme, which guaranteed 100 days' employment a year. As a result of these schemes wages had risen and there was less migration.

He expressed reservations about certain estimates of the numbers of bonded labour made by some agencies and recalled that the definition of bonded labourers needed to meet the characteristics set out in the ILO Global Report on the subject, which indicated that forced labour could not be equated simply with low wages or poor working conditions. Nor did it cover situations of pure economic necessity such as where a worker felt unable to leave a job because of the real or perceived absence of employment alternatives. The ILO definition of forced labour comprised two basic elements: the work or service was exacted under the menace of a penalty and was undertaken involuntarily. He noted that the Committee of Experts had questioned the adequacy of the penalties imposed and explained that exoneration was only granted when there was a lack of appropriate proof of forced labour as determined by the independent judicial authorities. There had been numerous cases in which a person had been identified as a bonded labourer and rehabilitated, but in which the employer had been acquitted because bondage had not been clearly established. However, unnecessary focus on these cases would tend to divert attention from real cases of bonded labour.

With regard to the recommendation of the Committee of Experts that a large-scale national survey on bonded labour be undertaken as a matter of priority, he recalled that the identification of bonded labour was a sensitive issue and that the approach adopted needed to be humane and unconventional. Information had to be collected by interviewing the affected persons indirectly about the nature of the exploitation and their conditions of service. Only then could it be determined whether they fell into the category of bonded labour. There was a practice under which contractors paid workers in advance for a specific task and this had incorrectly been branded as bonded labour. He added that it was the responsibility of the States to address these problems. In order to assist them, the central Government provided grants to States to conduct district surveys of bonded labour and to carry out awareness-raising activities. As a large number of surveys had been conducted by state governments, it was not considered necessary to conduct a national survey throughout the country.

In relation to the comments of the Committee of Experts concerning Vigilance Committees, he noted that all state governments had constituted Vigilance Committees

at district and subdivision levels and that these committees were meeting regularly.

In reply to the request by the Committee of Experts for information on the number of bonded labour complaints lodged with village institutions, he recalled that the Government's main priority was the identification, release and rehabilitation of bonded labour. Nevertheless, 5,893 cases of prosecution and 1,289 convictions had been reported by the states so far under the Bonded Labour System (Abolition) Act. These figures needed to be understood in the context of the socio-cultural environment in which the whole system operated. The informal grievance redressal mechanism in villages also acted as a dispute resolution mechanism, although records were not kept of such conciliation cases. He added that the incidence of bonded labour was declining and that awareness-raising workshops were being organized in the states by the National Human Rights Commission (NHRC) in collaboration with the Ministry of Labour and Employment.

With reference to the request by the Committee of Experts for further information on the release and rehabilitation of bonded labourers and the upgrading of the skills of freed bonded labourers, he indicated that the NHRC had been involved in overseeing and reviewing the implementation of the Bonded Labour System (Abolition) Act, 1976, and the centrally sponsored scheme for the rehabilitation of bonded labourers. The NHRC had appointed special rapporteurs to visit districts and ascertain the situation at the local level. The follow-up action taken on their reports and the awareness-raising workshops held showed the deep commitment to eliminating the menace of the bonded labour system. Moreover, a special group had been established to monitor the implementation of these measures and he provided details of its meetings in all regions and States between 2004–08. Detailed guidelines had been issued to state governments and they had been advised to integrate the centrally sponsored scheme with other ongoing poverty alleviation schemes with a view to pooling resources for the meaningful rehabilitation of bonded labourers.

With regard to the application and enforcement of the prohibitions established under the Child Labour (Prohibition and Regulation) Act, 1986, he provided information on the prohibition on child labour imposed in October 2006 on employment and domestic service in hotels, motels, restaurants, roadside eateries and recreational centres. The state governments had been given advice on the appropriate measures to take and the Ministry had undertaken an intensive awareness-raising campaign through the national and regional media. The action plans prepared by state governments had been discussed in regional conferences and meetings. The States had been urged to give due publicity to the prohibition and instructions had been issued requiring government employees to refrain from the employment of children as domestic servants. A special commemorative stamp on child labour had been issued in December 2006 and a nationwide enforcement drive against child labour had been launched in November 2007. Statistics on the implementation of the prohibition had been supplied to the Office.

In reply to the request of the Committee of Experts for information on the sanctions or sentences imposed, he indicated that the necessary information had been submitted to the Office and showed the declining trend of instances of child labour in each State. In response to the request by the Committee of Experts for updated and detailed information on the implementation of the National Child Labour Projects (NCLPs) scheme, he noted that the information provided to the Office illustrated the successful implementation of the scheme in all 20 States in terms

of the rehabilitation of child labourers withdrawn from various industries. A recent evaluation of the scheme had been conducted through independent agencies and the final report was under preparation.

The speaker added that certain amendments were proposed in the Immoral Trafficking (Prevention) Act 2006, with a view to broadening the scope of the original 1956 Act and focussing on traffickers, preventing the re-victimization of victims and improving its implementation. The major amendments included increasing the age of children (minors) from 16 to 18 years and the deletion of provisions calling for the punishment and removal of prostitutes, in recognition that women and children involved in prostitution were often victims of trafficking and that their penalization would traumatize them even further. Other amendments included the introduction of new sections defining the offence of "trafficking in persons" in accordance with the relevant United Nations instruments and the punishment of persons involved in trafficking, as well as those who visited or established a brothel for the purposes of sexual exploitation. It was further proposed to establish a central authority to combat trafficking in persons at the central and state levels. He further noted that a comprehensive scheme for the prevention of trafficking and the rescue, rehabilitation and reintegration of the victims of trafficking and commercial sexual exploitation had been launched in December 2007. The scheme consisted of prevention, rescue, rehabilitation, reintegration and repatriation measures. In addition, the Ministry of Women and Child Development had established a Central Advisory Committee composed of representatives of a broad cross-section of ministries and state governments, as well as NGOs, police organizations and international organizations. Some of the senior police officers in states where the problem was recognized as being acute were also being associated with the Advisory Committee. In its recent meetings, the Committee had identified the priority areas for action and had drawn up guidelines for use by all stakeholders.

The Employer members thanked the Government representative for his submission. The case had been considered by the Conference Committee on nine occasions since 1989 and even more frequently by the Committee of Experts. While noting the concerns expressed by the Government regarding the validity of the statistics provided by NGOs and mentioned in the Committee of Experts' report, the statistics supplied by the Government in its 2006 report demonstrated that cases of bonded or forced labour continued to exist. Despite the possible difficulties in compiling the relevant data, it remained crucial to have accurate information on the magnitude of the practice of bonded labour. The Government should therefore collect and compile accurate data on the existence of forced labour in India.

There had been a number of positive developments, including the existence of vigilance committees (VCs). In view of the shortcomings observed in this context by the Committee of Experts, the Employer members requested the Government to address the issue of the functioning of the VCs in its next report, in keeping with their mandate under the Bonded Labour System (Abolition) Act, 1976.

As to the enforcement of sanctions, the Employer members, mindful of Article 25 of the Convention and recalling the need for the judiciary to ensure enforcement of legislation prohibiting forced labour, encouraged the Government to provide detailed information regarding the prosecution of forced labour cases.

With respect to child labour, statistics showed that, regrettably, the situation did not appear to have improved. The detection of violations and initiation of prosecutions had declined in 2004–05, whereas statistics indicated an increase in incidents of child labour. The Government should provide information, in its next report, on the nature of sanctions or penalties imposed in case of convic-

tions pursuant to current legislation concerning work of children in hazardous occupations. The Employer members also encouraged the Government to address the recent decline in the detection of violations and initiation of prosecutions.

In view of the positive developments relating to the National Child Labour Project of the Ministry of Labour and Employment, the Government should continue providing detailed information on that initiative. The Employer members further noted a number of positive legislative efforts of the Government, including the amendment of the Child Labour (Prohibition and Regulation) Act, 1986 in 2006, the enactment of the Commissions for Protection of Child Rights Act 2005 (CPCRA), the draft Offences against Children Bill, 2006 (DOCB) and the Immoral Trafficking (Prevention) Amendment Bill 2006. The Government should provide information regarding the application of the provisions of the CPCRA, as they related to the trafficking of children for the purpose of commercial exploitation or prostitution. Furthermore, the Government should also supply, in its next report, additional information as to the enactment of the DOCB and the Immoral Trafficking (Prevention) Amendment Bill, as well as detailed information concerning other measures addressing trafficking and sexual exploitation of children.

The Worker members pointed out that this was the ninth time that the Conference Committee was examining the case of bonded and forced labour in India. Little progress had been made. The statistics provided by the Government were lower than those reported by other institutions and NGOs which estimated the number of persons living under conditions of slavery to range from 20 to 65 million. The Ghandi Peace Foundation and the National Labour Institute had mentioned some 2.6 million people working in bonded labour in agriculture alone while bonded and forced labour was prevalent in other sectors, including the brick kiln and stone quarry industry, silk and cotton production, domestic work and carpet and fire-cracker industries.

The Worker members considered that the Government was underestimating the problem, which could not be addressed without accurate knowledge of its extent and complexities. They therefore supported the Committee of Experts' request for a national survey on bonded labour to be carried out as a matter of priority. The federal Government's delegating the responsibility for data collection to the States was not appropriate, as States were not equipped for and did not give priority to such an activity. This was evidenced by the ILO evaluation of the Prevention and Elimination of Bonded Labour in South Asia project which had provided assistance to state governments to conduct surveys of bonded labour in 120 districts. Many States had not used the scheme. Owing to the lack of resources allocated to do surveys and lack of initiative by the States, bonded labour was considered not to exist.

Furthermore, new forms of bonded labour linked to the globalized economy were emerging, which had to be addressed at the central level as they occurred across States. In addition to the traditional debt bondage which was the result of feudal-like labour relationships, hundreds of thousands of workers, in particular girls, were being added to the number of workers under bonded labour. According to the National Commission for Protection of Child Rights, children were being trafficked from Rajasthan to Gujarat to work 12-hour days on hybrid cotton seed farms under hazardous conditions and exposed to pesticides. This type of work was linked to modern globalized production chains to provide garments sold in the international garment market. Child workers as young as 10 years old were reported by *The Observer* on 28 October 2007 to have been found working under near slavery conditions to produce clothes for a well-known clothing company. The ILO Subregional Office for South Asia had

found that globalization had contributed to the rise in forced labour, and trafficking in particular, and estimated that private contractors and traffickers earned about US\$9.7 billion.

The Worker members welcomed the Government's decision to conduct a nationwide survey to estimate child labour and emphasized that such a survey should cover all aspects of labour exploitation relevant to the Convention, including bonded labour. They also recommended that data on bonded labour and child bonded labour be included in the 2011 national census. Trade unions and NGOs should be involved in collecting data and identifying sectors and areas where bonded labour was prevalent.

India had been the first country to enact legislation against bonded labour with the Bonded Labour System (Abolition) Act of 1976, which imposed penalties for offenders. Its strict implementation would be instrumental in addressing the problem and in preventing children from being forced to work in exchange for monetary advancements to their parents. The report of the Committee of Experts indicated, however, that the vigilance committees were not effective as instruments to implement the Bonded Labour System (Abolition) Act. The Worker members therefore supported the strengthening of the vigilance committees and suggested that other institutions might be needed in their place. Local panchayats had been effective in Andhra Pradesh in releasing children from bonded labour and rehabilitating them in the educational system.

The Worker members wished to draw attention to the experience of Brazil where the Government was using multidisciplinary teams, including police, public prosecutors, social workers, trade unions and NGOs, to identify and liberate victims of bonded labour. They suggested an exchange of good practice, including effective sanctions, between the Governments of India and Brazil, facilitated by the ILO. Publishing a list of employers using bonded labour had proved effective in Brazil, while the fines imposed in India appeared too low to be truly dissuasive.

The Worker members supported the Committee of Experts' request to the Government to address the serious deficiencies in enforcing sanctions under the Bonded Labour System (Abolition) Act and recommended that data on sanctions imposed be published for each State. More training and awareness-raising of law enforcement officials and members of the judiciary were needed in cooperation with the National Human Rights Commission. Widespread publicity campaigns, with the involvement of trade unions, NGOs and employer organizations, exposing bonded and forced labour as a serious crime could help change social acceptance of the phenomenon and increase reporting of cases of bonded labour. Unions were also instrumental in linking released bonded labourers to social welfare schemes.

The Worker members welcomed the efforts made by the Government to reduce the number of children working in forced labour and the decision to extend the scope of the Child Labour (Prohibition and Regulation) Act, 1986, in order to include more occupations. They emphasized, however, that the Act needed more effective implementation, and that better facilities for rehabilitation were also required. The IPEC project which was initiated in 1992 and which was being implemented in 20 districts of four States and in the Central Capital Territory, as well as the Government's five-year plan (2008–13) to expand the national child labour projects to all districts in the country were welcomed. The Worker members reiterated their concern, however, about the slow progress made and the new forms of child labour that were not being sufficiently addressed.

India was a source, destination and transit country for trafficking of persons for purposes of forced labour and, in particular, for the sexual exploitation of women and girls. The Ministry of Home Affairs estimated that 90 per

cent of such sex trafficking was internal and estimates of the number of victims varied greatly. An estimated 15 per cent of prostitutes were children and tens of thousands of women and girls were trafficked from neighbouring countries.

In conclusion, the Worker members once again emphasized the extent and seriousness of the violation of Convention No. 29. Instead of going away as a result of economic growth, the problem of forced labour was getting worse as old and new forms of bonded labour were becoming integrated in the global production chains and international trade. The Government was urged to strengthen and accelerate the implementation of the legislation in place and put new innovative mechanisms into action to eliminate bonded and forced labour with the utmost priority.

The Worker member of India recalled that forced labour was a consequence of feudalism. India had been under imperialist rule which encouraged and maintained bonded labour for economic and political interests. Convention No. 29 was adopted in 1930 but the British authorities had not applied the Convention in India. It was only after independence that the national Government ratified the Convention in 1954. Furthermore, the law prohibiting forced labour was only enacted in 1976.

In this era of globalization, the rich were getting richer and the poor were getting poorer. Some 400 million workers were not covered by social security schemes. Many of these workers lived below the poverty line. Their jobs were never secured. Poverty had reached such an extent that the workers sometimes exposed themselves to debt traps. In some of the poorer States of the country, poverty also resulted in trafficking of women and children and, with the complicity of major companies in both sending and receiving countries, trafficking had become a growing business all over the world.

The trade union movement was aware of the problem and was opposed to such practices. The unions acknowledged the efforts of the Government to eradicate bonded labour and urged the Government to take all possible steps to severely punish the offenders and to rehabilitate the victims. The Government should set up a tripartite meeting on the issues of bonded labour and trafficking of women and children at the central level to discuss in depth the magnitude of the problem and the steps to be taken in the present circumstances.

The Employer member of India indicated that bonded labour was a sensitive issue, hence, no credible survey could be done on the basis of assumptions. As bonded labour was often hidden and found in the informal sector, it was difficult to detect it by a mere headcount. No survey was therefore possible. Some of the statistics provided by NGOs were questionable. However, India had a highly developed census system which was transparent and reliable. As per the definition of forced labour, work performed in brick kilns and agriculture was in fact not forced labour within the meaning of the Convention. This matter would need further examination. The employers in India had adopted a code of practice to address child labour and all employers had been asked to apply it. Many employers were also involved in rehabilitation measures, including in the informal sector, and participated in tripartite mechanisms to address child and forced labour.

The Government representative of India reiterated that the size of the country and its plurality in terms of social and cultural conditions had to be taken into account when assessing efforts regarding the application of the Convention. Whereas the Indian census was a permanent operation producing regular and comprehensive statistical data, it might be possible to complement it, as and when appropriate, with sample surveys on specific issues, such as bonded labour. Sample surveys were a highly scientific task which required appropriate manpower.

Despite the census data showing an increase of child labour between 1991 and 2001, child labour had actually declined, if the population growth that occurred during the period was taken into account. As regards the capacity of the States to establish statistical data, he reassured the Committee that appropriate structures were in place in the States, at the district level. Likewise, local institutions were increasingly efficient in addressing bonded labour. Additional statistical information on prosecutions would be provided to the ILO. The traditional system of money-lending had almost entirely disappeared due to the development of modern financial services. The elimination of child labour required holistic approaches, including awareness-raising. The support of the ILO in this respect was appreciated. His Government also considered employment creation, skills upgrading and universal health care as crucial in addressing the root causes of child labour. Vigilance concerning new forms of forced labour was required from all countries, not only India.

The Worker members noted that it was impossible to exactly determine the extent of bonded labour, due to the fact that such determination would be based on partial data extracted from local studies or information given by state governments. The Conference Committee should therefore support the view expressed by the Committee of Experts on the need for a large-scale national survey on bonded labour based on valid and appropriate statistical methods. Such a study would be the basis for a national strategy towards a better implementation of the legislation at all levels.

While recognizing the conformity of Indian legislation with provisions of Convention No. 29, the Worker members hoped for a strategy towards the effective enforcement of this legislation so that the law did not become a dead letter. They further stressed that this strategy, which should include information and awareness-raising campaigns, needed a real commitment on the part of local authorities, workers' organizations and NGOs, under an effective central coordination. Furthermore, the country's geographical size should not be considered as a justification for excluding a proactive approach covering the whole country.

The Worker members, referring to the experience of the Government of Brazil, supported the idea of encouraging the good practice exchange among countries having the same problems regarding the application of international conventions on forced labour. Moreover, they stressed the importance of ensuring the good functioning of the justice system with regard to cases of forced labour, as well as the application of sufficiently effective and dissuasive penalties in order to deter forced labour.

They encouraged the Government to request ILO technical assistance when elaborating and implementing such an integrated strategy. Moreover, the Government should commit to submit a detailed report on the progress achieved and the strategy's impact, including information and awareness-raising campaigns on the fight against forced labour at all levels and in all regions of the country.

The Employer members thanked the Government for the information provided and acknowledged that the problems of forced labour were connected to the existence of poverty. They welcomed the measures taken by the Government in the areas of skills development and health care. Nevertheless, India being the world's largest democracy and given the Government's commitment to transparency on the extent of the problem, they urged the Government to collect and compile appropriate national statistics. Noting the Government's indication of the possibility to complement the existing census data with more specific surveys, the Employer members urged the Government to follow up on this matter. In conclusion, they reminded the Government of the importance of Convention No. 29 and urged it to intensify its efforts to eliminate the use of

forced labour and to report on the results achieved in this regard.

Conclusions

The Committee took note of the detailed information supplied by the Government representative and of the discussion which followed. The Committee welcomed the positive measures taken by the Government and the Government's commitment to address the problem of bonded labour in the country. It noted, in particular, the information on the application in practice of the release and rehabilitation policies and programmes, including the Centrally Sponsored Scheme for the rehabilitation of bonded labour, the Government's efforts to improve the effectiveness of the vigilance committees, as well as statistical information concerning the release and rehabilitation of bonded labourers obtained from the government-funded district level surveys. The Committee also noted the information on cases of prosecutions under the Bonded Labour System (Abolition) Act, 1976, as well as the Government's statement that the incidence of bonded labour was declining.

However, while noting the positive steps taken by the Government to combat bonded labour, the Committee once again expressed concern about the disparity of statistics over the years and the Government's unwillingness to conduct a National Survey on bonded labour throughout the country. It urged the Government once again to undertake a comprehensive national survey using an appropriate statistical methodology and other data collection methods, in order to better identify the magnitude of the problem. Such a survey should involve employers' and workers' organizations as well as NGOs in the collection of data and the identification of sectors and areas where bonded labour was prevalent.

The Committee noted with regret that more than 30 years after the adoption of the Bonded Labour System (Abolition) Act, 1976, in spite of the efforts made, bonded labour had not yet been eradicated in practice and new forms of bonded labour were emerging. The progress made towards full compliance with the Convention were insufficient, despite repeated comments by the Committee of Experts and numerous discussions of the case in this Committee.

The Committee shared the Committee of Experts concern about the serious and ongoing deficiencies in law enforcement including shortcomings of the vigilance committees, low prosecution rate and insufficiently dissuasive penalties.

The Committee noted the Government's efforts to eliminate child labour falling under the Convention, i.e. labour performed in the conditions which were sufficiently hazardous or arduous so that the work concerned could not be considered voluntary. The Committee welcomed the planned extension to cover all districts in India of the National Child Labour Project for the rehabilitation of children working in hazardous industries. It took note of the measures under the National Plan of Action to combat trafficking and commercial sexual exploitation of women and children. The Committee also welcomed the measures taken by the Government in order to reinforce legislation, such as the elaboration of the draft Offences against Children Bill and the Immoral Trafficking (Prevention) Amendment Bill, which sought to improve deficiencies of the Penal Code by specifically including the offence of sexual exploitation and trafficking of children as well as providing for corresponding sanctions. The Committee also noted the information about a new Central Scheme – "Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation and Reintegration of Victims of Trafficking and Commercial Sexual Exploitation" – launched in December 2007, as well as the establishment of the Central Advisory Committee in the Ministry of Women and Child Development.

While acknowledging the recent initiatives of the Government, the Committee urged the Government to pursue its efforts with added vigour in order to eradicate bonded la-

bour throughout the country and to combat child labour under the Convention. The Committee drew the Government's attention to the urgent need to reinforce the effectiveness of the vigilance committees or other appropriate mechanisms. It should also take action to increase the impact of awareness-raising measures as regards both traditional forms and the new forms of forced and bonded labour, including those connected with trafficking in persons. The Committee pointed out that developing and reinforcing the legislative provisions and strengthening the law enforcement mechanism were vital, along with measures of a socio-economic character, for the effective eradication of forced or bonded labour and child labour. The Committee requested the Government to submit a report for the 2009 session of the Committee of Experts which should contain comprehensive information on the actions taken at the national, state and local levels, including legislative developments, reliable statistics on forced or bonded labour, information on prosecutions and penalties imposed, and on the progress achieved on the eradication of forced or bonded labour. The Committee expressed the firm hope that the full application of this fundamental Convention would be ensured, both in law and in practice. It proposed that the Government might wish to avail itself of the technical assistance of the Office.

The Government representative of India stated that although his Government took note of the conclusions arrived at by the Committee and would act on the most positive suggestions contained therein, one of the aspects of the conclusions was a matter of concern for his Government, namely the request to carry out a comprehensive national survey on bonded labour. As already mentioned in his opening remarks, the conduct of such a survey was not possible in a vast and diverse country such as India. The incidence of bonded labour was not spread throughout the whole country and was confined to a few isolated pockets. Due to resource constraints, surveys on this issue were limited to the specific States concerned and the Government took all necessary measures to facilitate the conduct of such surveys notably through the provision of funds. The Government would ensure that new state-oriented surveys would be conducted and that NGOs, employers and employees would be fully consulted in the process. On the contrary, the Government did not feel that it was necessary to carry out a national survey throughout the whole country. The speaker requested the Committee to appreciate this point.

MYANMAR (ratification: 1955)

See Part Three.

PARAGUAY (ratification: 1967)

A Government representative said that his Government accorded particular importance to the Conventions of the ILO, and therefore took the matter very seriously and was addressing it through tripartite dialogue, with interesting joint efforts being made. In that regard, he said that, with the technical cooperation of the ILO and of the Declaration Programme, in September 2007 a tripartite seminar on fundamental rights at work and forced labour had been held, at which it had been decided to establish a commission to address the issue, to be known as the Commission on Fundamental Rights at Work and the Prevention of Forced Labour, and to ask every institution and trade union to designate representatives to serve on the Commission by formal letter. It had also been agreed that a suitable number of representatives would be six titular members and their substitutes for each sector (employers, workers, State), while still allowing for the possibility of asking experts to work alongside the Commission and that, once the respective nominations had been received, the formal establishment of the Commission by decree of the executive authorities would be requested to give it

legal force with a view to eradicating forced labour. Last, it was agreed that, once established, the Commission would be given 60 days from the date of its creation to draw up a plan of action on the issue. Information would be provided in that regard in September 2008.

In October 2007, letters had been sent to all public institutions and to the main employers' and workers' federations, requesting them to nominate their respective representatives to the Commission, and nominations had been received from various public institutions and organizations. However, some of them had not yet nominated their representatives. It was the Government's intention that this Commission, with its tripartite structure, should be established as soon as possible so that progress could be made on the seminar's other conclusions, and to that end it had undertaken to send letters reiterating its requests regarding the creation of the Commission.

He recalled that his country had ratified Convention No. 29 on 28 August 1967 and had been bringing its national law and practice into line with the Convention, as could be seen from the reports of the Committee of Experts. He also reported that, in April 2008, a training day had been held with representatives of the Office of the Public Prosecutor (judges for children and adolescents, labour and criminal matters) and among its conclusions had emerged the proposal that other training activities and seminars should be held, and that progress should be made on joint and coordinated activities between the Ministry of Justice and Labour and the Office of the Public Prosecutor, in which respect he requested ILO cooperation.

He added that he had recently travelled to the Chaco region to verify the situation of the regional office there. On that occasion, he had contacted the highest municipal authorities, with whom he had agreed to nominate local people to head and staff the labour department in the area, so as to avoid uprooting people from elsewhere. The Government had promised to nominate persons covered by the budget of the Ministry of Justice and Labour and to collaborate in their training. To that end, he requested technical assistance from the ILO to ensure proper training for those who would fill posts in the regional office. He referred to the characteristics of the indigenous population and the repercussions of forced labour on that population category.

Last, he emphasized that his country was making efforts to address the situation that it faced today. He recognized that a problem of application of the Convention existed and said that the Government wished to promote tripartite initiatives in order to resolve the issues that had arisen, and in that regard he hoped for collaboration from employers and workers, as well as with international technical cooperation.

The Employer members thanked the Government representative for his presentation. In overall terms, they considered that the case was being treated too lightly by both the Government and the Committee of Experts. The situation involved debt bondage and was based on poverty. As the Government representative had indicated, the problem was wider than just affecting the indigenous peoples. When recalling the discussion on the application of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), it might appear that the problem affected a small percentage of the population. But it should be recalled that the informal economy accounted for around 60 per cent of the total economy. The problems identified by the Committee of Experts, including the payment of wages below the legal minimum, the charging of excessive prices for food products, the total or partial payment of wages in kind, were not just problems affecting indigenous communities in the Chaco, but were more widespread. The Government representative had referred to the meeting involving the United Nations and the ILO's Special Action Programme to combat forced labour and to

training measures and tripartite consultation. However, the Employer members emphasized the need for greater urgency. The Government representative had mentioned ILO technical cooperation. Once again, much more was needed. An urgent ILO mission should be carried out to identify an overall strategy. They welcomed the Government's commitment to encourage tripartite involvement in the action to be taken. However, there was a political problem in this respect as a new government would be taking office in August. Rapid measures needed to be taken to ensure that the problems under examination were given priority by the new Government. Rather than tactics, what was required was a fully-fledged strategy with the full support of the new Government and the social partners.

The Worker members indicated that the Committee was examining the case of Paraguay in relation to Convention No. 29, but it could also have examined the application of Conventions Nos 87, 111, 169 or 182.

The situation of rural workers was very serious. On one hand, they were forced to leave their lands, which were requisitioned by large landowners or multinational enterprises, for example for intensive soy bean production. Small farmers therefore faced unemployment and lived in poverty or were confronted by problems such as crime, violence and lack of schooling. On the other hand, they were maintained in situations of servitude and debt bondage, which were common among the indigenous communities of large farms in the Chaco region.

Since 1997, the Committee of Experts had been commenting on these situations of debt bondage in the country, which were amply documented in an ILO report in 2005, undertaken in the context of technical cooperation, and the reports of the NGO Anti-Slavery International in 2006.

Bonded labour took different forms in Paraguay. Workers received wages lower than the legal minimum, that is a symbolic wage. Sometimes they did not receive any wages. Women received even less than men. Moreover, wages were often paid three or four months after the work. The workers therefore found themselves under the obligation to make purchases at the shops in the plantations for which they worked, where the prices were excessively high. Wages were also often paid in kind or in the form of other basic goods, such as soap or candles. These products were very expensive and of low quality. The combination of very low wages, excessive prices and the payment of wages in kind resulted in the workers becoming indebted, forcing them to stay and work in plantations, just like their families, whose children received no education. The long working hours, infrequent holidays, restrictions on leaving the plantation and high illiteracy rates greatly reduced the alternatives available to them.

According to the ILO's 2005 report, the number of persons in situations of bonded labour was estimated at 8,000. The Government was responsible for these situations. The Labour Code provided that agreements were void if they set wages lower than the legal minimum rate and resulted in the direct or indirect obligation to purchase consumer goods in stores or places designated by the employer. The Labour Code also provided that up to 30 per cent of wages could be paid in kind and that the prices of the articles sold had to correspond to those in the village closest to the establishment.

In March 2005, the Ministry of Justice and Labour had organized three separate seminars with employers, unions and the labour inspection services. Following these seminars, the Government had undertaken to publish the ILO's report in Guaraní and to establish a labour inspection office in the Chaco region. However, the translation and publication of the report had not yet been carried out, and two labour inspectors had resigned six months after their appointment in view of the lack of support from the capital.

In September 2007, following a tripartite seminar, it had been decided to create a tripartite committee on fundamental principles of work and on the prevention of forced labour. Once established, the committee was to have had 60 days to develop an action plan. The committee had never been created, nor had the inter-agency and multi-sectoral committee responsible for following up the matter. More recently, the situation had deteriorated. On 24 May, Eloy Villalba, a leader of the farmers' trade union movement, had been killed at his house, in front of his children, for having dared to promote agrarian reform and denounce the corruption of certain politicians. These incidents of violence against trade unionists were illustrative of the situation in Paraguay.

A Worker member of Paraguay thanked the Committee for examining the case, which was of great importance for the entire trade union movement in his country. The scourge of forced labour needed to be eradicated not only in his country, but throughout the world. In Paraguay, many indigenous communities lived in the countryside without owning land and were forced to survive on small tracts of arid land, near highways and roads. Many of the members of such communities lacked the essentials for survival. When they worked on neighbouring farms they were exploited, and were frequently not paid wages and subjected to inhumane treatment. Those who migrated to the cities were forced to resort to begging and prostitution. He reiterated that forced labour existed in his country, and its main victims were indigenous persons and children living in various areas of the country, working in the manufacture of bricks, tiles and other products. There were flagrant violations, not only of Convention No. 29, but also in particular of Conventions Nos 138 and 182, as well as the Labour Code. He expressed the hope that progress could be made with the technical cooperation of the ILO and the combined actions of the government authorities, parliament and a justice system that needed to regain its credibility through the due application of the law, without giving priority to the interests of the powerful.

It was fundamental to reinforce ILO technical assistance. He proposed that a stable tripartite commission be established, composed of representatives of the Government, employers and workers, to submit viable work programmes including information and awareness-raising campaigns on the ILO's fundamental Conventions.

Another Worker member of Paraguay, referring to the application of Convention No. 29 in Paraguay, said that the abuse to which aboriginal and indigenous communities, rural workers, transport workers, traders and others were subjected were violations of fundamental ILO Conventions Nos 182, 138, 87 and 98, as the children of indigenous and rural workers were forced to work from an early age, for example in lime quarries and brickworks in the Chaco region, and were not allowed to organize, in violation of Convention No. 98. Nor were there any collective agreements. They lived under extremely abusive conditions, as described in the song "*Vale moroti*", which meant "worthless credit", as the workers never received wages and were permanently in debt for their food. The writer Roa Bastos described what had been happening since the last century, referring to the life of the workers called "*mensu*", who were deceived into being hired to work on ranches of the Alto Paraná, never to return; anyone who succeeded in escaping alive was extremely fortunate.

Indigenous people were being forced to abandon their natural habitat and rural workers their settlements, threatened by pseudo-investors who were invading the land to grow soy beans, which produced great profit that did not remain in the country for development. They used toxic agro-chemicals in an indiscriminate manner, harming the environment. Even worse, however, they jeopardized the lives of fellow rural and indigenous workers. Several had already died and others were suffering from serious irre-

versible health problems. These toxic agro-chemicals were being distributed by the multinational Monsanto in an uncontrolled manner. He indicated that the Sexta Mon enterprise had purchased thousands of hectares of land in the Chaco community of Puerto Casado, including its inhabitants, who continued to be subjected to all manner of abuse with the complicity of the authorities that were currently in office. Indigenous and rural families who left their lands arrived lost and ill-treated in large cities and ended up in alcoholism, drug addiction and prostitution, abandoned by the State.

In a country such as Paraguay, with a surface area of 406,752 square kilometres, it was difficult to understand or explain why over 300,000 indigenous and rural families had no access to a small piece of land on which they could live and work in peace with their families. There were currently over 2,000 women and men who were being prosecuted for their involvement in efforts to demand a comprehensive agrarian reform, and over 100 had died in the present transition period, which had already lasted 19 years since the fall of the bloody dictatorship of General Alfredo Stroessner. On 24 May last, Eloy Villalba, of the National Rural Workers' Organization (ONAC), an affiliate of the CNT, who supported the struggle of the rural workers and indigenous persons in their settlements, had been assassinated in his own home and in the presence of his family.

In the elections of 20 April, the Paraguayan people had expressed their rejection of corruption, impunity and human rights violations, when electing Mr Fernando Lugo as President, who would take office on 15 August. On 1 May, Mr Lugo, after having listened to the workers' demands, had indicated that during his Government he would give priority to comprehensive agrarian reform, education, health and the reactivation of production, so as to bring an end to exclusion, extreme poverty and forced migration. Mr Lugo had also said that the country was rich in natural resources and would be open to the international community for healthy and transparent investments so as to build a new Paraguay for everyone.

On behalf of the Coordination of Trade Unions of Paraguay, the member organizations of the Workers' Council of the Southern Cone region and the Coordination of Trade Unions of the Southern Cone region, together with the Trade Union Confederation for the Americas (CTUCA) and ITUC, he reaffirmed his country's commitment to the struggle to build a better world of peace and social justice. In conclusion, he requested the ILO to provide effective cooperation, support and technical advice in this new phase of his country's history beginning on 15 August.

The Worker member of Brazil, on behalf of MERCOSUR workers, said that over the last 18 years the Committee of Experts had made 12 comments on forced labour in Paraguay, particularly with reference to the indigenous population of the Chaco region. Regrettably, no progress had been made. On the contrary, forced labour had been spreading throughout the country and affected other sectors of the economy. The most common form of forced labour in Paraguay was debt bondage.

He indicated that the ILO was already providing technical assistance to the country, but that it was necessary to raise awareness of these problems among the population, and in particular among employers. As an example he referred to the statement broadcast by the director of the Rural Association of Paraguay, in which he had stated that, if money was given to indigenous peoples, the first thing they did was to get drunk, and that any woman of easy virtue could easily deprive them of their last cent, which was why they were normally paid in food and clothing. He called this comment racist, macho and pre-historic. He therefore emphasized that, in order to be able to combat forced labour, it was crucial to recognize its existence and to secure the commitment of the Govern-

ment and civil society, and particularly of employers. He considered the maintenance and renewal of ILO technical assistance to be essential.

He indicated that the President-elect appeared to be more committed to combating forced labour and that in this context it was important to follow up the recommendations of the Committee of Experts through social dialogue and agreements with the social partners. If given the opportunity, civil society could support this struggle against forced labour. The results of these activities, however, depended on the State, which was responsible for investigating, prosecuting and punishing the perpetrators of forced labour. To this end it was imperative to allocate resources to combat forced labour, providing the relevant departments with human, material and technical resources. In conclusion, he emphasized the need for social policies which focused on literacy campaigns and employment creation, since the root cause of slave labour was the immense poverty of a large portion of the Paraguayan population.

The Government representative of Paraguay said that he had taken note of all the interventions – some of them very critical – and that they would be taken into account in continuing work to eradicate forced labour. As he understood it, there was a consensus to continue working together with the social partners to help the new Government confront these problems. Last, he said he would transmit the observations and concerns expressed during the discussion to the authorities and expressed the hope that his country would continue to receive assistance from the ILO.

The Employer members thanked the Government representative, although they observed that his intervention made the problem seem very distant. Even the observation by the Committee of Experts appeared to take too narrow a view of the problem. In the view of the Employer members, the intervention by the Worker member of Paraguay gave an indication of the true extent of the problem, which affected the economy as a whole. The Employer members agreed that it was essential for the Government to submit a report to the Committee of Experts containing replies to the questions raised in its observations relating to the exaction of forced labour and section 39 of Act No. 210 of 1970 providing for compulsory work by detainees. They noted that the Government was willing to accept technical assistance from the ILO. However, in view of the question of timing with the arrival in office of the new Government, they believed that the Committee's conclusions should allow the Office sufficient discretion so that it could initiate technical assistance when it would be most effective and efficient.

The Worker members recalled the Government's share of responsibility for the persistence of situations of debt bondage. However, the ongoing important political transition in the country needed to be taken into account. Indeed, a democratic and progressive Government had been elected and the new President, Mr Fernando Lugo, would take office on 15 August 2008. Henceforth, the new Government would need to come to terms with the past and undertake to: adopt public policies with a view to eliminating existing illegalities; establishing supervisory mechanisms for the application of national legislation; establish an effective and useful partnership between the social partners; implement agrarian reform; create a Ministry of Labour and Social Security – rather than a Ministry of Justice and Labour – and, finally, accept ILO technical assistance.

Conclusions

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

The Committee took note that in its comments the Committee of Experts referred to the existence of bonded labour

practices in the indigenous communities of the Chaco and in other parts of the country which constituted a serious violation of the Convention.

With regard to the setting up of the Inspection Unit and the creation of the National Tripartite Committee on Fundamental Principles and Prevention of Forced Labour, the Committee observed that these were not functioning and no progress had been made by the action of these bodies.

The Committee took note of the Government's representative's statement that joint action between workers, employers and the Government was indispensable in finding a solution to the problem and that a new Government would be installed next August. The Committee also took note that, regarding the National Tripartite Committee on Fundamental Principles and Prevention of Forced Labour, the latter would be established shortly. Regarding the functioning of the regional office, the Committee took note that the Government had requested ILO cooperation for training of those persons who would be in charge of the office under the Ministry of Justice and Labour. The Committee welcomed the decision by the Government to include, among its priorities, the issue of forced labour in indigenous communities.

The Committee took note with concern of the conditions of forced labour to which the abovementioned communities were subjected and also of the non-compliance with the provisions of national legislation, with regard to the level of wages and the methods of payment which would help prevent forced labour. The Committee also noted the large informal economy where conditions conducive to bonded labour also existed.

The Committee also noted the consequences for the situation of these workers that their condition as landless peasants implied as well as the vulnerable situation that they were placed in by having to move to cities where they were obliged to beg and sometimes to enter into prostitution. Such displacements were the result of the intensive cultivation of soya in the settlements of indigenous communities.

The Committee took note with concern that this situation also affected children, who were forced into dangerous work such as in brickworks, in quicklime factories and quarries and certain sectors of the informal economy. The Committee also took note of the violence carried out against the National Peasants' Organization (ONAC).

The Committee expected that action would be given urgent priority in order to put an end to bonded labour in the indigenous communities of the Paraguayan Chaco as well as in other parts of the country that may be affected, thereby ensuring compliance with the Convention. The Committee took note that the Government had requested ILO technical assistance.

SUDAN (ratification: 1957)

A Government representative reaffirmed the full commitment of his Government to comply with its international commitments, and particularly Convention No. 29, which had been ratified by his country only one year after independence. This illustrated the importance attached by the Government to the eradication of forced labour. He added that his Government fully appreciated the work of the Committee of Experts and reaffirmed its willingness to cooperate fully with the supervisory system. He recalled that his Government had provided a detailed report to the Office on 27 April 2008.

With regard to the comments made by the Committee of Experts concerning the Committee for the Eradication of Abduction of Women and Children (CEAWC), which had been established in 1999, he indicated that full and detailed replies had been made to all the comments of the Committee of Experts. He recalled that the CEAWC addressed the problems encountered at the tribal level, with particular reference to those of families and children. Though the CEAWC had been established before the sig-

nature of the Comprehensive Peace Agreement in 2005, it had been found to be an appropriate response to the problem and its operation had been continued. He indicated that many abductions occurred when nomadic tribes moved to seek new pastures and came into confrontation with sedentary tribes. He recalled that the crimes of forced labour and abduction had been punishable by law even before the ratification of the Convention. However, one of the reasons for the ineffectiveness of the legal system in this respect was the prevalence of tribal traditions and customs which meant that victims were unwilling to go to the courts. This was not because they accepted abductions, but because they had their own methods of handling problems which arose. He added that the action of the CEAWC had received the approval of the Human Rights Council, the United Nations General Assembly, the United Nations Children's Fund (UNICEF) and the Society for the Prevention of Cruelty to Children in the United Kingdom. He noted that 11,300 of the 14,000 identified cases of the abduction of children had been resolved, as appreciated by the Committee of Experts.

He said that it was however regrettable that the Committee of Experts had not taken into account the detailed report submitted by the Government in May 2007 in which all the information requested by the Committee of Experts had been provided, including responses to the observations made by the International Trade Union Confederation (ITUC) up to October 2006. He noted that a letter of acknowledgement of receipt of the report by the Office had been sent to the Government and he cited the reference number of the letter (SM9/3A/99.7). It was understandable that the report of the Committee of Experts could not take into account the very latest report provided in April 2008, but the discussion of the situation would have been much more valid if the information provided by the Government one year earlier had been taken into account. The lack of recent information meant that the Committee of Experts had had to repeat its previous conclusions and observations, for example with reference to the situation in Darfur. He recalled that the Darfur situation was currently under consideration by the UN Security Council and had been discussed at length by the African Union and the Government. He emphasized that it was totally unrelated to the matters dealt with in the Convention. Moreover, there was no reference to the Convention in the Security Council resolution that was considered by the Committee of Experts.

He recalled that forced labour dated back hundreds of years and referred to the two appeals made by the Committee of Experts. The first was to hasten action to deal with the remaining cases of abductions. He recalled that the CEAWC had achieved a large measure of success in dealing with cases of abductions until the end of 2006, but had ceased its activity in response to the call by the Committee of Experts to treat cases through legal measures, rather than on the basis of tribal customs. With a view to giving effect to legal procedures, four prosecutors had been appointed covering all the regions addressed by the CEAWC, with a view to bringing the legal procedures closer to the victims. However, not a single victim had made use of these legal procedures and so, as of January 2008, it had been necessary for the CEAWC to recommence its work with a view to continuing the methods that had been applied previously. Since the beginning of the year, the CEAWC had dealt with over 350 new cases. With a view to ensuring that these cases were being handled in accordance with international standards, collaboration had been agreed upon with international partners, and particularly UNICEF. He therefore believed that the Government was in full compliance with its obligations under Article 25 of the Convention, as all the necessary legal procedures had been established. Nevertheless, the logical option was for the most effective measure of action, namely the CEAWC, to continue its efforts to elimi-

nate abduction and forced labour by resolving the remaining cases.

With reference to the appeal made by the Committee of Experts that the necessary measures be taken to ensure that legal proceedings were instituted against the perpetrators of abductions and forced labour and to resolve all cases of violations of human rights, he recalled that the Government had made great efforts in that respect. However, he did not wish to go into detail on a matter that was currently under consideration by the United Nations Human Rights Council. Moreover, the United Nations Special Rapporteur on the situation of human rights in Sudan had noted the full cooperation of the Government during her visit to the country and her examination of the measures adopted, including the work of the CEAWC. In this respect, he hoped that the information provided by the Government in its reports would be sufficient to bring the examination of the case to a conclusion.

Finally, he reaffirmed the Government's real commitment to examining all remaining cases of abduction and forced labour, as indicated in its communication in April 2007, and he expressed appreciation and respect for the efforts made by the Committee of Experts in this respect. However, as there were no further cases of abduction and forced labour in the country, he hoped that the Conference Committee would find a better use for its valuable time and resources rather than continuing to examine the present case.

The Worker members noted that the case of Sudan was being examined this year not only because it was mentioned in a footnote under Convention No. 29 but also in particular because the abductions of thousands of women and children and their forced labour persisted throughout the country. The Committee, as well as other United Nations agencies, workers' organizations and non-governmental organizations (NGOs) had already condemned the common practice of abduction and forced labour in 2005. After having reported the seriousness of the situation in Darfur at the end of 2006, the UN Security Council, based on a report by the UN Secretary-General and the Chairperson of the Commission of the African Union on the operation in Darfur in 2007, had expressed deep concern at the human rights violations and the spread of sexual violence. The Worker members raised several questions: whether the abductions and the use of forced labour had ceased; whether the victims had been released and assisted to return to their home region; and whether the perpetrators had been punished.

Concerning the abductions, in 2005 the Committee had welcomed the Peace Agreement and the adoption of the Interim National Constitution, which explicitly prohibited slavery and forced or compulsory labour. Furthermore, the Government had indicated in 2006 that the abductions had ceased following the Peace Agreement. The Worker members, however, taking as example the situation in Darfur, noted that peace was not a sufficient condition to bring an end to human rights violations. The situation was similar to that prevailing in the south of Sudan during the civil war period (1983–2005). Cases of abduction and sexual slavery in Darfur had been disclosed in the 2005 Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General and confirmed by inquiries undertaken by Anti-Slavery International in 2006–07. The victims of these acts were women, as well as men who were forced to work, in particular in isolated farms in the regions controlled by the Janjaweed to the west and the south of Darfur. The Conference Committee's recognition in 2005 that there was no tangible proof that forced labour had been eradicated remained valid.

As for the situation of the victims, the Worker members recalled the information supplied in 2006 by the Government, according to which the CEAWC had resolved 11,000 of the 14,000 cases of abductions reported and had

reintegrated the victims into their families in 3,394 cases. Certain United Nations agencies, such as UNICEF, however, had expressed doubts as to the veracity of these figures. The Worker members also queried what had happened since 2006 and requested information in this respect.

With regard to the perpetrators, the Worker members noted that the Government had firmly replied that they had not been punished, explaining that they had not been prosecuted at the request of the relevant tribes, including the Committee of Dinka Chiefs and in the interests of national reconciliation. While this response was direct and frank, it nonetheless posed problems from a humanitarian and legal point of view. Recalling Article 25 of the Convention respecting sanctions in the case of the exaction of forced labour, the Worker members questioned the value of a national agreement envisaging a general amnesty in relation to the provisions of an international Convention. International provisions regarding sanctions should prevail to prevent perpetrators of abductions enjoying impunity. The lack of prosecutions had undoubtedly contributed to the persistence of these acts during the civil war and until today in Darfur. The non-application of sanctions led to impunity for kidnappers and the absence of any prosecution had certainly contributed to the persistence of abductions in the course of the civil war, and, more recently, in Darfur where the Janjaweed militia were operating with the cooperation of the security forces of the Government, as the Murahaleen militia had done in southern Sudan. A genuinely efficient transition process should include various measures, such as the establishment of commissions to establish the truth, the preparation of objective reports on the acts committed, action to make those responsible understand their acts, a reform of the security forces and the compensation of victims.

The Worker members concluded that, in relation to the various questions raised, the Government had not supplied any up to date or satisfactory information. Only an independent evaluation of the situation could help to clarify certain points.

The Employer members emphasized that forced labour was universally condemned and that Conventions Nos 29 and 105 were the most widely ratified ILO Conventions. They said that examination of the 2007 General Survey of the Committee of Experts revealed that over 60 ILO member States were involved, in some way, in situations which were in violation of these Conventions. These instruments were of special value as a safeguard against threats to free labour relations and were important cornerstones of free market economies. Violations of the Convention took various forms, such as slavery and abduction, the obligation to perform public works and forced conscription, in addition to the performance of domestic work in conditions of servitude and child labour. There were also other factors to be taken into consideration: extreme poverty, institutional weakness, disinformation and lack of development for reasons related to education, cultural or traditional factors.

The case of Sudan had been examined on several occasions by the Committee of Experts and the Conference Committee. The Employer members had observed with interest the creation of the CEAWC which, according to the Government, was continuing its work, and referred to the promulgation of the Interim Constitution and section 162 of the Penal Code, which established sentences of imprisonment for up to ten years in cases of abduction.

They reiterated that the majority of problems of application occurred in countries where market economies did not exist, where poverty weighed on society or where significant restrictions were placed on the functioning of markets. There were some factors, such as cultural ones, which could never be considered higher than international labour standards. They said that, in view of the severity of the allegations, the difficulty in establishing exactly what

information was being provided by the Government, and the difficulties in determining the precise situation, the Government should be requested to engage in the highest level of cooperation in this case which they considered to be extremely serious.

The Worker member of Sudan recalled that the case had been examined by the Conference Committee since 1989, since which date important developments had occurred, with particular reference to the signing of the Comprehensive Peace Agreement in 2005. He recalled that the abduction of women and children was a practice that had begun during the civil war that had been waged before independence and was a result of the previous colonial system. The war had now stopped in the south of the country, a Government of national unity had been formed and the process of national reconciliation was under way. Cases of the abduction of women and children had ceased completely since the signing of the Peace Agreement. Moreover, of the 14,000 identified cases of abducted children, almost 80 per cent had been reunited with their families. He said that support should be provided to the Government to help resolve the remaining cases where abducted children had not yet been reunited with their families, reintegrate the victims into society, prosecute the perpetrators and ensure that the problem did not reoccur. He called for the Government to be offered appreciation and support, rather than further harassment. Although the Worker members might hold differences of opinion with the Government, he called on the Conference Committee to support the Government and for the Office to provide technical advice on the issues raised by the Committee of Experts and the Worker members.

The Employer member of Sudan recalled that the case had been discussed by the Conference Committee on several occasions. However, he regretted that no account had been taken in the report of the Committee of Experts of the information supplied by the Government in May 2007, which meant that the analysis of the facts in the report was not fully up to date. The question also arose as to what the principal objective should be, whether to bring an end to abductions or to prosecute the perpetrators. Although the necessary judicial procedures had been established and had been tried over a certain period, it had been shown that they were not as effective as customary procedures, as the people were unwilling to have recourse to the law. The most effective solution was therefore traditional action through the continuation of the work of the CEAWC with a view to the eradication of all cases of abduction. He added that the question of Darfur was a political matter and he referred to the specific case of the abduction of children from that area by a non-governmental organization (NGO) based in France. He said that abductions no longer took place since efforts had been made to introduce democracy and eradicate such practices. Many of the children who had been abducted had been released by the Government. He therefore called upon employers to support the Government in its action.

The Government member of Egypt observed that Sudan was confronted by difficult economic circumstances because of the civil war that had affected the country. The authorities had taken great efforts to achieve peace in accordance with an approach that recognized cultural differences. Peace and stability were the objectives of all countries. She indicated that she had paid close attention to everything that had been said during the discussion and to recent events in the country. Certain facts were common knowledge. However, she emphasized that it was important for the Committee of Experts to take into account the most recent reports submitted by the Government so that discussions could focus on the most up to date knowledge of the case. She observed that the Government had established the CEAWC to address cases of abduction, which had already dealt with 11,000 of the 14,000 cases identified. However, the action of the CEAWC had been sus-

pending for a number of months with a view to giving effect to the recommendations that legal measures should be implemented to combat abduction and forced labour. The CEAWC had recommenced its activities at the beginning of the year and another 350 victims had been released. The lesson from this was that the Committee of Experts needed to take full account of particular national circumstances and factors, as the decision by the national authorities concerning the CEAWC had turned out to be effective and could well be instrumental in leading to the closure of the case.

The Government member of Kenya reiterated the strongest condemnation of any cases of forced labour, which was inhuman, degrading and unacceptable under any circumstances. It was particularly sad when it affected women and children. He, however, noted with appreciation that, following widespread concern at the situation in Sudan, an Interim National Constitution had been adopted in 2005, followed by the signature of a Comprehensive Peace Agreement in Kenya. The involvement of Kenya had been due to the value that it attached to human rights and socio-economic development. He further noted the inclusion in the new Constitution of provision for a Bill of Rights which promoted human rights and fundamental freedoms. Indeed, the Government representative had clearly indicated his Government's strong commitment to eradicating the problems referred to by the Committee of Experts.

He recalled that on the previous occasion that the case had been examined by the Conference Committee, the Government had been urged to suspend the activities of the CEAWC based on its amicable and traditional approach and to adopt legal procedures. The Government representative of Sudan had indicated that this had been done between 2006 and 2007, and that four prosecution officers had been appointed to handle complaints from abductees and their families. However, no complaints had been submitted to the officers as those affected preferred the traditional methods of the CEAWC. According to the information provided by the Government representative, the traditional approach had yielded results, with the processing of 350 complaints. Although the actual number was not significant, it pointed to the progress that was being made. Greater efforts were now needed, including legal measures and penalties for the perpetrators of forced labour and abductions. He acknowledged that national circumstances were unique and alternative methods could therefore be adopted to bring about positive change. As it had yielded results, the traditional method should therefore be encouraged by the ILO. The ILO should provide technical support so that the Government could examine how the legal approach could be combined with traditional means in the effort to eradicate forced labour. The Conference Committee should continue to encourage the Government to adopt the most appropriate measures.

The Government member of the Syrian Arab Republic indicated that he had taken due note of the information provided by the Committee of Experts concerning violation of the Convention and of the comments made by the Government representative. He could only praise the efforts made by the Government in promoting the Comprehensive Peace Agreement, which had been signed in Kenya in January 2005 and had been of great benefit to all parties. His Government welcomed the fact that the number of abductions had been reduced to almost zero since the signing of the Agreement, and that 11,000 of the 14,000 identified cases of abduction had been resolved. He noted the legal measures adopted, including the establishment of tribunals to investigate cases of abduction and to try the perpetrators, and observed that Convention No. 29 had been a source of inspiration for these measures. He added that there was at present no evidence proving that abductees were subject to forced labour. He therefore considered that abduction, if it was not committed with a

view to exacting forced labour, was not covered by the Convention and should therefore be examined by the appropriate international and United Nations bodies.

The representative of the Secretary-General provided clarification concerning the reports received by the Office from the Government of Sudan. She observed that the Office's records showed that a report dated 4 September 2006 had been sent by facsimile by the Government of Sudan and had been received by the Office on 11 October 2006. The only other report received by the Office had been dated 27 April 2008 and had been received by the Office on 30 May 2008. Both of the reports had been prepared by Mr Elmufiti, Chairperson of the CEAWC. She added that no report on the case had been received by the Office in 2007, although the report received in 2008 had made reference to such a report. The Office observed a very stringent process for the registration of the reports received and the records were available for inspection by the Government delegation. She further noted that there appeared to have been a misunderstanding since nowhere in the observation of the Committee of Experts, of which the relevant section was paragraph 8, had any comment been made about the CEAWC stopping its activities. Indeed, the Committee of Experts noted the progress achieved by the CEAWC.

The Government representative of Sudan thanked all the members of the Committee who had intervened in the discussion. He also thanked the representative of the Secretary-General for confirming receipt of the reports provided by the Government in 2006 and 2008. He expressed the hope that the situation with regard to the 2007 report would be cleared up rapidly. With regard to the question of technical assistance, his Government believed that such assistance could be provided to the CEAWC, although it would need to take into account the unique situation in the country and the approach adopted by the CEAWC, which was based on the traditions of the tribes rather than the use of police forces and law enforcement. His Government was willing to work closely with the Office in promoting the action that was most effective in addressing the problems identified.

With regard to the issue of Darfur, he recalled that the matter was before the UN Security Council and that it was not essentially a labour-related matter. He recalled in this respect that an international NGO had abducted over 100 Sudanese children below the age of 12, who had been released by the Government. In relation to the introduction of legal procedures, in view of the unwillingness of the people to resort to such procedures, and the international recognition of the work of the CEAWC, he believed that it was more effective to follow traditional methods. With reference to the points raised by the Worker members, he wondered whether their sources of information, such as a documentary on abduction, were really reliable. In reply to the questions raised by the Committee of Experts, he affirmed that there had been no cases of forced labour in the country since the signature of the Peace Agreement. The large majority of victims of abduction had been returned to their families. Moreover, the Government was still committed to prosecuting those guilty of such acts. It was the unshakeable conviction of the Government that the total abolition of forced labour needed to be achieved. However, certain questions remained about the most effective means of achieving this objective. Traditions were deeply embedded in tribal cultures and many years would be needed to bring about changes. There was a traditional manner of reaching agreement and resolving issues. For this reason, courts, prosecutors and the police were not necessarily the most effective means available. In view of the lack of success of legal means, his Government at present preferred to retain the most effective traditional methods. In view of the progress that had been made, he therefore hoped that

this would be the last occasion on which the Committee would examine the present case.

The Worker members said that, although they had listened to the positive explanations provided by the Government representative, they were hardly satisfactory in that the indications provided contradicted the information provided by the Government. In fact, no replies had been provided to questions concerning ending the use of forced labour in the country, the rehabilitation of the victims of forced labour and the penalties imposed on those convicted of having used forced labour. It was in everyone's interests, including the Government, for the situation in Sudan to be clarified. The Committee of Experts would then not be obliged to include a footnote on the case. The Worker members requested the ILO to provide technical assistance to the CEAWC and to the Sudanese authorities in response to the matters raised. Otherwise, the Worker members said that the case should be examined once again by the Committee of Experts and included in the list of individual cases the following year.

The Employer members re-emphasized the importance of Conventions Nos 29 and 105. Both related to the most unacceptable forms of forced labour and were fundamental pillars of economies based on a free market. According to the information available, there was evidence of the persistence of violations of human rights and traditional forms of forced labour, such as abduction, and more modern forms, such as trafficking. There were also problems such as poverty, institutional weakness and cultural and traditional elements. However, no data existed on the scale and scope of violations of the Convention. They welcomed the goodwill of the Government, as expressed through the creation and maintenance of the CEAWC. Nevertheless, the amount of time that had elapsed without definite solutions being found demonstrated that the Government's will alone was not enough to solve the problem. Consequently, they requested the Government to accept ILO technical assistance.

Conclusions

The Committee took note of the verbal information supplied by the Government representative and of the detailed discussion which followed. The Committee noted that this was an extremely serious case affecting fundamental human rights, since it concerned the practices of abductions and forced labour affecting thousands of women and children in a situation of civil war that took place in the country. This case had been discussed in the Committee on numerous occasions over the past 20 years, and several times it was included in a special paragraph. The Committee noted that, as the Committee of Experts repeatedly pointed out in its reports, the situations concerned constituted gross violations of the Convention, since the victims were forced to perform work for which they had not offered themselves voluntarily and under extremely harsh conditions combined with ill-treatment.

The Government representative stated that the Committee of Experts had not taken into account the more recent information communicated by the Government to the ILO in April 2007. According to the Government representative, the Committee of Experts' comments contained a recommendation to suspend the operation of the Committee for the Eradication of Abduction of Women and Children (CEAWC).

The Committee noted the statement of the Government representative that they continued to provide support to CEAWC, which had succeeded to document 14,000 cases of abductions and was able to reunify 6,000 persons with their families. The Committee also noted the information on the current activities of the CEAWC to resolve the remaining cases of abduction, as well as the Government's statement that abductions had stopped completely.

The Committee noted the measures taken by the Government, such as the progress achieved by the CEAWC in the liberation of abductees, as well as the Government's efforts to improve the human rights situation in the country. However, the Committee expressed the view that there was no verifiable evidence that forced labour was completely eradicated in practice and expressed concern at the reports relating to involuntary return of certain abductees, some of them being separated from their families, including cases of displaced and unaccompanied children. The Committee also noted with concern that there was a lack of accountability of perpetrators. The Committee once again observed the convergence of allegations and the broad consensus among the United Nations bodies, the representative organizations of workers and non-governmental organizations concerning the continuing existence and scope of the violations of the human rights and international humanitarian law in certain regions of the country.

The Committee considered it necessary to pursue effective and urgent action, including through the CEAWC, to completely eradicate the practices identified by the Committee of Experts and to put an end to impunity by punishing perpetrators, particularly those unwilling to cooperate. The Committee expressed the firm hope that the Government would provide detailed information in its next report for the examination by the Committee of Experts, indicating, in particular, whether the cases of the exaction of forced labour have stopped completely, whether the victims have been reunified with their families and whether perpetrators have been punished.

The Committee urged the Government to pursue its efforts with vigour in order to ensure the full application of the Convention, both in law and in practice. It again invited the Government to avail itself of the technical assistance of the ILO and other donors to achieve this goal, bearing in mind that only an independent verification of the situation in the country could make it possible to determine that forced labour practices had been completely eradicated.

Convention No. 81: Labour Inspection, 1947

SWEDEN (ratification: 1949)

A Government representative of Sweden welcomed the opportunity to discuss the progress made by his country in the implementation of the Convention which was one of the ILO's priority Conventions. His Government considered that the Convention and an efficient labour inspection system were crucial to the success of the Decent Work Agenda. The progress noted by the Committee of Experts related to certain specific developments in the organization and operation of the labour inspection system. The Committee of Experts had also noted with satisfaction that the in-house training provided by the Swedish Work Environment Authority had been expanded to new groups associated with labour inspection.

He indicated that his Government had established a number of objectives as guidance for the labour inspection system. First, it was vital that the operation of the system should be uniform. Second, targeted inspections should focus on the workplaces presenting the greatest risk of ill health or accidents. Accordingly, the Work Environment Authority had been striving to increase the standardization of inspection activities. Improvements had been achieved and the Authority had revised its internal rules with a view to promoting uniformity of inspection. The overall priority given to preventive safety and health action was based on joint inspection in six sectors with major work environment problems. Over one-fifth of all inspections were follow-up inspections performed at worksites. He noted that inspection activities were supplemented by other tools, including comprehensible rules and inspection notices, easily accessible information and cooperation and the exchange of experience between the

various branches, trade unions and other authorities, which all contributed to the achievement of an acceptable occupational safety and health environment.

In its last annual report, the Work Environment Authority had emphasized that occupational safety and health action had improved considerably in workplaces where inspections had been carried out. The Authority expressed particular satisfaction at the comprehensive inspections targeted at the growing problems of threats and violence in society. Examples of the progress made included the decision to abolish the use of cash in the public transport system in the Stockholm area, which had eliminated robberies on the personnel concerned. Hazard risk analyses had been carried out in schools and programmes adopted to combat threats and violence. The number of employees working alone when caring for violent persons had been reduced. Measures had been adopted in the retail trade to improve security and limit the risk of strain injuries.

He emphasized that the improvement of the inspection system was a continuing long-term process. Recent measures adopted included a methodology for more effective supervision of companies located in the various parts of the country. A computerized system had been developed to facilitate the reporting of occupational accidents and other incidents by employers. In addition, the introduction of a procedure for the mapping of workplaces where occupational hazards might be suspected contributed to the efficient use of resources and the concentration of inspection activities on sectors where they were most needed. The in-house training provided by the Work Environment Authority, which had previously been confined to inspection personnel, now included basic training for all employees involved in the handling of supervision procedures. These employees were also provided with supplementary training in accordance with the competence required for their duties. His Government agreed with the Committee of Experts that such measures would contribute to achieving a significant improvement in the operation of the labour inspectorate and hoped that the measures adopted in his country would inspire others to find ways of improving the application of the Convention.

The Employer members thanked the Government representative for the information provided. This was the first time that the case of the application of this Convention by Sweden had come before the Committee and it should be regarded as a case of progress, demonstrating an improvement in national policy for the achievement of fuller compliance with the Convention.

They recalled that Convention No. 81 was a priority Convention which had been ratified by 137 countries. They recognized that labour inspection was an essential function of labour administration. Although the Convention was not prescriptive, it provided guidance for public authorities to follow to institutionalize labour inspection with a view to ensuring the protection of workers in a coordinated and effective manner. Furthermore, the Convention promoted laws and regulations adapted to the changing needs of the labour market. It set out principles regarding the functions and organization of the inspection system, as well as criteria relating to the recruitment, status and terms and conditions of employment of labour inspectors and their powers and obligations.

The Employer members recalled that the duties of labour inspectors were complex and diverse. Inspectors had to be invested with significant authority to fulfil the requirements of their role. Article 7 of the Convention provided for the recruitment of inspectors having regard to their qualifications for the performance of their duties. Article 14 established the requirement to notify the labour inspectorate of industrial accidents and cases of occupational disease as prescribed by national laws or regulations.

The Employer members noted with interest the observation of the Committee of Experts relating to the develop-

ments that had occurred in the organization and operation of the labour inspection system in Sweden, including the development of a computerized application for the notification of employment accidents and other incidents. In addition, the determination of a method for the mapping of workplaces where work environment hazards might be suspected, which would allow the Work Environment Agency to evaluate workplace registers in this respect, went beyond the actual requirements of the Convention and was recognized by the Employer members as a positive step. However, the Employer members requested clarification on what the mapping method entailed and confirmation that no legislation was to be introduced in relation to mapping which would impose additional burdens on employers.

The improvement in the training of the staff of labour inspection services was also to be welcomed. The in-house training provided by the Work Environment Agency, which had previously been limited to inspection personnel, had been extended and now included basic training for all associates concerned with the handling of supervision procedures. After basic training, associates underwent supplementary training according to the competence required for their respective duties.

The Employer members therefore commended the Government on the achievement of a significant improvement in the operation of the labour inspectorate and encouraged the Government to continue reporting on the measures taken to ensure the application of the Convention in law and practice.

The Worker members emphasized that Sweden was not a country that often appeared on the Conference Committee's list of individual cases. It was appearing on it this year by virtue of the indication by the Committee of Experts that progress had been made in implementing the Convention, particularly in relation to the creation of a computerized database, the development of a method for mapping establishments at high risk and the provision of training for labour inspection staff, which was not limited to labour inspectors in the strict sense, but included their colleagues involved in handling supervision procedures.

The Worker members said that they completely shared the view of the Committee of Experts concerning the importance of investing in labour inspection, in accordance with the provisions of the Convention. Labour inspection was a key element in applying international social standards. It required, in particular, a sufficient number of labour inspectors; investment in the quality of collaborators, through both recruitment conditions and continuous training; intense collaboration with the social partners; and the collaboration of qualified experts and technical staff.

Labour inspection was becoming increasingly important in view of the growing complexity of the functions of inspection services in a globalized economy and labour market, in which enterprises and intermediaries were developing practices to circumvent social rules. This was particularly true when a country, such as Sweden, was faced with new waves of immigration and new practices of the international posting of workers, which involved the risk of social dumping. For these reasons, it appeared to be essential that labour inspection services should be capable of developing innovative practices, by reinforcing collaboration between services, making use of the opportunities provided by new information and communication technologies, and developing new methods for the mapping of workplaces that were at high risk.

From this perspective, the observation of the Committee of Experts indicated interesting progress in Sweden. It was however regrettable that some details were missing, both on the improvements made and the effectiveness of the progress achieved. Questions arose as to whether the new database had really improved the notification of employment accidents and whether the new method of map-

ping establishments at high risk had given rise to more targeted action. In addition, the information on the extension of training lacked the necessary detail for a full evaluation of what was described as being a good practice. It was necessary to ensure that the progress observed was not cancelled out by retrograde steps in other areas.

The Worker members welcomed the fact that the report of the Committee of Experts contained observations on a country which did not hesitate to invest in its labour inspection services, with particular attention to the application of international social law. However, the fact that the data provided were not quite consistent and had been partially contradicted meant that the case could not be viewed as one of true progress that could be taken as an example by governments and the social partners in other member States.

The Worker member of Sweden expressed her satisfaction at Sweden being included on the list as a case of progress. Issues concerning occupational safety and health were certainly of vital importance and a major concern for Swedish trade unions, and any progress in this area was welcome.

However, she indicated certain developments in the area of occupational safety and health that she found very worrying. In order to save money, the Government had decided on large savings in the resources allocated to the Work Environment Authority. These savings would result in a situation in which the number of labour inspectors would not be sufficient to fulfil the requirements of the provisions of the Convention. The ILO had for a long time advocated that there needed to be at least one inspector for every 10,000 workers. After the savings had been made, Sweden would probably have only one inspector for every 13,000 employees, or 0.8 inspectors for every 10,000 employees. In other Nordic countries, the number of inspectors for every 10,000 employees was 1.7 in Denmark and 1.8 in Norway. Sweden would be far below the average number of labour inspectors in Europe, with the reduction of approximately 25 per cent in the number of labour inspectors and the expectation that an enterprise could be visited by labour inspectors a maximum of once every 20 years.

In addition, in 2007 the Government had shut down the National Institute for Working Life, the areas of research of which included the work environment. The Government's rationale was that such research should instead be conducted by universities. Unfortunately, the result of the shutdown had been that research in the area of occupational safety and health was no longer coherent and systematic. The closure of the Institute also resulted in the ending of public funding for the education and training of local trade union health and safety representatives.

At the same time, there had been a very worrying development with an increase in recent years in the number of serious accidents at workplaces, such as those leading to employees being seriously hurt or even causing death. In 2007, a total of 77 workers had died, compared to 68 in 2006. Six of these cases were related to temporary migrant workers working in Sweden. The reasons for this regrettable development had yet to be clarified. The increasing number of accidents at workplaces should be a signal to the Government of the need to take further steps and to strengthen the Work Environment Authority, instead of making savings in this area. She urged the Government to reconsider its policy and to take proper action against this negative development.

The Employer member of Sweden noted that this case of progress concerned three issues: the development of the computerized application for the employers to communicate with the authorities over the Internet; the mapping of workplaces; and in-house training of labour inspection staff and all associates concerned with labour supervision procedures.

With regard to the first issue, Swedish law required employers to report accidents in the workplace to the authority. The Internet application was a positive development, saving employers' time and effort and making reporting easier. His organization welcomed such improvements.

Regarding the second issue, employers were required by law to conduct risk assessments of the workplace on a regular basis. Labour inspectors also inspected workplaces regularly. These inspections had to, or at least should, be done according to the standards set out by the authority. If the authority could identify risks in workplaces through mapping, this could be a positive step, provided that no further burdens were imposed upon employers, and depending on how the mapping was conducted and what conclusions were drawn from the results.

In connection with the third issue, the in-house basic training provided by the authority to all parties concerned was a step in the right direction. Supplementary training might also be needed. It was very important for the staff of the labour inspection authority to have the knowledge to achieve uniform application of the national work environment legislation throughout the country, in all branches of the economy and in all enterprises.

These measures taken by the Government were an example of how a member State might handle labour inspection matters at the national level, although they went beyond the requirements of the Convention. In response to the statement made by the Worker member of Sweden, he stated that the situation in Sweden could not be evaluated simply in terms of the number of inspectors, but that the quality of inspectors also needed to be taken into consideration. In this regard, training of the inspection staff was important.

The Government representative of Sweden thanked all those who had participated in the discussion. In response to the request for clarification by the Employer members, he indicated that no legislation was envisaged respecting hazard mapping. With regard to the points raised by the Worker member of Sweden, he recalled that the discussion had mainly been based on the positive evaluation of the case by the Committee of Experts. However, a number of points had been raised concerning issues which had arisen after the reporting period. Although the proper time for their discussion would be when such developments had been examined by the Committee of Experts, he could make a number of preliminary remarks. As recalled by the Employer members, effectiveness could not only be measured in terms of numbers. Moreover, the ILO's recommendations concerning the numbers of labour inspectors available were targets and were not legally binding. The circumstances in which the labour inspection system operated should also be taken into account. It was widely recognized that the Swedish inspection system involved the social partners, with their long-standing responsibilities in this area, as well as safety delegates. With regard to the closure of the National Institute for Working Life, he said that it was a matter of opinion as to whether research in the field of occupational safety and health should be handled by a public authority or by universities. His Government's view was that this type of research should be carried out by universities under competitive conditions. With reference to the rise in the number of occupational accidents, he indicated that the Swedish Work Environment Authority had carried out an inquiry which would evaluate the underlying reasons for this trend. A provisional report would be finished by the middle of June 2008.

The Employer members thanked the Government representative for the clarifications provided, and particularly the indication that there were no plans to introduce legislation respecting hazard mapping. With regard to the statistics mentioned by the Worker member of Sweden, the Employer members recalled that quantity was no substi-

tute for quality and in this respect endorsed the comments made on this subject by the Employer member of Sweden and the Government representative. Moreover, the numbers advocated by the ILO with regard to labour inspectors were merely recommendations and were not mandatory. The Employer members added that it had not yet been established whether the slight rise in the number of employment accidents recorded was in any way linked to the reduction in the number of labour inspectors. They therefore considered that the present case could still be considered a case of progress.

The Worker members said that they did not doubt that Sweden was a country with a modern social model and was a source of inspiration for the entire world. However, as far as the application of the Convention was concerned, the information contained in the observation made by the Committee of Experts was not positive enough to regard this case as a case of progress, especially as Swedish workers had provided contradictory information, particularly in relation to the reduction in the capacity of the labour inspectorate and the dismantling of the National Institute for Working Life just when workers were faced with a substantial increase in the number of workplace accidents. The Government should continue to modernize and better equip its labour inspection services. Furthermore, the Government should provide additional information on developments in the capacity of its services and their collaboration with competent experts, bearing in mind the trend in the number of workplace accidents. Finally, the Committee of Experts should continue to monitor progress in the implementation of the Convention in the country.

Conclusions

The Committee took note of the statement made by the Government representative and the discussion that followed. It noted that the Committee of Experts had considered the measures taken by the Government through the Work Environment Authority to improve the functioning of labour inspection to be a case of progress. These measures included the creation of a web site for the online notification of employment accidents and other incidents; the determination of a method for the mapping of workplaces likely to present occupational safety hazards, thereby facilitating the evaluation of all workplaces registered in this respect; and appropriate training activities for all staff involved in the handling of supervision procedures, particularly with a view to ensuring compliance with professional rules and ethical principles.

The Committee welcomed the measures adopted by the Government. Nevertheless, it requested it to provide the Committee of Experts in the next report due with detailed information enabling it to assess their impact, particularly with regard to: improving the notification of employment accidents; improving occupational safety and health conditions in establishments that were at risk; and with regard to the quality of the collaboration of those who had benefited from the training in labour inspection provided by the Work Environment Authority.

UGANDA (ratification: 1963)

A Government representative reaffirmed the commitment of his Government to fulfilling its obligations under the ILO Constitution. The Committee of Experts had observed a dismantling of the labour inspection system owing to the decentralization of labour administration, while the Convention required the Government to put in place a mechanism for labour inspection through legislative, administrative and policy mechanisms. The speaker stated that the decentralization of labour inspection could go against the letter and spirit of the Convention and expressed his Government's commitment to pursuing meas-

ures to establish a system of labour inspection in conformity with the Convention.

In the meantime, in compliance with article 40(3) of the Constitution of the Republic of Uganda, the Government had enacted the Occupational Safety and Health Act No. 9 of 2006 and the Employment Act No. 6 of 2006. The former guaranteed the right to safe and healthy working conditions and the establishment of safety and health committees in workplaces, while the latter provided for the appointment of Labour Officers in every district. Furthermore, notwithstanding the principle of decentralization, under the Local Governments Act 1997, section 8 of the Employment Act, provided that the administration of the Act was the responsibility of the Directorate of Labour. The Government was of the view that the Directorate of Labour was a central authority within the meaning of the Convention. Moreover, sections 10 and 11 of the Employment Act empowered the Labour Officers, on behalf of, and under the supervision of, the central Government, to, among other things, carry out inspections. Under section 15 of the Employment Act it was an offence for any person to obstruct the performance of these functions. Thus, at the legislative level, there was sufficient protection within the terms, letter and spirit of the Convention.

At the policy and administrative levels, the total implementation of the Convention was an ongoing process embarked upon by the Government, together with the social partners. As resources were mobilized to give effect to the requirements of the Convention, the tripartite partners had been encouraged to embark on an active campaign of sensitization, awareness raising and training of all stakeholders to ensure that the values, principles and goals of the Convention were realized in full.

The tripartite delegation of Uganda had requested financial and technical assistance in the area of labour inspection in a meeting with the ILO Director-General during the current session of the International Labour Conference. The speaker reiterated this request, adding that it could possibly be provided under the country's Decent Work Country Programme. He added that to strengthen capacities further, the Government was seriously considering the re-establishment of a fully fledged Ministry of Labour, as this Ministry was for the moment, a mere department. The Government undertook to inform the ILO of all developments in this regard. In conclusion, the speaker reiterated his Government's commitment to compliance with the provisions of the Convention.

The Employer members recalled that this case had already been considered in 2001 and 2003, and emphasized that the Convention was an important priority instrument, as labour inspection was an essential function of labour administration and an integral part of the implementation of ratified ILO Conventions. They added that the Convention promoted laws and regulations which were adapted to the changing needs of the labour market and, without being prescriptive, set out a series of principles regarding the function and organization of the system of labour inspection which were essential for ensuring the protection of workers in a coordinated and effective manner.

The Committee of Experts raised two issues. First, it referred to the dismantling of the labour inspectorate owing to the decentralization of labour administration functions. They noted with concern, from the report of the Committee of Experts, that the very notion of a central labour inspection authority had become devoid of all substance, as the little authority that the Minister retained in law could not be exercised for want of the necessary structure and resources. The dismantling of the labour inspectorate had commenced with the decentralization of the labour inspection system in 1994, following which it had been left to the districts whether or not to establish an inspection system. An ILO mission carried out in Uganda in May 2005 had revealed that there were a total of

26 labour inspectors for 56 districts. However, the number of districts had since been increased to 81, although the number of inspectors had not increased proportionately: there were at the moment 30 inspectors covering the 81 districts. Moreover, they lacked training and there was still no central authority as prescribed by Article 4 of the Convention. The Government had enacted labour legislation in 2006 to provide for labour inspection in a manner which, in fact, went further than the Convention's requirements, but the legislation had not been put into practice. The country lacked the necessary infrastructure to achieve compliance with the Convention.

Second, the Committee of Experts had referred to the establishment of an inspection system suited to economic and social needs. The Employer members noted with concern the continued failure of the Government to produce an annual report on the work of the inspection services, pursuant to Article 20 of the Convention. This prevented any assessment of needs, either at the national or regional levels, and furthermore hindered the determination of priorities for action and the evaluation of resources required.

In conclusion, they accepted that the decentralization process had been carried out with the best of intentions, namely, to bring services closer to the people, and acknowledged that this process was unlikely to be reversed. However, its effect had been adverse to the labour inspection system, although this system was required in the interests of social protection and improved productivity. Recognizing that the performance of the labour inspection system had been badly affected by an unfavourable economic situation and lack of infrastructure, the Employer members suggested that consideration be given to ways to ensure that competence for labour inspection was shared between the central bodies of the labour administration and the decentralized authorities. They supported the Committee of Experts in calling for the Government to adopt, as soon as possible, all measures that were essential for the establishment and functioning of an inspection system which conformed to the requirements of the Convention. This included improved training, seeking the necessary funds and technical assistance, keeping the ILO informed and sending copies of the relevant legislative, regulatory and administrative texts. Finally, they encouraged the Government to supply the information required by the Convention report form and to communicate its report to the most representative employers' and workers' organizations.

The Worker members once again emphasized the crucial importance of the application of the Convention, which required labour inspectors in sufficient numbers to ensure the efficiency of their work, that they possessed the adequate proficiency and means to perform their visits of workplaces and, finally, that they were able to benefit from training programmes due to investments and the assistance of experts. This Convention also emphasized the need to place inspection services under the control of a central authority (Article 4), which must then publish an annual inspection report (Article 20).

The application of the Convention in Uganda raised great problems because a real Ministry of Labour did not exist, and because the organization of labour inspection was completely left up to districts, without central coordination or follow-up. The new law adopted in 2006 and referred to by the Government representative obliged each district to recruit at least one labour official. However, according to the information available to the Worker members, only one third of the districts had done so. Furthermore, due to the many tasks assumed by these officials, it was difficult to concur that the measures taken by the districts applied the Convention in a satisfactory manner.

Before this Committee, the Government, which declared itself aware of the problem and acknowledged that

decentralized practices were not in conformity with the Convention, had committed itself to taking the necessary measures to establish a fully fledged Ministry of Labour. However, these promises had already been made in the 2001 and 2003 Conference sessions, yet nothing had been done to improve the situation since then. It was deplorable that the Conclusions of this Committee remained a dead letter. The Government's argument that the National Constitution provided for wide decentralization, could not overshadow the fact that a country's ratification of a Convention implied its application by central authorities. Furthermore, considering the competence of subrogation attributed by the Constitution to the central authority, this argument seemed to be merely a pretext.

Considering the effects of globalization on Uganda, this situation also presented a problem vis-à-vis competing countries for attracting foreign investments and entailed risks of social dumping for workers. In this context, a recent conference, which gathered the ministers of labour of the five Eastern African countries in Arusha, emphasized the need for Uganda to establish a fully fledged Ministry of Labour and a central labour inspection authority, as prescribed by the Convention. The Worker members urged the Government to take the necessary measures to apply the Convention and to commit itself to do so within the framework of a plan of action containing time frames for every measure and every step.

The Worker member of Uganda stated that although workers had been given the opportunity to dialogue with the Government – which had expressed its commitment to complying with the Convention – he wished that the Government would hasten the compliance process and commit to a time frame for doing so. The establishment of a fully fledged ministry of labour was long overdue, and its importance in securing compliance with the provisions of the Convention could not be overemphasized. Other countries within the eastern Africa region, he noted, all possessed fully fledged labour ministries. The centralization of labour inspection was of the utmost importance. While acknowledging the difficulty of facilitating the centralization process and establishing the mechanisms necessary for compliance with the Convention, he maintained that improvements to the present framework were necessary for the Convention's implementation. Enhancing the capacity of the existing labour inspectors through additional training and financing, for instance, would go a long way towards the improvement of working conditions. Additionally, the Government ought to recruit labour inspectors in districts lacking such services, particularly as those districts themselves lacked sufficient resources. He urged the Government to introduce the necessary legislative changes, and trusted that by next year it would be able to report satisfactory progress to the Committee.

The Government member of Kenya noted that the Ugandan Government had acknowledged the need for a strong labour administration system and a ministry of labour in order to achieve compliance with the requirements of the Convention. He thanked the Government for its openness and willingness to pursue a path of socio-economic development.

He remarked that labour inspection helped to promote the standards and principles safeguarding the welfare of workers. Conversely, violations of labour standards were likely to occur in regions that lacked labour inspection systems. The Government's desire to establish an effective labour inspectorate was therefore welcome. He noted that Kenya, as Uganda's neighbour, would certainly be adversely affected by Uganda's failure to ensure the enforcement of labour standards. He encouraged the Government to act with due haste to strengthen the labour inspection system and establish a fully fledged ministry of labour. He additionally urged the Office to provide the technical assistance the Government may require in its endeavours.

The Government representative of Uganda thanked the speakers for their contributions. He stated that although the will to effect the required reforms existed, the capacity to do so was lacking. Recent changes had occurred within the Government, in the area of policy as well as within the administration itself. Although no specific deadlines could be given, he assured the Committee that the necessary reform processes were underway and that a fully fledged labour ministry would be established in a year or so.

The Employer members thanked the Government for its candour and willingness to accept the Office's assistance. They accepted that the decentralization process was being carried out with the best of intentions, namely to bring services closer to the people, and acknowledged that it was unlikely to be reversed. However, decentralization had adversely affected the labour inspection system, a system necessary to ensure social protection and improved productivity.

While recognizing that the performance of the labour inspectorate had been greatly affected by the unfavourable economic situation as well as the lack of infrastructure, they joined the Committee of Experts in calling upon the Government to adopt, as soon as possible, all measures necessary for the establishment and functioning of an inspection system that conformed to the Convention's requirements. These included improved capacity-building and training, seeking the necessary funds and technical assistance, and keeping the ILO informed by sending copies of the relevant legislative, regulatory and administrative texts. They concluded by requesting the Government to supply the information required by the Convention report form and to send its report to the social partners.

The Worker members expressed their deep regret that effect had not been given to the commitments made by the Government at the 2001 and 2003 sessions of the Conference and took note of the new commitment made by the Government that it would ensure compliance with the Convention in law and practice, and in particular establish a fully fledged Ministry of Labour, in conformity with the Declaration of Arusha of the Ministers of Labour of the Eastern African countries. However, since obscure commitments did not suffice, they requested the Government to elaborate a concrete plan of action with the collaboration of the representative workers' and employers' organizations and regretted that the Government could not yet give specific deadlines. The Worker members also invited the Government to use the technical assistance provided by the ILO through the Strengthening of Labour Administration and Labour Relations in East Africa (SLAREA) project.

Conclusions

The Committee noted the statement by the Government representative and the discussion that followed. It noted the Government's commitment to adopt measures for the establishment of an inspection system that met the requirements of the Convention. The Committee noted the announcement by the Government representative of the adoption of the Occupational Safety and Health Act, No. 9 of 2006, which provided for the establishment of workplace safety and health committees and the Employment Act, No. 6 of 2006, under which labour officers would be recruited in every district. It nevertheless noted with concern the indication by the Government representative of the absence of a Ministry of Labour, with the corresponding functions being entrusted to a fledgling department in a ministry with broader responsibilities.

The Committee drew attention with concern to its reiterated discussions of the case, first in 2001, then in 2003 and finally at the present session. It recalled that the Committee of Experts had been urging the Government for many years to take measures to reverse the phenomenon of the continued deterioration of the labour inspectorate, which had been

aggravated following the decentralization of the inspection function to the district level in 1995. It also recalled that in 2001 and 2003 it had endorsed the conclusions of the Committee of Experts on the case calling for the establishment of an inspection system in accordance with the requirements of the Convention and adapted to changing economic and social conditions. It emphasized in particular the need for such systems to be under the responsibility of a central authority so as to ensure equal protection for workers in industrial and commercial establishments throughout the country.

The Committee observed that the absence of an annual report on the work of the inspection services, as required by Articles 20 and 21 of the Convention, meant that it was not possible for the ILO supervisory bodies to assess the application of the legislation on labour inspection in practice, or the volume or quantity of inspections, in relation to the requirements of the Convention. It therefore requested the Government to adopt measures without delay to establish an effective labour administration with the resources and personnel necessary for its operation, as an essential prerequisite for the effective operation of an inspection system. Noting its request for specific technical assistance to enable it to meet its obligations deriving from the ratification of the Convention, particularly in the context of the Decent Work Country Programme, the Committee requested it to adopt all the necessary measures for this purpose. Finally, it requested the Government to provide the Office with information reporting positive developments in this respect for examination by the Committee of Experts at its session in November–December 2009.

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

BANGLADESH (ratification: 1972)

A Government representative reaffirmed that his Government was fully committed to complying with various ILO Conventions, as well as to promoting labour union activities and freedom of association in Bangladesh. His Government took seriously into account any allegations of the violation of ILO Conventions and had looked into the allegations raised very carefully. He recalled in this respect that his country had ratified a total of 33 ILO Conventions, including seven fundamental Conventions.

He recalled that the Labour Law 2006 had been enacted after protracted consultations with stakeholders over a period of 14 years. The Labour Law fostered trade union activities, and he noted in this connection that various trade unions had held elections in recent months and that permissions for the right to organize were being granted to labour union activists. Nevertheless, some parties still felt that the Labour Law 2006 needed improving.

He also noted that there had been cases when non-workers had attempted to foment unrest and vandalize small businesses. He recalled that the Government was responsible for maintaining public order and affirmed that the law enforcement agencies had shown great restraint in such circumstances. The action taken by the law enforcement agencies had been in accordance with the law of the land under the direct supervision of judicial magistrates. Such action was not intended to harass trade union leaders or prevent them from pursuing legitimate union activities. Although the International Trade Union Confederation (ITUC) had referred to a few cases, he emphasized that they were isolated instances which did not establish a pattern of violations. As a preventive measure, the Government had established a Task Force on Labour Welfare with the participation of worker representatives and a Crisis Management Committee headed by a senior official of the Ministry of Labour and Employment.

Turning to the specific allegations contained in the report of the Committee of Experts, he affirmed that none of the people mentioned were still in custody and that all

of them had been released on bail. The Government was not actively pursuing their cases. He added that there were over 5,000 factories in the country with 2.5 million workers and that it was not easy to maintain law and order in all of the factories. The Government was committed to ensuring law and order in factories with the utmost restraint. However, certain non-workers took advantage of the situation, and in certain cases took refuge in trade union offices. Extra care was taken in enforcing the law in such cases. For example, the 250 garment workers detained in 2006 had all been released and their cases were not being pursued.

With reference to export processing zones (EPZs), he recalled that they had been in existence for the past two decades with a view to promoting foreign direct investment in the country. There were over 250 factories in EPZs and their owners were committed to establishing fully fledged trade unions in their factories by 2010 in accordance with the EPZ Workers' Associations and Industrial Relations Act 2004. In the meantime, workers' associations had been established in all factories in EPZs as from November 2006 to look after the welfare of workers. There were presently 177 elected workers' representation and welfare committees in EPZs. The wages and other benefits enjoyed by workers were significantly higher in EPZs than elsewhere in the country, and laws and regulations on trade union activities in EPZs were constantly being improved.

He also described the activities undertaken by the Government to promote freedom of association and decent work conditions. He indicated that a policy was being finalized in consultation with worker representatives and NGOs for the elimination of child labour, with a view to ensuring workplaces free of child labour. Several projects were being undertaken, including one time-bound ILO project which was in its second phase and was aimed at removing 45,000 child labourers from hazardous work in eight major cities. Another Government project involving multiple stakeholders was intended to remove 30,000 children from hazardous work, provide them with non-formal education and skills training and offer their parents microcredit to secure their livelihoods. With ILO assistance, guidelines had been developed for shipbreaking workers and training was provided to them on such matters as occupational safety and health. A project was also being implemented to educate tea estate workers with a view to helping them avoid social violence and infection with sexually transmissible diseases. He added that minimum wage provisions had been announced in the ready-made garment sector and in 35 other sectors. Moreover, the minimum wage had achieved a 98 per cent implementation rate in the ready-made garment sector.

With regard to the Tripartite Consultation Committee, he indicated that it was a very effective body with 60 members and that the Government was committed to making it more representative. He referred in this respect to a recent meeting with representative trade union leaders at which decisions had been taken to facilitate more vigorous trade union activities and to make the Tripartite Consultation Committee more representative by co-opting new members.

In conclusion, he noted that the caretaker Government was preparing for the holding of elections in December 2008 and was relaxing the measures respecting trade union activities. Efforts were being made to promote corporate social responsibility so that employers felt obliged to support the welfare of workers, and the conditions of workers were being monitored by the Factories and Establishments Inspectorate.

The Employer members recalled that the Committee had been dealing with the issue of freedom of association in Bangladesh since 1983. The last discussions had been held in 1997 and 1999. The General Survey of 1994 on Convention No. 87 had emphasized that the legislation in

Bangladesh was not in conformity with the Convention. The Committee had repeatedly requested the Government to bring the country's legislation into conformity with the requirements of Convention No. 87, as had the Committee of Experts, and to remove the restrictions on freedom of association in law and practice.

The Government had repeatedly referred to work on the legislation in various legislative commissions, but so far without visible results. The first paragraph of the observation of the Committee of Experts showed optimism and hope that after many years, improvements would now materialize. The new Labour Law 2006, had been enacted, which had superseded the Industrial Relations Ordinance 1969. The Committee of Experts had analysed the new Law in detail as far as freedom of association was concerned. The Employer members were bound to express great disappointment with the results of the analysis. Based on this analysis, they were under the impression that all provisions criticized in previous years by the Conference Committee and the Committee of Experts had once again been incorporated into the new Labour Law. For example, managers and workers in the public administration continued to be excluded from the right to establish workers' organizations, in the same way as many other groups of workers, such as casual workers. Certain measures taken by trade unions to find new members were qualified as "intimidating", and therefore inadmissible. The minimum membership requirement for the registration of a trade union was still 30 per cent of all the workers in an enterprise. It was prohibited to be a member of multiple trade unions and violations of this prohibition were sanctioned with detention. With regard to the point concerning restrictions on the right to strike raised by the Committee of Experts, the Employer members referred to their usual position on this subject. The Employer members were not able to relate to the fact that the experts paid so much attention to a matter which was not regulated in Convention No. 87.

The Employer members had referred to only a few of the points raised by the Committee of Experts. Nevertheless, they wondered whether the Government had totally misunderstood or simply ignored the requests by both the Conference Committee and the Committee of Experts to bring the legislation into line with the Convention. Against the background of the comments made by the Government representative, the Employer members welcomed that he accepted the fact that the new Labour Code had to be amended once again.

The Employer members also expressed concern at the developments in practice in the country, such as the multiple detentions of trade unionists, especially trade union leaders, in the context of demonstrations, and the punishments imposed on them. The Government had taken the position that in the course of demonstrations, public law and order needed to be maintained. This, however, could not justify all the measures against trade unionists, as described by the Committee of Experts. Regarding the implementation of the Convention in practice, the Employer members agreed with the Committee of Experts that workers' and employers' organizations could only exercise their rights in conditions free from threats, pressure and intimidation of any kind. In situations such as those described in the observation, a targeted strategy of de-escalation might be necessary.

The third issue indicated by the Committee of Experts was freedom of association of workers in EPZs. In EPZs, a multitude of complex regulations existed which, in part, set insurmountable obstacles to the establishment of workers' organizations. The Committee of Experts and the Conference Committee had repeatedly requested the Government to ensure the implementation of the Convention in EPZs as well.

Finally, the Employer members referred to the question of the government official responsible for trade union

registration who still possessed far-reaching powers over access to and the supervision of trade union offices. This point remained unclear.

The Employer members urged the Government to report in detail whether, in addition to the points already raised in relation to the Labour Law, there were any other provisions in the law which might be in accordance with the Convention. Otherwise, the new Labour Law would need to be amended as soon as possible. Moreover, the provisions for the establishment of workers' organizations in EPZs would have to be aligned with the Convention. In practice, freedom of association could only be developed and exercised in a climate free from threats. If there were still any obstacles, the Government should – 26 years after its ratification of the Convention – request the Office for technical assistance.

The Worker members recalled that the case of Bangladesh, concerning the application of Convention No. 98, had been discussed in 2006, when the Employer and Worker members, together with a significant number of Governments, had emphasized the extreme seriousness of the case. This had led to the Committee adopting harsh conclusions on the importance of ensuring suitable protection against acts of interference and guaranteeing the exercise of free and voluntary collective bargaining in the public and private sectors without legal obstacles, and on the important difficulties encountered by workers in the exercise of trade union rights in EPZs. On that occasion, the Committee had decided to include its conclusions in a special paragraph of its report.

This year, the case of Bangladesh was being examined in relation to the application of Convention No. 87, which was closely linked to Convention No. 98. The comments made by the Committee of Experts on the application of Convention No. 87 were discouraging. In August 2007, the ITUC had, among other information, made a series of grave allegations to the Office concerning violations of civil liberties relating to: the death of a trade unionist killed by the police; the particularly harsh repression by a rapid intervention army battalion; the arrest of strikers and demonstrators, and in particular of trade union leaders; harassment by the police against the American Center for International Labor Solidarity; the shots fired at Mohammed Firoz Mia, President of the Bangladeshi telephone union.

In its observation, the Committee of Experts recalled that freedom of association could only be exercised in a climate free from violence, pressure or threats of any kind. To a certain extent, the violence concerned trade union campaigns for the defence of workers' rights in EPZs, where the EPZ Workers' Associations and Industrial Relations Act 2004 was still in force and violated the fundamental rights of workers in several respects. The first of these violations concerned the prohibition of establishing trade unions in EPZs, which was due to be removed at the end of 2006. The situation still remained unchanged, however, or at least the Government had not provided any information on this subject.

It should be recalled that the Committee on Freedom of Association, on the basis of a complaint by the International Textile, Garment and Leather Workers' Federation (ITGLWF), had already adopted important conclusions on trade union rights in EPZs. The Committee on Freedom of Association had recalled that workers in EPZs, despite the economic arguments often put forward, should enjoy the trade union rights provided for by the freedom of association Conventions like other workers, without distinction whatsoever. The Committee on Freedom of Association had also considered that the blanket denial of the right to organize in EPZs amounted to a serious violation of the principles of freedom of association, and particularly Article 2 of Convention No. 87, which guaranteed all workers the right to establish and join organizations of their own choosing. With a view to confirming the legal

framework of the Convention, the Committee on Freedom of Association had formulated 15 concrete recommendations.

In its observation, the Committee of Experts also noted serious discrepancies between the national legislation and the Convention. In the same way as the Committee of Experts, the Worker members observed that the new Labour Law, which replaced the Industrial Relations Ordinance in 2006, did not contain any improvement. On the contrary, in certain regards it had introduced new restrictions: the exclusion of managerial and administrative employees from the right to organize; the exclusion of a series of sectors; the restriction of membership in trade unions and the participation in trade union elections only to those workers who were employed in the establishment concerned; the sanctions envisaged for certain methods of recruiting union members; the strict criteria of representativeness; the prohibition on unregistered unions from collecting funds; and several restrictions on the right to strike. The Worker members shared the deep concern expressed by the Committee of Experts in its observation and the urgent call by the Committee of Experts to bring an end to the serious violations of trade union rights and the denial of the fundamental rights of workers in EPZs and elsewhere.

The Committee of Experts had made a large number of comments since 1989 on the application of Conventions Nos 87 and 98 by Bangladesh and the Conference Committee had adopted conclusions on several occasions, drawing attention in particular to the problems in EPZs. Over the same period, the Committee on Freedom of Association had also formulated several recommendations. It could therefore be concluded that this was a case of continued failure to apply the freedom of association Conventions.

If the case was on the list, it was also due to the developments in the situation at the national level, which could be classified as extremely serious. Those who had hoped that the situation would improve after the installation of the new caretaker Government had been mistaken. On the contrary, the situation had deteriorated. Trade union activity had become almost impossible. Trade union secretariats had closed down. Strikes and demonstrations were prohibited. Trade union leaders were arrested or intimidated by criminal prosecutions, which were often totally unjustified. Trade union activists in enterprises were obliged to resign and were under physical threat. New unions could not register. Moreover, the national press reported that the police had fired on workers in the garment industry who were demonstrating in favour of a readjustment of their purchasing power following the steep rise in the prices of basic foodstuffs, a claim that was clearly justified when the basic wage was no higher than US\$25 a month. It should also be noted that the Government had prohibited unions from celebrating May Day.

In its observation, the Committee of Experts proposed substantial amendments to the legislation to bring it into conformity with Convention No. 87. However, over recent months, the workers had been faced by even more restrictive legislative proposals. The Government was clearly taking advantage of the state of emergency that the country had been in since January 2007 to engage in a heavy-handed repression of trade union rights. This not only gave rise to social problems, but also to economic difficulties, particularly for the garment industry. The employment of 2.5 million workers in these sectors was under serious threat because Western countries and enterprises were increasingly demanding respect for the fundamental rights of workers.

The Government member of Pakistan noted with satisfaction that several measures had been taken by the Government of Bangladesh to implement Convention No. 87. He was encouraged by the fact that permission for labour activities had been granted under the 2006 Labour Law,

which fostered trade union activities. Several other measures, including the establishment of the Tripartite Consultative Committee and steps taken by the Ministry responsible for shipbreaking, were also a positive indication. He hoped that the new Government, which would take office after the elections to be held in December 2008, would take further steps and remove the prohibitions on trade union activities in EPZs and on membership of multiple trade unions.

The Worker member of Bangladesh said that, following confrontational politics in Bangladesh, the President, acting under the country's Constitution, had declared a state of emergency and formed a caretaker Government, which had taken office in January 2007. All political and trade union activities had subsequently been suspended. The application of Convention No. 87 had also been suspended, leaving trade union leaders unable to exercise their right to freedom of association. The Government had undertaken some reforms with a view to holding free and fair parliamentary elections, which were scheduled for December 2008. The Tripartite Consultative Committee had been formed to discuss, negotiate and find solutions to labour issues, and to develop a strategy to restore the application of Convention No. 87. Several high-level meetings had been held but, despite intense pressure on the Government, freedom of association had yet to be restored.

Meanwhile, as a result of sky-rocketing prices, the purchasing power of low-paid workers had been tremendously affected, resulting in demonstrations by workers and organizations in the garment sector to voice legitimate demands in defence of their wages and livelihood. After prolonged agitation by the labour movement in 2006, a tripartite memorandum of understanding had been signed with the previous Government, fulfilling the demands of the garment workers. Although its provisions had been implemented by some parts of the garment industry, the precarious situation of many companies had prevented its universal implementation. If the Government did not restore Convention No. 87, more agitation and demonstration would follow, despite the current state of emergency.

Unprecedented price rises had gravely affected the country's workers. The minimum wage had been fixed at US\$25 per month, which was insufficient for even a single person to live on. In the light of price increases, wages needed to be reviewed and the minimum wage fixed at US\$75 per month. Workers had also faced problems as a result of the absence of fundamental trade union rights, which jeopardized and severely hindered the exercise of human rights, as well as the application of Convention No. 87.

The Government had proposed the repeal of the Act on political parties, which contained a provision stating that all political parties had to include a labour organization. This had the effect of politicizing trade unions, and he therefore welcomed the Government's proposal. His organization was strongly in favour of establishing a non-partisan trade union movement in Bangladesh, an aim which was also being pursued and promoted by the ILO.

In 2006, during the last tenure of the previous Government, a number of labour laws had been enacted or amended to the great detriment of the trade union movement. It was now mandatory that, soon after receiving an application for union registration, the registration authority had to provide the employer concerned with a list of the union's proposed leaders. While few unions in fact sought registration, those who did found that the employer had dismissed all the proposed leaders and had them brutally beaten by hired thugs. Another provision stipulated that if the Director of Labour failed to conduct an election for any reason within the required period, the union currently serving as collective bargaining agent

(CBA) would remain as such for an unlimited period, which violated the democratic rights of workers.

The caretaker Government had raised some points for discussion by the Tripartite Consultative Committee, including the requirement that there could be only one union in each establishment, that union offices should not be established within 200 yards of the enterprise concerned, and that anyone intending to run for election to any trade union office should first obtain training on trade unions. Trade union leaders had voiced strong opposition to such proposals at meetings of the Tripartite Consultative Committee, and Government representatives had said that they would not be enacted without trade union support. He hoped that the Government would keep its promise.

With regard to multinational enterprises, the speaker recalled that, within the tripartite system which had existed before the state of emergency, many companies had been reluctant to discuss matters relating to contract labour. Despite strong opposition from the unions, many companies were engaging contract workers, while at the same time implementing a “voluntary” retirement scheme on a compulsory basis. Freedom of association in EPZs had virtually disappeared although, following several meetings with the ILO and other bodies, the Government had eventually decided to allow the formation of consultative committees in the respective industries in EPZs. He expressed the hope that full freedom of association would be established in EPZs.

The speaker urged the ILO and the Committee of Experts to put pressure on the Government and employers to stop the current outrage, amend anti-worker laws and restore the application of Convention No. 87 in Bangladesh, in order to ensure a healthy and democratic trade union atmosphere.

An observer representing the International Textile, Garment and Leather Workers’ Federation (ITGLWF) said that, in June 2006, the Conference Committee had requested the Government of Bangladesh to eliminate obstacles to trade union activities in EPZs, prevent interference in trade union affairs and set lower limits for trade union registration and recognition. Two years later, freedom of association had in reality been eliminated following the outlawing of trade union activity under the emergency regulations imposed in January 2007. For 17 months, trade unions had been prevented from organizing, meeting members and even holding statutory meetings for the renewal of the mandates of their leaders, and the Government was now proposing even higher thresholds for trade union recognition. As a direct result, worker exploitation had intensified and, in the absence of worker representation, near anarchy prevailed when tensions mounted because of the frequent late payment of wages, cheating on overtime pay, and the regular aggressions against workers.

For the past year and a half, every week had brought new reports of unrest arising from extreme exploitation. The newspapers today had run reports of 50,000 garment workers damaging 50 factories after one worker had been killed. The previous day had seen reports of hundreds of garment workers rioting and forcing closure of 20 factories because they were being paid below the minimum wage and cheated on overtime. This was what happened when workers’ representation was repressed and workers went leaderless. Workers in EPZs had gone largely unrepresented during the 20 years of EPZs’ existence. Repeated promises had been made to grant EPZ workers freedom of association, but those promises had been broken, and workers were as far away as ever from being able to combine and bargain freely. Suppression of workers’ rights had resulted in a legal minimum wage of less than 80 cents a day, or US\$22 per month, which was well below the United Nations “absolute poverty” level. Workers now spent 70 per cent of their wages on rice alone.

The Government itself admitted that only 51 per cent of garment companies met the minimum standards on wages and basic working conditions. Labour inspectors had reported 37,033 labour law violations in 2006 and 48,291 in 2007, but cases filed against errant companies had fallen from 5,684 in 2006 to only 428 in 2007 – and this at a time when the garment industry was booming. The garment sector expected exports of US\$11 billion in 2008, with inward investment in EPZs predicted to top US\$1 billion.

He appreciated the difficulties faced by the caretaker Government in rescuing Bangladesh from the political inaction and corruption of past decades, but the workers were not responsible for the situation, and yet they were being penalized through the denial of their rights, impoverishment and inhuman treatment. He cited numerous examples of detention and maltreatment of trade unionists and of abuse of workers, including coercion to work extremely long hours, leading to death in certain cases.

Not surprisingly, labour unrest had become widespread. Indeed, in February, a deputy Secretary in the Ministry of Labour and Employment had admitted that the “ill-treatment of workers and wrong handling of issues” was one of the main reasons of labour unrest. The chief inspector of factories had agreed that agitation was natural when workers were not being paid their wages. But instead of promoting mature industrial relations through dialogue based on freedom of association and the right to bargain, the caretaker Government was acting to limit long-term worker empowerment, both inside and outside EPZs.

Appearing to act under pressure from investors in EPZs, as well as domestic industry, the Government was proposing Labour Code amendments outlawing trade union offices within 200 metres of factories; preventing anyone not trained by the Government from assuming trade union office; removing the need for labour court approval for the cancellation of trade union registration; and increasing from 30 to 50 per cent the percentage of members needed for trade union recognition. The proposals were in clear violation of Convention No. 87 and the conclusions of the Conference Committee.

Garment workers in Bangladesh, who were mainly women, should not be allowed to drop further into serfdom. The ILO could not let Bangladesh drive trade unions out of existence. The Conference Committee’s report should include a special paragraph on Bangladesh demanding the full application of the principles of freedom of association, including in EPZs; the dropping of false charges against trade union leaders and activists and the cessation of campaigns of harassment against trade union activity; and the full application of the law in every factory. In addition, the ILO should fully investigate, through a high-level mission, the labour rights situation in Bangladesh with a view to offering technical assistance to redraft the Labour Law.

The Government representative of Bangladesh expressed appreciation of the comments made by certain speakers and wished to reply to some of the issues raised during the discussion of the case. As admitted by trade union leaders, it had been necessary for the caretaker Government to hold the political parties responsible for the role that they had played in the crisis affecting the country. In certain cases, trade union leaders had been involved in that crisis and would therefore also be tried for any crimes committed. However, he emphasized that due process was being followed and that any trials would be for committing crimes and not for running trade union activities. He added that the caretaker Government had entered into discussions with the political parties, and more recently with trade unions with a view to broadening the consultation process. He recalled that elections would be held in 2008 and that the newly elected Government would undoubtedly withdraw many of the measures that had been

taken over the past months, including the withdrawal of measures suspending the application of Conventions Nos 87 and 98. He further recalled that the Labour Law of 2006, which had been adopted after a consultation process lasting 14 years, was already subject to a process of amendment to bring it into line with the Convention. Furthermore, in view of the need to give enterprises which invested in EPZs the necessary time, under the terms of the agreement signed with employers, trade union activities would resume fully in EPZs by 2010. He noted in this respect that, although workers enjoyed better conditions in EPZs, there had also been unrest at internationally managed EPZ factories. This was a cause of concern for the High-Level Crisis Management Committee, which included worker representatives. It should also be noted that inspectors covered EPZs and that labour regulations had been prepared and would start applying in such zones. With reference to minimum wages, he referred to the efforts to extend minimum wage provisions to other sectors, including tea plantation workers. In conclusion, he expressed the hope that Bangladesh would have a Parliament by 2009 which would be able to take measures to improve the implementation of ILO Conventions.

The Employer members urged the Government to make efforts to translate the provisions of the Convention into law as soon as possible. They also called on the Government to provide all the information requested by the Committee of Experts as soon as possible. The Employer members recognized that the Government had had recourse to the technical assistance of the Office in the past and requested the Government representative to specify whether the Government was prepared to request assistance on the problems highlighted by the Committee of Experts in the present case.

The Worker members thanked the Government representative for his reply, as well as the Committee of Experts for its very detailed analysis of the application of Convention No. 87 in Bangladesh, both with regard to trade union rights in EPZs and the new Labour Law 2006. The reaction of the caretaker Government that responsibility for the allegations rested with previous Governments was foreseeable. However, it should be noted that the new Government had not made any effort to improve the situation. On the contrary, it was using the situation of the state of emergency to seriously jeopardize all trade union rights. Moreover, the legislation currently under consideration regulated trade union activity in an even more restrictive manner.

This was a case of serious and persistent failure to comply with the fundamental rights of workers for two decades, which was giving rise to a very explosive social condition and which also endangered much of the country's economy. For all these reasons, the Worker members fully endorsed the conclusions of the Committee of Experts concerning both EPZs and the revision of the Labour Law 2006. In addition, it was necessary, as a matter of urgency, to call on those responsible to put an end to the persistent attacks on freedom of association and trade union rights. The question arose as to whether the situation would change after the election of a new Government. In the light of past experience, doubts remained.

In 2006, the Committee had decided to include a special paragraph in its report for non-compliance with Convention No. 98. Following the refusal to receive technical assistance from the Office and also considering the close relationship between Conventions Nos 87 and 98, the serious allegations of failure to comply with Convention No. 87, and the deterioration of the situation since 2006, the Worker members requested the Government to accept a high-level technical assistance mission.

The Government representative of Bangladesh emphasized that a detailed report was being prepared on all the issues raised by the Committee of Experts so that it could be submitted in due course. With regard to the question of

technical assistance, he believed that it would be more logical for the Government to assess where such assistance was needed before going on to request it. Moreover, he did not see the need to include the case in a special paragraph of the Committee's report. He recalled that certain technical missions had been received by the country a few years ago and that a tripartite consultation process was being developed. He therefore considered that it would be better to wait until the new Parliament was in place in 2009. The Government of Bangladesh was accordingly prepared to accept ILO assistance, but needed to work out the areas in which such assistance was needed. He emphasized that his Government was not refusing such assistance.

The Employer and Worker members, in light of the response of the Government representative, called for the present case to be set out in a special paragraph of the Committee's report.

Conclusions

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

The Committee observed that the Committee of Experts' comment referred to serious violations of the Convention both in law and in practice, including: allegations of the raiding of the offices of the Bangladesh Independent Garment Workers' Union Federation (BIGUF) and the arrest of some of its officers; further arrests and police harassment of other unionists in the garment sector; arrests of hundreds of women trade unionists in 2004 whose case was still pending before the courts; and obstacles to the establishment of workers' organizations and associations in export processing zones (EPZs). It further observed with regret that many of the discrepancies between the Bangladesh Labour Law of 2006 and the provisions of the Convention concerned matters upon which the Committee of Experts had been requesting appropriate legislative action for some time now.

The Committee noted the Government's statement that the Labour Law of 2006 was adopted following a process of consultations with the social partners over many years. It further noted the Government's indication that it was in the process of reviewing the Labour Law, within the framework of the Tripartite Consultative Committee, in order to bring its provisions into conformity with the Convention in respect of any remaining loopholes. As regards the allegations of arrests and detentions, it noted the Government's statement that none of these persons remained in custody nor were the charges against them being actively pursued. The Committee observed that in reply to its request concerning technical assistance, the Government stated that it would conduct a needs assessment and request such assistance if needed.

Expressing its concern over the apparent escalation of violence in the country, the Committee stressed that freedom of association could only be exercised in a climate that was free from violence, pressure or threats of any kind against the leaders and members of workers' organizations. The Committee requested the Government to provide full particulars to the Committee of Experts in respect of all the allegations of arrest, harassment and detention of trade unionists and trade union leaders and urged it to give adequate instructions to the law enforcement bodies so as to ensure that no person was arrested, detained or injured for having carried out legitimate trade union activities.

The Committee further urged the Government to take measures for the amendment of the Bangladesh Labour Law and the EPZ Workers' Associations and Industrial Relations Act so as to bring them into full conformity with the provisions of this fundamental Convention as requested by the Committee of Experts. The Committee emphasized in this regard the serious difficulties prevailing as regards the exercise of trade union rights in EPZs and the restrictions on the right to organize of a number of categories of workers under the Labour Law. It called upon the Government to ensure

that all workers, including casual and subcontracted workers, were fully guaranteed the protection of the Convention. The Committee expressed the hope that the necessary concrete steps would be taken without delay and trusted that all additional measures would result in an improvement and not a deterioration of the trade union rights situation in the country. It requested the Government to provide a detailed report on all of the above matters for examination at the forthcoming session of the Committee of Experts.

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

BELARUS (ratification: 1956)

The Government communicated the following written information concerning measures taken to fulfil the recommendations of the Commission of Inquiry.

Since 2005, when the Government made a plan to fulfil the recommendations of the Commission of Inquiry, a number of concrete steps were taken, which had led to full implementation or significant progress in the implementation of its recommendations. These steps include in particular:

- abolition of the Republican Registration Commission and transfer of responsibility for registration of trade unions to the Ministry of Justice;
- registration of four primary-level trade unions of the Radio and Electronic Workers' Union in Minsk, Brest, Borisov and Grodno (there were no cases of dissolution of trade unions since the establishment of the Commission of Inquiry);
- admission to membership of the National Council on Labour and Social Issues of the representative of the second largest trade union – the Congress of the Democratic Trade Unions (CDTU);
- publication of the recommendations of the Commission of Inquiry in the major periodical in the country;
- reappointment to his post of the air traffic controller, Oleg Dolbic;
- issuance by the Ministry of Labour and Social Protection of a circular letter to enterprises concerning prohibition of interference by employers in trade union affairs and continuation of this work in the National Council on Labour and Social Issues;
- creation of the expert Council for the Improvement of the Legislation in the Social and Labour Sphere trusted by all social partners;
- organization in January 2007, jointly with the ILO, of a seminar for judges and prosecutors on compliance with the recommendations of the Commission of Inquiry;
- agreement with the ILO on organizing a joint seminar on protection of workers against discrimination on the grounds of trade union membership on 18 June 2008 in Minsk.

Cooperation of the Government of Belarus with the ILO and the social partners in the preparation of the new law on trade unions

The Government informed the ILO that improvement of the national legislation concerning establishment and registration of trade unions would be realized through amendments to the law on trade unions, which was thoroughly reviewed in order to reflect the new conditions and to create the legal basis for more active development of the trade union pluralism in the country. This process was carried out in close consultations with the ILO, which took place 19–20 October 2006 (Geneva), 15–17 January 2007 (Minsk), 8–9 and 14–15 February 2007 (Geneva), 14–15 May 2007 (Geneva), 20–23 June 2007 (Minsk). Consultations with the social partners were carried out within the expert Council for the Improvement of the Legislation in the Social and Labour Sphere which includes representatives of all major participants in the so-

cial dialogue at the national level: the Government, the Federation of Trade Unions of Belarus, the CDTU, the Republican Association of Industrial Enterprises, the Business Union of Entrepreneurs and Employers. Four meetings of the Council took place in 2007 to discuss the draft law.

Major improvements in the draft law on trade unions

The conditions for the establishment of a trade union were substantially simplified. Trade unions could be created at any enterprise by only three persons who, instead of a legal address, would have to indicate the address for correspondence. Thus, the draft solved two principal problems raised by the Commission of Inquiry: that of the legal address and the minimum membership requirement of 10 per cent of employees for the creation of a trade union. Furthermore, the draft simplified conditions for the creation of trade unions regrouping workers from different enterprises: such trade unions could be established with a minimum of 30 members, which is in line with the conclusions of the ILO supervisory bodies. Trade unions were freed from the payment of state duty for their registration.

The main divergences concerned the provisions of the draft law dealing with the representative capacity of trade unions, which the Government tried to bring into conformity with ILO standards. The number of members was set as the basic criteria determining the representative capacity of a trade union. All trade unions, irrespective of the representative capacity, received rights and guarantees necessary to ensure their normal activities for protecting the interests of workers. All trade unions have the right to independently adopt their statutes; elect and manage their bodies; collect contributions; establish and join trade union federations; receive and disseminate information relating to their statutory activities; take part in discussing labour contracts concluded between employer and worker; protect labour rights of their members and represent them in court; organize strikes and mass actions. Additional rights given to the representative trade unions were quite limited and included the right to negotiate collective agreements; to participate in defining state policy; and to exercise public supervision of compliance with labour legislation.

Continuation of the social dialogue to reach agreement by all interested parties

The new version of the draft law on trade unions was ready by autumn 2007 and should have been submitted by the Government to Parliament. The majority of the interested parties taking part in the social dialogue supported the draft, but the CDTU opposed its principal provisions. ILO also made a number of comments during the consultations in Geneva in May 2007 and in Minsk in June 2007, recommending the Government not to submit the draft law to Parliament largely because it was not supported by one of the participants of the social dialogue, namely the CDTU. Following this recommendation, the submission of the draft law to Parliament was suspended. The Government informed the social partners about the continuation of the work on the draft law at the meeting of the National Council on Labour and Social Issues on 1 November 2007. The November session of the Governing Body welcomed the decision of the Government to reach agreement of all interested parties. The Committee of Experts also positively appraised the Government's action by enlisting Belarus among cases of interest concerning the application of Conventions Nos 87 and 98 (Report III, Part IA, page 18).

In March 2008, the Governing Body pointed out, among other things, the need to take tripartite action to be reported to the Conference. Implementing this decision, the Government pursued consultations with the social

partners with the aim to reach consensus on the principal improvements of the draft legislation. It was not an easy task as such agreement was not obtained in 2007 and the parties had different views on concrete provisions of the future law on trade unions. To resolve the situation, the Government suggested an entirely new approach where the key role was assigned to the expert Council for the Improvement of the Legislation in the Social and Labour Sphere. At the meetings of the expert Council in April 2008, instead of discussing concrete provisions of the draft law which were in dispute, the members concentrated on elaborating the basic position, which reflected the view of all represented parties and provided a starting point for future work. This position consisted in acceptance by all participants of the social dialogue of the principle that future work on improvement of the national legislation should be based on the provisions of ILO Conventions Nos 87 and 98. Furthermore, the expert Council has unanimously decided to put this question for the consideration of the main body of the social dialogue in Belarus – the National Council on Labour and Social Issues. At its meeting on 16 April 2008, the National Council fully supported the position worked out by the expert Council and endorsed the principle of full compliance with ILO Conventions Nos 87 and 98 as the basis for the future work on the new legislation on trade unions.

The decision of the National Council has created a new situation in principle: for the first time since the establishment of the Commission of Inquiry the Government and all social partners have managed to work out a common position on one of the most important questions. Such common position on the basic principle reflected in the decision of the National Council of 16 April 2008 would help the Government and the social partners to progressively align the points of view of all participants of the social dialogue on the concrete provisions of the new legislation.

In addition, before the Committee a **Government representative of Belarus** said that, under the plan to implement the recommendations of the Commission of Inquiry, as prepared in 2005, a number of specific measures had been taken by the Government, leading to full implementation of some recommendations and significant progress in the implementation of others. These measures included in particular: the abolition of the Republican Registration Commission and the transfer of responsibility for the registration of trade unions to the Ministry of Justice; the representative of the Congress of Democratic Trade Unions' (CDTU) admission to membership of the National Council on Labour and Social Issues (NCLSI); the publication of the recommendations of the Commission of Inquiry in the major periodical in the country; Oleg Dolbik's reappointment to the post of air traffic controller; the issuance by the Ministry of Labour and Social Protection of a circular letter to enterprises concerning the prohibition of interference by employers in trade union affairs and a follow-up in the NCLSI; the creation of the Expert Council for the Improvement of Legislation in the Social and Labour Sphere, which had the confidence of all social partners; the organization in January 2007, jointly with the ILO, of a seminar for judges and prosecutors on compliance with the recommendations of the Commission of Inquiry; and the agreement with the ILO to organize a joint seminar in Minsk on protection of workers against discrimination on the grounds of trade union membership on 18 June 2008.

Guided by the ILO Conference and the Governing Body, steps had been taken to develop social dialogue and establish constructive relations between the social partners. The situation was already significantly more stable. The previous antagonism between the Federation of Trade Unions of Belarus (FPB) and the CDTU had given way to dialogue, and it was hoped that they would work together on the new draft of the General Agreement for 2009–10.

The NCLSI and the Expert Council for the Improvement of Legislation in the Social and Labour Sphere had played a positive role in this process, and both the FPB and the CDTU participated in their meetings on a permanent basis. Employers' organizations played an ever more active role, as they currently chaired the NCLSI. All interested parties had found their place in the social dialogue process, and Belarus now had pluralistic workers' and employers' organizations.

One of the main challenges in the near future would be to draft new legislation on trade unions. In order to improve the legislation on the formation and registration of trade unions, the current law on trade unions would be amended. The law had been thoroughly reviewed to reflect the new conditions and to create a legal basis for a more active development of trade union pluralism. The process had involved three rounds of close consultations with the ILO in 2007, as well as consultations with the social partners at the four 2007 meetings of the Expert Council, which brought together the Government, the FPB, the CDTU, the Republican Association of Industrial Enterprises, and the Business Union of Entrepreneurs and Employers. An ILO mission had visited Belarus in June 2007 and participated in one of the Expert Council's meetings.

The new draft law on trade unions substantially simplified the conditions for the establishment of a trade union. Trade unions could be created at any enterprise by only three persons who, instead of a legal address, had to provide a correspondence address. This solved two of the main problems raised by the Commission of Inquiry, namely the need for a legal address, and the minimum membership requirement of 10 per cent of all employees for the establishment of a trade union. Furthermore, the draft simplified the conditions for forming a trade union by bringing together workers from different enterprises, which could now be established with a minimum of 30 members, in line with the conclusions of the ILO's supervisory bodies. The payment of state duty upon registration of trade unions had been waived.

The main points of contention had been those provisions of the draft law that dealt with the representativeness of trade unions, which the Government had tried to bring into conformity with ILO standards. Under the draft legislation, all trade unions, irrespective of their representativeness, enjoyed the rights and guarantees necessary to safeguard their activities in defence of workers' interests. The majority of social partners had supported the draft law, but the CDTU had opposed its principal provisions. The ILO had also made a number of comments.

The draft law, which had been prepared in autumn of 2007, should then have been submitted to Parliament. However, the ILO had recommended that the Government abstain from doing so, as the draft law did not enjoy the support of one of the partners in the social dialogue, namely the CDTU. Taking this into account, the Government had postponed the submission of the draft law to Parliament and informed the social partners that work on the draft law would continue at a meeting of the NCLSI in November 2007. At its November 2007 session, the ILO Governing Body had welcomed the Government's decision, and encouraged the Government to take further positive steps. The Committee of Experts had also positively appraised the Government's action by including Belarus in the list of cases of interest with regard to the application of Conventions Nos 87 and 98.

In March 2008, the Governing Body had stressed the need for tripartite action and had reported such to the Conference. The Government had therefore pursued consultations with trade unions and employers' organizations with a view to reaching agreement between all those involved in social dialogue on the issues of principle in relation to the improvement of national legislation. This had not proved possible in 2007, as the parties had had differ-

ent views on the specific provisions that should be included in the new draft law, and the Government had recognized that a new approach was needed. The Expert Council had played a key role as the chosen forum for consultations. At its meetings in April 2008, instead of continuing to argue over individual provisions of the draft law, members had concentrated on agreeing on a basic position which reflected the view of all represented parties and which would serve as a starting point for further discussions. All sides had recognized that the starting point for future work to improve national legislation should be the standards enshrined in Conventions Nos 87 and 98. The Expert Council had decided unanimously to bring the matter before the NCLSI, as the principal forum for social dialogue in Belarus, for consideration. During a meeting in April 2008, the National Council had fully supported the position of the Expert Council and endorsed the principle of full compliance with Conventions Nos 87 and 98 as the basis for the social partners' future work to improve national legislation in accordance with the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

This decision of the NCLSI had created a new situation in principle: for the first time since the establishment of the Commission of Inquiry, the Government and the social partners had managed to reach a common position on one of the most important issues. Work would now move forward step-by-step on the basis of that common position, with a view to reaching agreement on the specific provisions to be included in the new draft law. The Government would continue to cooperate actively with the ILO through the joint seminar to be held on 18 June 2008, which would involve all workers' and employers' associations, the International Trade Union Confederation (ITUC) and the International Organization of Employers (IOE). In addition, discussions were under way on the possibility of holding a tripartite seminar on the implementation of the recommendations of the Commission of Inquiry in Minsk later in 2008. Such positive steps were encouraging for the future.

The measures taken in Belarus to strengthen relations between the social partners provided the necessary foundation for the full implementation of the Commission of Inquiry's Recommendations. The conclusions of the Conference Committee would have particular significance as the support of the ILO was needed to enable the Government, together with workers' and employers' organizations, to continue developing social dialogue. All parties in the process should be able to see and understand that the path chosen was approved by the ILO, and that the ILO was ready to provide the necessary cooperation to make it a reality.

The Employer members stated that this case had a long history of over 15 years including a review by the Commission of Inquiry. Compared to 2005 and 2006, the Government's involvement in this case seemed to have changed significantly. Previously, the Government had said that the recommendations of the Commission of Inquiry needed to be adapted to national conditions. Now the Government said that it would seek to fully implement them without any reservation. Such shift was welcomed.

In 2007, the Government discussed its cooperation with the ILO in terms of seminars and technical assistance which had resulted in a new draft law intended to address the recommendations of the Commission of Inquiry. Nevertheless, as pointed out by the Committee of Experts in its observation, there were still problems with the content of the draft Bill, namely the following issues: establishing unions at the enterprise level without legal personality; a legal address required; the link between representativeness and the rights of trade unions; the level of formality of the registration procedure; the power of registration authorities to request and obtain information on the statutory activities of trade unions and the 10 per cent mem-

bership requirement to be registered at the enterprise level. The Employer members considered that the requirement of 10 per cent of the membership was not too high.

The Government had taken some constructive steps. As a result, there appeared to be a tripartite consensus on the principle that the new draft law would fully implement the Convention. The Employer members would have had preferred that the Government at this stage would have been closer to meeting the recommendations of the Commission of Inquiry. In 2007, the Employer members raised several issues that equally applied this year. First, the Employer members suggested that the Government had to remedy the damage done over the past several years to employers' and workers' organizations. The Government's approval on a tripartite consensus went a long way to meeting this recommendation. Second, the Employer members had pointed out that even with good intentions, there could be a gap between a draft law and the requirements of the Convention. Even if a tripartite consensus had been achieved, this did not mean that this was equivalent to meeting the requirements of the Convention, as the consensus was probative but not conclusive. Third, the ILO and the Committee of Experts had to examine how the draft law met the requirements of the Convention. Fourth, NCLSI and the Expert Council for the Improvement of Legislation in the Social and Labour Sphere would have to adjust the draft law on trade unions because of the time that had elapsed since the recommendations of the Commission of Inquiry. The new text had then to be included in a Government report to be examined by the Committee of Experts in its forthcoming session. The Committee would have a concrete basis to discuss whether this case was moving forward on a positive basis.

The Worker members recalled that this case was being presented before the Committee for the seventh time; that the Commission of Inquiry of 2003 was one of the more serious procedures that the ILO could put into place; and that the Committee of Inquiry formulated 12 clear recommendations which should form the basis for evaluating progress. In 2007, this Committee, while noting some progress, had expressed its concern at the draft law on trade unions and recommended that the Government consult with the social partners in order to bring its legislation into full conformity with the Convention.

An ILO mission was carried out in Belarus in June 2007 at the request of the Committee. Various consultations between the ILO and the Government had been held in Geneva and Minsk. However, no relevant evolution had been noted regarding the recommendations of the Commission of Inquiry, especially with regard to Article 2 of the Convention. Despite the fact that the Republican Registration Committee had been abolished, there was no proof that all obstacles to trade unions' registration had effectively disappeared. In this regard, the Committee of Experts had indicated that obstacles to the registration of primary level workers' organizations persisted. Therefore, the Worker members expected concrete clarifications on the situation with regard to the trade union registration procedure.

The draft trade union law which had been elaborated with ILO assistance and the participation of social partners, contained an ambiguity with respect to the requirements for trade unions. This could represent a disguised way to maintain the principle of prior authorization for trade unions, in contravention of Article 2 of the Convention. Similarly, the reasons for substituting the definition of "legal address" with that of "contact address" were not convincing. Moreover, this draft law did not repeal the provision stating that a trade union must represent at least 10 per cent of workers in order to be registered at the enterprise level.

The Worker members supported in full the suppression, required by the Committee of Experts, of all registration formalities contravening the Convention. They regretted that some signs of progress shown by the Government towards free trade unionism had been simultaneously contradicted by other measures constituting administrative harassment, such as the arbitrary rent increase for the premises occupied by independent trade unions.

The Worker members stressed that, as indicated by the Committee of Experts, section 41 of the draft law on trade unions would authorize public administrations to inquire into trade unions' activities, in violation of Article 3 of the Convention. Moreover, the measures taken in order to amend section 388 of the Labour Code which prohibits strikers from receiving financial assistance from foreign persons, as well as Decree No. 24 (concerning the use of foreign gratuitous aid, so that workers' and employers' organizations may benefit from assistance from international organizations of workers and employers) violate the trade unions' (and employers' organizations') right to benefit from the assistance from international organizations to defend their interests.

The Committee of Experts' report clearly indicated that the draft reforms were far from guaranteeing the full respect of freedom of association. The Worker members welcomed the Government's statement that in the future, independent trade unions would be treated on an equal footing with other trade unions. They urged the Government to follow the recommendations of the Commission of Inquiry and the conclusions of the Committee of Experts, as well as to amend the draft law on trade unions in conformity with what was indicated by the Committee.

A Worker member of Belarus declared that, despite the recommendations of the Commission of Inquiry, independent trade unions were struggling with the same difficulties as in the past. The refusal to register an independent trade union remained common. Last April, a Presidential Decree had led to a tenfold increase of the rent to be paid for premises occupied by independent trade unions. For the 1 May ceremonies, the FPB had been able to organize its meetings on the most prestigious sites of the capital, whereas the CDTU and the Radio and Electronic Workers' Union (REWU) had not even been authorized to organize their meeting in a city park. During the last seven months, the premises of the CDTU had been raided twice by the police and were accompanied by arrests of trade unionists and sequestration of property. Administrative and legal procedures launched against anti-union dismissals were not successful. The Expert Council for the Improvement of Legislation in the Social and Labour Sphere had still not been established. Without going into further detail, it could be concluded that out of 12 recommendations of the Commission of Inquiry, merely two had been implemented, albeit partially. The Committee should therefore be firm with the Government and compel it to have a more constructive approach.

Another Worker member of Belarus stated that the FPB represented the interests of more than 4 million workers in the country. He affirmed that a constructive dialogue with the Government existed. This was confirmed by the active participation of the FPB in the activities of the National Council on Labour and Social Issues and the Expert Council for the Improvement of Legislation in the Social and Labour Sphere. The FPB worked for the respect of ILO's international labour standards in the country and supported trade union pluralism. The examination of this case for the seventh time by the Committee revealed, on the one hand, that problems persisted and, on the other, that changes undertaken by the Government were not considered at the right moment. In this regard, it was indispensable for the ILO to support the progress achieved through more active dialogue and increased technical assistance. He invited the Committee to consider, in its conclusions, the need to maintain the dynamism established,

and to consolidate the progress achieved. At the same time the Committee should not continue to include this case in a special paragraph of its report.

The Employer member of Belarus stated that remarkable structural changes had occurred in the course of 2007 concerning the development of social partnership and cooperation between the Government and workers' and employers' organizations. Tangible progress had been achieved in fulfilling the Commission of Inquiry's recommendations. Regarding the improvement of social dialogue and the implementation of collective agreements, regular tripartite consultations had been held with the participation of all unions. Positive changes could be noted also concerning the legislation regulating and facilitating the development of the economy and the creation of favourable conditions for investment. It was hoped that these laws would help the country to achieve a high-level of economic development and a stable social environment. In this regard, it was also hoped that the countries' participation in the General System of Preferences, would be restored, the withdrawal from which had a negative impact firstly on ordinary workers. It could be the case that further requests from the ILO would have to be implemented, but there was no reason to believe that restrictions in the country would create social tension or curb dynamic development. The Belarusian employers were ready for the continued cooperation with all those organizations which had a clear view of the progressive, positive and real trends in the country. They also wished to make use of the support of the ILO. The Committee should undertake a proper assessment of the State's economic policy and all positive changes introduced in accordance with the ILO's recommendations, and reach balanced and fair conclusions.

The Worker member of the Russian Federation urged the Government to take the necessary measures to implement fully all recommendations of the Commission of Inquiry. The situation had begun to change slowly, but was moving in the right direction. The authorities understood that constructive dialogue was better than confrontation, and that it was easier to redress violations than to deny their existence. While a number of measures had been taken, violations still continued and pressure on trade unions was still exerted, including rent increases for the premises rented by some trade unions. He welcomed the fact that the draft trade union law was not submitted to Parliament and that the Government agreed to conduct two seminars on anti-union discrimination with the participation of all trade unions. He called upon the Government to demonstrate its goodwill and to reaffirm its adherence to ILO principles.

The Government member of Slovenia, spoke on behalf of the Government members of Member States of the European Union (EU). The Governments of Albania, Bosnia and Herzegovina, Croatia, Iceland, Montenegro, Norway, Serbia, The former Yugoslav Republic of Macedonia, Turkey and Ukraine aligned themselves with the declaration. The EU associated itself with the conclusions of the last session of the Governing Body in March 2008, in which the lack of progress made towards the implementation of the recommendations of the Commission of Inquiry since November 2007 had been deeply regretted, and which had urged the Government to ensure that workers' and employers' organizations could carry out their activities in full freedom. The EU remained deeply concerned by the situation in Belarus regarding the compliance with Conventions Nos 87 and 98. The EU deplored that the Government of Belarus had repeatedly failed to provide the Committee of Experts with requested information, and therefore invited the Government to improve the quality of cooperation with the Committee in this respect. He noted the Committee of Experts' finding that the "current situation in Belarus remains far from ensuring full respect for freedom of association and the

application of the provisions of the Convention". The registration of all workers' organizations without restrictions was particularly pertinent. The EU called on the Government to ensure freedom of association and the rights of all workers to form and join organizations of their choice in accordance with the Convention. The EU would continue to monitor closely the situation in Belarus. It called once again on the Government to honour its repeatedly stated commitment for the full implementation of the recommendations of the Commission of Inquiry without any further delay. The EU strongly encouraged the Government to continue a transparent and close dialogue with the social partners and the ILO. The EU took note of the recent information provided by the Government. The EU continued to stand ready to provide assistance if requested by the Government, with the objective of implementing these recommendations, involving also free trade unions.

The Government member of the Russian Federation recalled that last year, the Conference Committee noted the progress made by the Government of Belarus in the implementation of recommendations of the Commission of Inquiry. At its March 2008 session, the Governing Body also noted that constructive dialogue with the social partners had taken place in Belarus. With regard to the measures taken by the Government to implement the recommendations of the Commission of Inquiry, the following could be noted: the Republican Registration Commission was abolished and the responsibility for the registration of trade unions was transferred to the Ministry of Justice; two representatives of the CDTU became members of the NCLSI; the NCLSI became the competent body to examine complaints of interference in trade union affairs; the Ministry of Justice monitored the implementation of the NCLSI's decisions; several trade unions were registered; the Government continued its work on the draft trade union law in consultation with social partners and by taking into account the recommendations of the ILO; and the decision adopted on 16 April 2008 by the NCLSI that future work on improvement of the national legislation should be based on the provisions of ILO Conventions Nos 87, 98 and 144. The Government reaffirmed its willingness to cooperate with the ILO to achieve compliance with Conventions Nos 87 and 98. Thus, the Government was making progress in good faith and in the spirit of cooperation with the ILO.

The Government member of the United States expressed continued concern about the status of freedom of association in Belarus and applauded the many efforts of the ILO to work in good faith with the Government of Belarus to implement the recommendations of the Commission of Inquiry. This continuing cooperation should be welcomed. She noted the information that the Government of Belarus had supplied to the Committee. Despite these positive developments, her Government had the impression that Belarus was still far from ensuring full respect for freedom of association. This was indeed the essence of the Committee of Experts' observation. She noted that the Committee of Experts must examine whether, and to what extent, the latest developments in Belarus represented genuine progress in the application of the Convention. In the meantime, she recalled that the right to freedom of association should be fully respected in Belarus and all barriers, in law or in practice, should be removed to enable all workers to organize and to express their points of view without threat of interference or reprisal.

The Government member of the Bolivarian Republic of Venezuela indicated the positive aspects of the case and the measures taken by the Government to strengthen social dialogue. A tripartite mechanism had been established, the NCLSI, and a Council of Experts, the Expert Council for the Improvement of Legislation in the Social and Labour Sphere. The ILO Governing Body had also recognized the progress made. The Government was will-

ing to comply progressively with the recommendations of the Commission of Inquiry, based on social dialogue. Moreover, the Government recognized the need to amend the legislation and counted on the cooperation of national social partners, as well as on the participation of the ILO. The Committee of Experts had indicated as cases of interest the cases involving the application of Conventions Nos 87 and 98 by the Government of Belarus. The Committee had to also stress the importance of constructive social dialogue, as well as cooperation among the social partners and with the ILO.

The Government member of Canada expressed his Government's concern that the Government of Belarus continued to disregard international appeals to respect human rights and democratic principles, including the right of workers to form and join organizations of their own choosing. The Government of Belarus should be urged to recognize and respect the political and human rights of its citizens to peaceful and democratic activity, including those rights granted under the Convention that it had ratified. It also urged the Government to comply with the recommendations of the Commission of Inquiry and the requests of the Committee of Experts. The Canadian Government had worked, and would continue to work, with other member States of the ILO to encourage reform by the Government of Belarus.

The Government member of India noted the tangible efforts made by the Government of Belarus in initiating a draft trade union law in close cooperation with the social partners. He encouraged dialogue and cooperation between the member States and the ILO to resolve outstanding issues. The steps taken by the Government to engage with the social partners and to implement the recommendations of the Commission of Inquiry were extremely positive. In view of the significant progress made towards the practical implementation of the recommendations of the Commission of Inquiry and with the follow-up mechanisms in place, it was emphasized that this case should no longer be examined as an individual case.

The Government member of Egypt stated that the Government of Belarus had taken numerous measures to implement the recommendations of the Commission of Inquiry. Her Government also took note of the efforts to improve the legislation and of the cooperation with the ILO. In view of the progress made, the Committee should continue to support the Government.

The Government member of Cuba indicated that the explanations given by the Government representative confirmed that the recommendations of the Commission of Inquiry were fulfilled. By virtue of the new Decree No. 605, four out of six trade unions affiliated to the Radio and Electronic Workers' Union (REWU) had been registered. Moreover, a draft trade union law had been prepared with the participation of the social partners and the assistance of the ILO. It was important to remember the support of the ILO mission, which participated in the consultation process aimed at amending the draft law, and bringing it into conformity with Conventions Nos 87 and 98. Considering that in its previous session, the Committee of Experts had noted progress regarding certain recommendations of the Commission of Inquiry, the Conference Committee needed to act with impartiality and set aside any political interests. The Committee should note the progress achieved through social dialogue, its positive effects and the measures taken by the Government of Belarus to comply with the recommendations of the Commission of Inquiry and the observations of the Committee of Experts.

The Government member of China noted that since the last session of the Conference, the Government had achieved further progress through cooperation with the ILO and through constructive dialogue with the social partners with regard to the implementation of the recommendations of the Commission of Inquiry, preparation of

the draft trade union law and the establishment of tripartite mechanisms. The Committee should recognize the progress made in cooperation with the social partners. She expressed the hope that the collaboration between the Government and the ILO would continue for the implementation of Conventions Nos 87 and 98.

The Government representative of Belarus stated that this important discussion would be taken into account by the Government. Significant progress in the implementation of the recommendations of the Commission of Inquiry had been achieved and the Government continued its cooperation and dialogue with the ILO. A series of consultations had taken place in May in Geneva between the Government representatives, ILO experts, and the Employers' and Workers' groups. A seminar on anti-union discrimination would be held on 18 June 2008 with the participation of high-ranking officials and experts from the ILO, representatives of the ITUC, judges, prosecutors, representatives of the ministries concerned, representatives of the FPB, the CDTU, as well as employers' organizations.

All trade unions in Belarus, irrespective to which structure they belonged, could defend the interests of their members and conclude collective agreements. Six out of eight workers named in the report of the Commission of Inquiry were now working. Two preferred to stay in the informal sector. The eight persons concerned were not dismissed, but their contracts were not renewed. The fact that the system of fixed-term contracts existed in Belarus could not be criticized, as such a system existed in many countries. The anti-union discrimination was prohibited by the legislation and for cases of violations, the Office of the Public Prosecutor and the labour inspectorate were obliged to examine such cases.

With regard to the draft trade union law, it was important to note that a common position was finally adopted by all parties involved and the principle of full compliance with Conventions Nos 87 and 98 was endorsed as the basis for the future work on the new legislation. The efforts of the Government of Belarus to achieve implementation of the recommendations of the Commission of Inquiry should therefore be assessed positively.

The Employer members indicated that after a long debate, the conclusion seemed to be that this individual case was a good way towards solution, but much needed to be done. Nobody, especially not the Government, should underestimate the amount of work necessary to be undertaken. The Committee was waiting for the full realization of freedom of association in the country.

The Worker members expressed their support for all the recommendations made by the Committee of Experts in its observation. It contained an accurate and well-founded analysis, along with clear observations on the current law and the contribution of planned reforms with regard to the Convention. The Worker members regretted that the recommendations made by the Commission of Inquiry in 2003 had not yet been specifically implemented, in particular with regard to recognizing the rights of workers' organizations to be registered and to carry out activities free from interference. The Worker members strongly urged the Government to work in consultation with all social partners, particularly trade unions, to put the Commission of Inquiry's recommendations into practice and to ensure that this was done in a climate free from any violence or threats towards workers' organizations.

The Worker members welcomed the fact that the draft trade union law had been subject to a process of consultation with the social partners, rather than being imposed. This initiative on the part of the Government was more in line with Convention No. 87. In spite of the fact that they considered the situation to be encouraging and that they had seen some positive signs, the Worker members said that they would remain vigilant, and requested the Government to report regularly to the Governing Body on progress in legislation and in practice with regard to the

application of Convention No. 87. The Worker members stressed that the situation remained serious and that the Government should not consider that it had now fulfilled its obligations under Convention No. 87. It would be for the Governing Body to assess the efforts made by the Government in that regard.

Conclusions

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

The Committee noted the detailed information provided by the Government on steps it had taken to implement the recommendations of the Commission of Inquiry since the issuance of the Commission's report in 2004 and on recent steps to promote social dialogue in the country.

The Committee noted the statements made by the Government representative according to which, the submission of the draft trade union law to Parliament had been suspended and that the Government was actively continuing its work on the draft law in consultation with the social partners. **The Committee** further noted the Government's statement that, at its April 2008 meeting, the National Council on Labour and Social Issues endorsed the principle of full compliance with ILO Conventions Nos 87 and 98 as the basis for the future work on the new legislation on trade unions, which would be discussed in the Council for the Improvement of Legislation in the Social and Labour Sphere in July.

In light of the recommendations made by the Committee of Experts that the draft trade union law should not go forward in its present form, the Committee welcomed the fact that the Government had held the draft law back.

The Committee nevertheless noted with deep concern new allegations of harassment and pressure exercised on independent trade unions, including through dismissal, arbitrary rent increases for the premises used by independent trade union organizations and the continuing denial of registration.

The Committee noted with regret that it had to observe once again that the key recommendations of the Commission of Inquiry had not yet been implemented. While some recommendations had been dealt with, as noted earlier by this Committee, these steps did not go to the heart of the matter as clearly set out in the report of the Commission of Inquiry. In particular, no specific steps had yet been taken to satisfactorily address the question of the right for all trade unions to obtain registration without previous authorization and to conduct their activities without interference and harassment.

In light of the Government's stated commitment to social dialogue, the Committee firmly encouraged it to work closely with all the social partners to find acceptable solutions in the light of the comments of the Committee of Experts and which would effectively lead to the implementation of all the recommendations of the Commission of Inquiry. **The Committee** emphasized that such cooperation had to take place in a framework where there was no pressure on, or harassment of, trade union organizations and their members and where the fundamental rights of each of them was scrupulously respected.

The Committee welcomed the Government's statement that it was organizing a seminar on anti-union discrimination with the participation of ILO representatives immediately following the Conference and that a more expanded tripartite seminar would be organized, in autumn 2008, on the implementation of the Commission of Inquiry recommendations.

The Committee firmly expected that the Governing Body would be in a position to note positive developments in this respect at its November 2008 session. It requested the Government to provide information on legislative developments, as well as complete statistics relating to the registration of

BULGARIA (ratification: 1959)

A Government representative recalled that Bulgaria had been a Member of the Organization since 1920 and had ratified to date 80 ILO Conventions, including all eight fundamental and three priority Conventions. His Government fully shared the ILO's values and mission and believed that human rights in the social and economic fields were inseparable from the fundamental human rights. Among its main priorities was improving the application of international labour standards, ensuring effective access to social rights and strengthening their enforcement and implementation.

The last ten years had been marked by intensive cooperation between the International Labour Office and Bulgaria. The Government had received invaluable assistance in its successful process to join the European Union, in reforming its labour legislation, in capacity building and in strengthening implementation of social and economic rights. This discussion offered further opportunity for improving the country's compliance with international obligations and this could be positive in raising awareness of all those stakeholders responsible for the effective implementation of international labour standards in his country.

The observations of the Committee of Experts mostly concerned the right to strike, the most powerful means of pressure available to workers for protection of their interests. In a globalized context, collective actions closely reflected national systems of industrial relations and took into account socio-economic factors that vary from one country to another. The right to strike was guaranteed by the Constitution, which provided that workers and employees had the right to strike for the protection of their collective economic and social interests. There were several laws regulating the procedure and scope of the right to strike, in particular the Collective Labour Disputes Settlement Act which provided for different types of strike, such as symbolic strike, warning strike, effective strike and solidarity action. According to the national legislation, the decision to strike had to be taken by a simple majority (50 per cent plus one) of the workers of the enterprise or unit concerned. Such an important decision had to be taken responsibly by the majority of workers, which was in line with the principle of democratic rule. However, the Government was aware of the trade union's requests as well as of the Committee of Experts' observations concerning the need to review this provision. Consequently, it had been decided to search an appropriate solution and in this regard to request the technical assistance of the Office with a view to improving the collective labour dispute settlement system. Following this request, a senior official from the International Labour Standards Department had visited the country a few years ago on an advisory mission. In her mission report, the ILO official had proposed a concrete text for the amendment of the provision in question, which was still under consideration by the social partners.

As the national system of labour relations was based on the principle of tripartite consultations, the Government was committed to encouraging the continuation of tripartite consultations in order to reach a mutually agreed decision which would respond to the Committee of Experts' recommendations, while taking due account of the national social and economic conditions, the positions of different stakeholders and the obligations arising out of binding international legal instruments.

With regard to the obligation to notify the duration of a strike, the relevant legal provision was not considered to give rise to any practical problems. It did not mean that a strike had to last only a few days since a strike might in

fact be declared without limit, or until all requests were satisfied. This provision only provided for the possibility to gradually increase pressure by progressively increasing the term of the strike, until it was declared without limit. But there was no obligation to follow this pattern as a strike could be announced as being without limit from the beginning.

In its observation, the Committee of Experts requested the Government to amend section 51 of the Railway Transport Act, which provided that, where industrial action was taken, workers and employers had to provide the population with satisfactory transport services of no less than 50 per cent of the volume of transportation services that were available before the strike. The Committee of Experts estimated that the 50 per cent requirement for minimum service was excessive and pointed out that, since the establishment of a minimum service restricted one of the essential means of pressure available to workers, workers' organizations should be able to participate in defining such a service, along with employers and public authorities. In the light of these observations, the Government had initiated internal expert discussions on the possible amendment of this text. There was a clear will to resolve this question and it was hoped that progress could be achieved in the very near future.

Another observation of the Committee of Experts related to the workers in the energy, communications and health sectors, whose right to strike was denied. In this connection, the Government was pleased to announce that this provision was no longer in force since 2006. Accordingly, these workers now effectively enjoyed the right to strike. Under the new regulations, the workers concerned were required to ensure conditions for the functioning of the respective activities. These conditions should be set out in a written agreement, concluded no less than three days before the beginning of the strike. In case of failure to reach such an agreement, each party could bring the case before the National Institute for Mediation and Arbitration in order to determine the required minimum service. Detailed information would be provided in the Government's next report on Convention No. 87 to enable the Committee of Experts to assess the new system.

Finally, the Committee of Experts also commented on the restrictions on the exercise of the right to strike by civil servants, finding the right to a symbolic strike not to be fully consistent with the requirements of the Convention. In this respect, the Government recalled that the notion of civil service varied from one country to another. For instance, there were cases where civil servants were all those employed in the public sector, e.g. government officials, doctors, teachers, police officers, and persons in the judiciary system. This was not the case in Bulgaria where all employees representing the public sector were more than 500,000 whereas the number of civil servants was around 88,000. The notion of civil service was therefore limited to those persons who assisted a state body in the implementation of its functions. As a result, if those persons were granted the full right to strike, this could imply the cessation of normal state governance, serious negative societal consequences and possible infringement of individual human rights. For these reasons, the Government considered that, under the present circumstances and due to the special nature of the functions of civil servants, such a restriction was reasonable, proportionate and necessary for the protection of public interest, national security, public health and morality. However, in full respect of international labour standards and as further proof of its commitment to the core values of the Organization, the Government was ready to reopen discussions on the right to strike of civil servants in order to reach an acceptable solution. In this respect, the Government would welcome the technical assistance of the Office in analysing different systems and formulating concrete proposals appropriate for the specific situation of the country.

The Employer members thanked the Government representative for the explanations and expressed their appreciation for the Government's positive attitude. This case was unusual in that the Committee of Experts' observations dealt exclusively with various aspects of the right to strike. As such it provided an opportunity to provide some clarity around the Employer members' view on the right to strike under Convention No. 87.

All would agree that the right to strike was not expressly provided for in the Convention and the negotiating history of the instrument was unequivocally clear that the Convention related only to freedom of association and not to the right to strike. The Employer members recalled in this respect that in one of the preparatory reports (International Labour Conference, 31st Session, 1948, Report VII, page 87), the Office had concluded that several governments had emphasized, justifiably it would appear, that the proposed Convention related only to the freedom of association and not to the right to strike, and that in these circumstances it was preferable not to include a provision on this point in the proposed Convention concerning freedom of association. Both in the preparation and the adoption of the Convention the question of whether the freedom of association created a basis for regulating the right to strike was answered in the negative. The Employer members recognized that freedom of association under Convention No. 87 contained a generalized right to strike but Convention No. 87 did not provide a basis for regulating the right to strike itself. Thus, governments had substantial latitude to determine the scope and limits of the right to strike based on national conditions and circumstances.

This background was essential in considering the Committee of Experts' second, third and fourth observations in this case. The second point concerned the Government's view that workers and employers should provide the population with no less than 50 per cent of the volume of transportation that was provided before the strike. This was a decision for the Government to make. In view of the fact that tripartism was a cornerstone of the ILO, Convention No. 87 was somewhat unusual in that it did not contain an express provision calling for consultations with employers' and workers' organizations in the development of legislation and regulations concerning implementation of the Convention. Nonetheless, by virtue of its membership in the ILO, under the Constitution, the Declaration of Philadelphia and the Declaration of Fundamental Principles and Rights at Work, the Government had an obligation to consult with workers' and employers' organizations on legislation and regulations implementing the Convention. With respect to the third point raised by the Committee of Experts concerning compensatory guarantees for workers in the energy, communications and health sectors, the Employer members noted that the Government had removed the prohibition on strikes in these sectors. This was of course within the competence of the Government and in line with a generalized right to strike. As regards the fourth point concerning a total ban on the right to strike, the Committee of Experts had noted the Government's willingness to consider possible legislative changes.

Finally, regarding the Committee of Experts' first point concerning the right of workers' and employers' organizations to organize their activities freely without interference by the public authorities, the Employer members took the view that Article 3 of the Convention clearly provided for this but it was obvious that strikes had consequences that were not inherently internal. Even though a strike was normally directed against an employer, in a globalized world a strike's inevitable and calculated effects were increasingly intended to be felt on third parties and the public. Sympathy and political strikes, for instance, were aimed at parties not involved in the actual dispute. In other words, Article 3 applied when it was

purely an internal matter. The percentage involved to authorize a strike was an internal governance matter of the union and was protected by Article 3. On the other hand, specifying the duration of the strike was an external matter in the purview of the State because of the impact the duration of the strike had. In conclusion, the Employer members restated that the limits on the right to strike were not governed or regulated by Convention No. 87.

The Worker members noted that important progress had been achieved on several critical points raised by the Committee of Experts. They noted with satisfaction that the prohibition of strikes in the energy, communication and health sectors had been repealed in conformity with the principles of Convention No. 87. They also welcomed the commitment of the Government to revising the Civil Servant Act to bring it into conformity with Convention No. 87, and expressed the wish that such revision be undertaken in dialogue with the social partners.

The Worker members noted, however, that two difficulties pointed out by the Committee of Experts persisted. The first concerned the lack of progress in the revision of section 11 of the Collective Labour Disputes Settlement Act, which had repeatedly been requested by the Committee of Experts, and had also been the subject, in 2006, of scrutiny by the Council of Europe and the European Committee of Social Rights under the European Social Charter. The Worker members fully subscribed to the Committee of Experts' request to amend section 11, so as to relax the conditions that needed to be fulfilled before resorting to strike, both as regards the minimum required support to trigger the strike and the obligation of prior notification of its duration. The latter condition could create a situation of serious legal uncertainty for workers, in the case that the strike exceeded the announced duration. This difficulty had also been pointed out by the Council of Europe and the European Committee of Social Rights.

The Worker members further raised the issue of the right to strike of workers in the railway transport sector, which could not be considered, under the principles established by the Committee of Experts and the Committee on Freedom of Association, as an essential service within the strict sense of the term. Whilst a revision of the Railway Transport Act had well been announced, the Committee of Experts had noticed that the proposed amendments continued to considerably restrict the right to strike. The Worker members expressed their concern about the recent tendency in several European countries to impose limits on the right to strike by establishing a minimum service, which in turn rendered the right to strike meaningless.

The Worker members also invoked a problem that had recently arisen in Bulgaria concerning the right to strike. Following a large-scale strike in public education in September–October 2007, an association of parents had decided to lodge with the Commission for Protection against Discrimination an appeal against the trade union leaders, namely Yanka Takeva, President of the Bulgarian Teachers' Trade Union of the Confederation of Independent Trade Unions of Bulgaria (CITUB), and Krum Krumov, President of the education sector. The peculiar argument put forward by the plaintiffs amounted to saying that, due to the strike, pupils in public education had been discriminated against compared to pupils in private education. The Worker members declared that, should Bulgarian authorities come to the point of applying national legislation on discrimination, in order to restrict trade union rights, a new strategy for violating the provisions of Convention No. 87 would have seen the light.

The Worker member of Bulgaria, speaking on behalf of the CITUB and the Confederation of Labour "Podkrepa", shared the views of Worker members. On the subject of the amendment of section 11(2) and (3) of the Collective Labour Disputes Settlement Act, the revision of laws was being discussed for many years by the Government and the employers' and workers' organizations. Lack of po-

litical will and claims by the employers' organizations to have something in return before they could give their consent, made the process unusually long.

Regarding the request addressed by the Committee of Experts to the Government to amend section 51 of the Railway Transport Act of 2000, the recent declaration of the Ministry of Transport on this subject was untruthful, since the CITUB and the Confederation of Labour "Podkrepa" had been requesting such revision for many years without obtaining any reply from the Government.

With regard to the suppression of the prohibition of the right to strike in the energy, communications and health sectors, in the framework of the revision of the Labour Disputes Settlement Act, he wished to thank the ILO for the many years' efforts made in this regard leading to the abovementioned result. Concerning the restrictions on the right to strike of civil servants, the two trade union confederations considered that the provisions of section 47 of the Civil Servant Act were discriminatory against civil servants who could not be considered to be exercising authority in the name of the State. They expressed the hope that such provisions would be repealed with the support of the ILO.

Moreover, regarding the strike of the teachers and the appeal submitted to the Bulgarian Commission for Protection against Discrimination, it was noted that this had been one of the most important strikes in Bulgaria, with a participation of 80 per cent of the education personnel. The issue of legality of this strike had never been raised. However, after the ending of the strike, the authorities, under the guise of a parents' association, referred the case to the Bulgarian Commission for Protection against Discrimination claiming the alleged discrimination suffered by certain pupils with respect to those in private schools. The Commission, quite unusually, accepted the claim, notwithstanding the trade unions' argument that no tangible proof had been given to demonstrate the alleged discrimination. It was indeed an intimidatory action against the teaching personnel based on an inadequate interpretation of the national legislation. It was probable that this case would be submitted to the Supreme Administrative Court. If so, this would be a demonstration of the Government's attempts to hinder the freedom to exercise the right to strike recognized by the Constitution.

The Worker member of France denounced the trend of challenging the right to strike through insidious means such as, the exacerbation and exploitation for their own ends, of the disruption and discontent due to strikes. Strikes were disruptive and costly. However, the strike was also expensive for workers. As recalled in the General Survey of 1994 on freedom of association and the right to collective bargaining, the system of minimum services should not weaken the workers' actions to defend their rights. For workers, the right to strike represented a means of last resort when collective bargaining failed. The strike of Bulgarian teachers in 2007 showed that costly and disruptive conflicts were often long lasting and it could take time before a government recognized the failure of its policy and finally accepted, as in this case, to seek a solution through negotiation. Finally, the Worker member considered that the right to strike was an indissociable corollary of freedom of association, protected by the Convention.

The Government representative of Bulgaria thanked the speakers for their remarks. He reiterated the Government's intention to rectify the situation, in particular as regards the amendment of section 11(2) and (3) of the Collective Labour Disputes Settlement Act, and reaffirmed the Government's commitment to the search for appropriate solutions through tripartite dialogue. As regards the right to strike in the railway transport sector, he acknowledged that no consultations had been held, but only internal discussions had been initiated. The Government intended to forward new proposals to the Parliament

once tripartite consultations had been completed. With respect to the existing restrictions on the right to strike of civil servants, he expressed the hope that a satisfactory solution could soon be found with the help of the ILO. Finally, as regards the recent strike of teaching personnel, he observed that there was an ongoing procedure before the Commission for Protection Against Discrimination and therefore no conclusions could be drawn at this stage.

The Employer members welcomed the Government's statement that it was willing to rectify the situation on the basis of tripartite consultation. Under the circumstances, they expected appropriate steps to be taken and they would be prepared to assess progress in future sessions.

The Worker members stated that, setting aside the issue of the competence of the Committee on questions regarding the right to strike, they always considered the right to strike as a key part of freedom of association, covered by Convention No. 87. In this regard, they requested that the Collective Labour Disputes Settlement Act would be revised and brought into conformity with Convention No. 87, as recommended by the Committee of Experts. In Bulgaria, as in other countries, railway transport was not an essential service and the workers in this sector should be able to have recourse to strike action. The eventual new obligation for them to guaranteeing a minimum service would make the right to strike in this sector meaningless. Moreover, the Worker members hoped that the Committee of Experts would continue to be vigilant in the face of a dangerous trend attempting to challenge the right to take direct industrial action such as the right to strike, through legal action aimed at presenting the outcome of strikes as discriminatory. The success of such a strategy would negate the right to take industrial action.

Conclusions

The Committee took note of the statement made by the Government representative and the discussion that followed. The Committee recalled that the Committee of Experts referred to a number of matters relating to the right of workers' organizations to organize their activities freely without government interference.

The Committee noted the Government's statement according to which it committed itself to ongoing tripartite consultations in order to find a mutually agreed upon solution to respond to the comments made by the Committee of Experts bearing in mind the national social and economic factors. The Government further announced legislative changes which granted the right to strike to certain categories of workers who had been previously restricted in this regard.

The Committee noted with interest the Government's indication that some of the matters raised by the Committee of Experts had already been resolved and others were being addressed in consultation with the social partners. The Committee welcomed the Government's statement that it would fully associate the workers' and employers' organizations concerned in all discussions relating to these questions. It expected the Government to take all necessary measures to bring the legislation into conformity with the Convention and to provide full information on any relevant development, as well as the corresponding legislative texts, with its report when it is next due for examination by the Committee of Experts.

COLOMBIA (ratification 1976)

A Government representative stated that he had come from Colombia with the intention to share with the Employers, the Workers, the Government representatives and the ILO officials the space provided by the Committee on the Application of Standards in order to discuss a case which, like the case of Colombia, was no doubt a case in progress.

Talking about a case in progress required an objective analysis to be carried out in order to look for mechanisms which would allow progress to be made on the subject that should interest and bring together everyone: the improvement of the labour conditions in Colombia. This exercise made it necessary to recall and face the past, look at and analyse the present and project into the future the efforts that should continue to be made in order to improve on the situation.

The Government representative focused his intervention on the security, the impunity, the labour standards and what he considered a special point, namely the ILO presence and follow-up. These subjects were being analysed from the point of view of the tripartite agreement, recently evaluated by the high-level mission which had visited the country six months ago.

He recalled that each one of the steps achieved in the framework of the agreement should be seen as a triumph in terms of concerted action. But at the same time, it should be recalled that each step forward was a defeat for those who wanted only to exaggerate the problem. He stated that his Government and the ILO believed in dialogue, understood the agreement and the opportunity it represented as a mechanism which allowed the identification of points of divergence, the development of solutions, the building of democracy and assisting development. Tripartism was a real and concrete alternative on which one should bet.

With regard to the issue of security, he indicated that it could not be said that a policy focused and aimed at exterminating the Colombian trade union movement had existed or currently existed in Colombia. What had existed was a generalized problem of violence which had been confronted within the framework of the programme of democratic security. The previous year, five years after the implementation of the programme, the 32,000 violent deaths of the year 2002 had been lowered to 17,198, and the 196 assassinations of persons connected with the trade union movement had been reduced to 26, amounting to a reduction of 86 per cent. This number, he reiterated, continued to be very high and there was an enormous concern that in the first months of this year, the number of deaths had increased in relation to the same months last year.

The speaker referred to the protection programme. In 2000, two years after the Government came to office, the totality of the protection programme in the country had a budget of US\$1.7 million for trade unionists, journalists, social and political leaders. In 2007, the programme had 34 million dollars, approximately 30 per cent of which, around 11 million dollars, was allotted to the protection programme for trade unionists.

The second subject which he addressed was a priority objective of the Tripartite Agreement, namely, the fight against impunity and the progress made in this area. He recalled that the Attorney General's Office had created a special unit dedicated solely and exclusively to the investigation of the crimes committed against any person linked to the trade union movement. This unit which had been temporary at first, had been converted the previous year into a permanent unit within the Attorney-General's Office. This special unit had been reinforced the previous year when this same assembly of the ILO, had identified as an important need the promotion of the creation of specialized courts to clear the backlog, devoted solely and exclusively to judging the offences mentioned above. As a result of the above, the magistrates of the country had created three specialized courts to clear the backlog which had led to quick results against impunity, including: 44 convictions during 2007 and 11 during 2008 leading to a total of 103 sentences during the mandate of this Government. This number, which would be seen as small by many people, should be compared to the two judgements handed down in the five years between 1996 and 2001, while during the last year and a half, 55 sentences had

been pronounced, 177 persons had been convicted and 117 of them were in prison; and, according to the judges who were independent from the executive, 20 of the 105 sentences handed down so far were related to trade union activities.

However, the efforts related to security and the fight against impunity had been recently reinforced with a system of rewards which would lead to the identification and arrest of the instigators and perpetrators of all the crimes against persons linked to the trade union movement. These rewards had led to important results during the current year with the capture of five persons who were presumed to be responsible for such acts. Moreover, the national Government had tabled a draft law in Congress in order to toughen the penalties against the assassins of members of the trade union movement.

With regard to the labour standards, he mentioned that the previous week, Congress had upon a Government initiative, approved a draft law which transferred to the labour courts the responsibility for declaring strikes illegal in the country. The same draft law provided that the establishment of arbitration tribunals should take place by joint agreement of the parties.

The other project, which should be approved by Congress soon, had to do with associated labour cooperatives. Only some of these cooperatives were abusing the system, due to the lack of clarity of some of the legal provisions. This draft law, developed jointly with the associations of cooperatives was presented upon the initiative of the Government. He considered that the development of cooperatives should not be condemned as being an alternative to development.

Moreover, the Colombian Government had promised Congress that in the next six months it would present a draft law on essential public services.

He recalled that after the Tripartite Agreement, the country had also approved a law which introduced oral proceedings in the labour justice system. These measures which were still in the process of being implemented, would lead to an acceleration of the legal processes for re-establishing and compensating labour rights and would speed up the judicial decisions to ensure their timeliness. In 2008 the construction of more than 100 labour courts in the country had commenced.

Finally, he referred to the decision of the Government to reinforce the inspection and monitoring unit in charge of the implementation of the labour legislation. This measure was of great importance because the annual rate of unemployment had fallen from 20 per cent in 2002 to 11 per cent in 2007. The majority of these workers received benefits from the expansion of the social security system with regard to health, pensions and professional risks in Colombia. For example, in 2002, 55 per cent of Colombians were covered by the health-care system, while at present, around 90 per cent of Colombians were covered and the goal was universal coverage by 2010. In addition, during the coming three years the labour inspectorate would increase by 207 officials, leading to an increase of approximately 30 per cent.

With reference to the presence of the ILO in Colombia, he recalled that since November 2006, the ILO had an office in Colombia. Through this office, the Government had provided more than 4 million dollars of its own funds for the implementation of technical cooperation projects on decent work agreed upon in a tripartite manner.

The follow-up of the ILO Office in Lima, Peru, as well as the permanent and smooth communication with ILO headquarters, had allowed the ILO to play a decisive role in facilitating a constructive process of resolving problems, while helping to find national and international allies in the implementation of the projects at national level.

The high-level mission, which had visited Colombia on behalf of the Director-General Mr Juan Somavia and under the direction of Mr Kari Tapiola and his team, laid the

foundations for promoting the identification of a tripartite agenda, and work on this had started within the framework of the National Consultation Commission on Labour and Wages Policies. Subjects like decent work, labour justice and the exercise of freedom of association were included in the tripartite agenda. The Government representative reiterated the Government's will and its conviction on the need to move forward.

The Worker members emphasized that this special examination procedure did not constitute a precedent. There was cause to focus on certain themes covered by the Committee of Experts on the subject of the Tripartite Agreement of 2006. Firstly, as for the militarization of society, the acts of violence against trade union militants and leaders were ongoing. From 1986 to April 2008, 2,669 trade unionists were assassinated, hence one trade unionist every three days. This year, 26 assassinations had already been recorded, including seven teachers, one of whom was pregnant. These trade unionists were killed because of their trade union-related activities and, in most cases, by paramilitary groups that stigmatized the trade union movement as guerrillas or extremist socialist movements. The Government had made efforts to protect trade unionists, but the number of assassinations had not significantly decreased while according to the Committee of Experts the number of people protected had declined. The speaker asked when trade unionists would be able to safely carry out their activities, without bodyguards or bullet-proof vehicles. In addition, 96.8 per cent of trade unionist assassinations remained unpunished. Even if the number of investigations had recently increased, the percentage of those leading to legal action or convictions was considered tiny by the Committee of Experts.

As concerned hindrance to trade union activities, this did not stem only from the climate of violence but also from the legislation and from practices that were contrary to the Convention. In this regard, the Committee of Experts referred to the following: (i) the use of various contractual labour modalities, such as associated labour co-operatives, service contracts or civil or commercial contracts, which, by disguising the labour relationship, deprived workers of trade union rights. Yet, the Committee of Experts recalled that, when workers have to perform work within the framework of the normal activities of the establishment in the context of a relationship of subordination, they must be considered as employees and benefit from trade union rights; (ii) the arbitrary refusal to register new organizations, new statutes or amendments or the executive committee of the organizations. Even if the Government announced that a new resolution was enacted in 2007, the Committee of Experts considered that the administrative authorities still had excessive discretionary power, contrary to Article 2 of the Convention; (iii) the impossibility for federations and confederations, as well as for civil servants, to resort to strikes in a broad range of services not considered to be essential, added to the possibility of dismissing trade union leaders who participated in so-called illegal strikes and the authority of the Ministry of Labour to referring disputes to arbitration. In this regard, the Government adopted a new law regulating the right to strike which took into consideration only one of the nine recommendations of the ILO and allowed the President of the Republic to put an end to a strike. Finally, it was impossible to conduct collective bargaining since, trade unions for civil servants could not present their demands nor conclude collective agreements – a prohibition which extended to civil servants who are not in the administration of the State – and, in the private sector, so-called collective agreements were used to weaken the position of trade union organizations and limit their capacity to conclude a collective agreements.

The Worker members concluded that Colombia continued to clearly and flagrantly violate Convention No. 87. The Tripartite Agreement, concluded in 2006, had not yet

borne fruit. Of course, more means had been devoted to the protection of trade unionists, but the number of prosecutions and convictions of trade unionist murderers remained largely insufficient. With regard to fundamental rights and freedoms there was still no significant progress. Social dialogue must be reinforced in practice, and a true indicator of progress would be that collective bargaining be conducted on a more frequent basis in the private and public sectors. The Worker members noted that the ILO permanent representative and technical cooperation programmes were just beginning. International pressure was beneficial, but the results obtained remained insufficient. This pressure had to be applied more firmly and this discussion pursued this objective.

The Employer members thanked the Minister of Social Protection of Colombia for his voluntary presence before the Committee discussed the list of cases and underlined their appreciation for the Government's goodwill expressed to the Committee. Recalling the long history of the supervision by this Committee of the application of freedom of association standards in Colombia, the Employer members noted that during the last five years many positive developments had taken place, although the Government acknowledged that more needed to be done. In February 2000, a direct contacts mission had been sent to Colombia. In 2001, the Governing Body had appointed a Special Representative of the Director-General who had presented three reports to the Governing Body within a year. In 2003, the Governing Body had authorized a costly programme of technical cooperation financed by the ILO, which had lasted until 2006. At the June 2005 Conference, Colombia had agreed to accept a high-level tripartite visit composed of the Chairperson of the Committee on Freedom of Association and the two Vice-Chairpersons of the Committee on the Application of Standards. The high-level tripartite visit had been allowed full access and transparency in its meetings, including with the President of Colombia. On 1 June 2006, a historic Tripartite Agreement on Freedom of Association and Democracy had been signed at the International Labour Conference to strengthen the defence of the fundamental rights of workers, their organizations and trade union leaders, especially as concerned the respect of human life, trade union freedom, freedom of association, freedom of speech, collective bargaining, free enterprise for employers, as well as the promotion of decent work. To facilitate the implementation of this Agreement, the Office had established a permanent representation in Colombia and a US\$5 million programme of technical cooperation financed by the Colombian Government had been put in place. During the 2007 session of the International Labour Conference, it had been decided to organize a high-level mission to identify the additional needs in order to guarantee the effective implementation of the Agreement and the technical cooperation programme in Colombia. The high-level mission that had gone to Bogotá from 25 to 28 November 2007 had made a very positive report to which there had been no opposing position in the Governing Body.

The main issues raised by the Committee of Experts in this case concerned the situation of violence and impunity and certain legal and legislative matters against the background of several decades of continuous civil war. Since 2001, the level of violence against trade unionists had declined substantially along with the overall rate of homicides. It was important to note that the targets were not only trade unionists but also teachers, judges and other prominent personalities in society. However, everyone had to be concerned about the increase in trade union violence in 2008. The Committee of Experts noted that the protection budget had increased, with over a quarter of it going exclusively to the trade union movement, and that the Colombian central unions acknowledged the increased efforts of the Attorney-General to secure prosecutions and

convictions. The Government as a matter of urgency should continue these efforts with the systematic work of prosecutors and judges. The Employer members expressed the hope that these measures would lead to improvements in tackling the situation of impunity.

With regard to the legislative matters raised by the Committee of Experts, one important issue was the inappropriate use of cooperatives, an issue that had been focused upon by the high-level tripartite visit to Colombia in 2005. As the Committee of Experts pointed out, employees in such circumstances should be treated as regular employees with the same terms and conditions of employment and eligibility to join a trade union. The Employer members took note of the proposed 2007 Decree intended to level the playing field on this issue as mentioned by the Government, and asked that it be enacted expeditiously.

With regard to the comments made by the Committee of Experts concerning obstacles to the registration of trade unions and their activities, it was understandable that in the current climate of unrest the Government might wish to ensure that trade union functions did not go beyond normal trade union activities; however, Article 2 of Convention No. 87 clearly required that workers' and employers' organizations should be able to establish themselves without previous authorization. Moreover, keeping in mind that Convention No. 87 provided no express right to strike, note should be taken of the legislation under consideration that would allow the parties to fashion their own dispute resolution process in lieu of the current compulsory arbitration process. Furthermore, substantial resources should be allocated to the judiciary and labour tribunals as well as to the strengthening of labour inspection services. Finally, active steps should be taken to resolve the other issues raised by the Committee of Experts. The Employer members concluded by thanking the Government for its voluntary appearance and expressed the hope that the Government would continue to take steps to improve the situation as it had done in the past.

The Government member of Slovenia, speaking on behalf of Governments of Member States of the European Union as well as Albania, Armenia, Bosnia and Herzegovina, Croatia, Iceland, The former Yugoslav Republic of Macedonia, Moldova, Norway and Turkey, welcomed the Minister of Social Protection of Colombia, and expressed full support and appreciation for the work of the ILO and its permanent Office in Colombia in assisting the country in its efforts to ensure respect for Conventions Nos 87 and 98 through the technical cooperation programme in Colombia.

Although the efforts of the Government to improve the situation should be acknowledged, the level of violence was still far too high and the killing of trade unionists was of great concern. Nevertheless, the willingness of the social partners to cooperate in putting in place the mechanisms for effective implementation of the Tripartite Agreement on Freedom of Association and Democracy in Colombia was encouraging.

The measures taken so far by the Government in the fight against impunity should also be welcomed. However, the recommendation of the high-level mission should be stressed once again, to the effect that all cases of violence against trade unionists should be examined and no further backlog accumulated. Therefore, the Government was strongly encouraged to speed up the fight against the very high rate of impunity.

The protection programme for trade unionists should be supported and the Government encouraged to ensure that all trade unionists who so requested enjoyed adequate protective measures which commanded their trust. Finally, the Government was urged to take all necessary steps to amend the legislative provisions, such as the Labour Code, in order to align them with the provisions of Conventions Nos 87 and 98. The speaker called for the

continued cooperation of the Government with the ILO, in particular by seeking ILO technical assistance.

Finally, the ILO supervisory system, which was unique in the world, should be supported and this year's procedure should not be considered as a precedent for the future work of the Committee.

A Worker member of Colombia stated that when, on 1 June 2006, the Government, the workers and the employers of his country had signed the Tripartite Agreement on Freedom of Association and Democracy, the trade union movement was convinced that this had opened a new avenue to bring an end to the climate of violence and absence of freedom of association which had prevailed for more than a quarter of a century. Unfortunately, the anti-union climate of violence continued, with serious repercussions not only for trade unionism but also for democracy and social rights that were enshrined in the Colombian Constitution.

It could not be denied that an outcome of the Tripartite Agreement was the establishment of the special public prosecutor's unit to combat impunity (which was the best ally of anyone seeking to assassinate trade unionists), which had allowed some results to be obtained, even though much remained to be done. At the same time, he was concerned that, as far as 2008 was concerned, the 26 trade unionists killed in five months was far too high a figure for such a short period of time. The Government had to take measures to prevent such a genocide.

It was urgent to find a solution to bring an end to the acts of violence against trade unionists by stopping the Government's and the employers' anti-union conduct and by creating conditions in which the working class could organize freely without fear of losing their life or their job. It should not be forgotten that in many countries trade unions had played a leading role in the struggle against dictatorial regimes and that the return to democracy was due to the sacrifices, determination and altruism of thousands of workers, who, from the ranks of trade unions, did not hesitate to give up their lives so that democracy could prevail.

The speaker appealed to the Government and the employers to turn to freedom, peace and democracy, and to reaffirm the ILO as a key player and a forum for coming together and, that conflicts could be settled if and to the extent there existed political will of the different actors. The best way to discourage the enemies of trade unionism was through the promotion of a real climate of freedom of association and the use of collective bargaining and by ensuring that precarious contracts did not become the rule for workers.

The major concern of the trade union movement lay not only in the fear of losing life, but also in the fear that decent work would vanish. Decent work was at the core of the ILO and the worker's ideology. Unfortunately, the phenomenon of "delabourization" in labour-management relations was a fact and was most often seen in labour relations based on outsourcing, temporary work, civil contracts, service contracts, contracts for very short-terms and finally the scourge of associated labour cooperatives. These cooperatives represented the worst form of aggression against trade unions, as they prevented workers from joining a union and from having access to collective bargaining. It did not seem appropriate, therefore, that the Government had included in the Colombian delegation to the Conference spokespersons for these cooperatives, as they could not represent workers and, even less, trade unionism.

The future held little that was positive if the climate of violence, anti-union conduct and absence of freedom of association prevailed. It was for this reason that he proposed that the Government and the employers of his country fully implement the Tripartite Agreement, as it was the only way of laying a foundation for a new country. He also appealed to the international community to

provide all support so that ILO Conventions and Recommendations would not remain a dead letter.

Finally, emphasizing that a democracy without trade unions was only a caricature of a democracy, the speaker stated that the low rate of unionization, the drop in the number of workers covered by collective bargaining, the death of trade unionists, the refusal of the Ministry to recognize new organizations, the increase in informal work relations, the impoverishment of agricultural workers, the fact that more than two million children were child labourers, forced displacement, unemployment and social exclusion all constituted a ticking social bomb which still could be defused.

The Government member of the United States thanked the Government of Colombia for its presentation. The situation of worker and human rights in Colombia had been an issue of long-standing, and at times grave concern in this Committee and the other supervisory bodies of the ILO. The discussion provided an opportunity to take stock of the Government's ongoing commitment to the Tripartite Agreement on Freedom of Association and Democracy and the important progress that had been made thus far in implementing the Agreement. The Government of Colombia, thanks in large part to its cooperation with the ILO, had made demonstrable progress in turning around the country's long history of violence and instability and in modernizing and strengthening its legal system. She noted the Government's efforts to protect at-risk individuals, including trade unionists; investigate and prosecute perpetrators of violence; strengthen the judiciary; and bring the legislation into closer conformity with ILO standards. There was a clear focus on making the Government institutions work for the Colombian people, with the result that Colombia was steadily building an increasingly stable, peaceful, inclusive and prosperous democracy. The Government's achievements to date had been acknowledged and welcomed by both the Committee of Experts and the high-level mission. The speaker expressed her confidence that these efforts would continue.

Notwithstanding this impressive progress, it was to be recognized that there was much more to do in what remained a difficult overall situation. Everybody looked forward to a completely secure and peaceful Colombia. To that end, the speaker encouraged the Government to continue working with its tripartite partners and the ILO to address all of the issues that the Committee of Experts had outlined in its observations. These included measures to continue making progress in the reduction of violence and impunity as well as acting on a number of long-standing practical and legislative matters related to trade union rights and activities. As the high-level mission had noted, ongoing and open-ended dialogue and oversight through Colombia's National Consultation Commission on Labour and Wages Policies offered an excellent means for dealing, in an operational way, with the broad agenda of the Tripartite Agreement, while at the same time creating and strengthening trust among the parties. The United States Secretary of State had recently noted that the story of Colombia was a good example of a Government that was trying to do the right things. The speaker expressed confidence that the Government of Colombia would continue to take full advantage of ILO technical assistance in order to continue to do the right things. She urged all the partners to the Tripartite Agreement to remain committed and steadfast to it, however different their views might occasionally be. Colombia had taken great strides forward, and with such a commitment in place, the international community could expect to see even further progress in the near future.

Another Worker member of Colombia stated that the trade union organizations, the employers and the Government of Colombia had concluded a Tripartite Agreement on Freedom of Association and Democracy. The agreement had not yet yielded practical results in the im-

provement of freedoms and fundamental rights at work. All that could be demonstrated was the setting up of a permanent representation, the launching of some cooperation programmes and some initial results from the Public Prosecutor and the judiciary in bringing to light acts of violence against trade unionists and bringing criminals to trial.

The central trade union organizations would present a timetable for achieving compliance with the recommendations of the ILO supervisory bodies, so that the State could align its legislation and practice with international labour standards. However, the absence of will by employers and the Government would impede meeting this timetable and compliance with the agreement.

The high-level mission of November 2007 recalled that for any tripartite agreement to function efficiently, it was necessary for all parties to stand by their commitments, no matter how different their points of view on specific issues. This meant that the parties had to accept as the basis for discussions, international labour standards and the recommendations of the ILO supervisory bodies. The mission report highlighted the importance of permanent dialogue and permanent supervision of the application of the Tripartite Agreement in organizing and promoting useful and effective social dialogue.

The ILO could not allow non-compliance with commitments, which in Colombia meant a decent work deficit, limits on freedom of association, murders, impunity and the absence of efficient social dialogue. Moreover, less than one third of workers had access to any social and labour protection, and only five out of 100 workers belonged to a union. In the last five years, the Ministry of Social Protection had refused the registration of 236 new trade unions and only one in 100 workers benefited from a collective agreement. The Government had banned half of all work stoppages, thereby imperilling the right to strike.

Since the beginning of this year, 26 trade unionists had been murdered and four had disappeared, which meant a 71.4 per cent increase over the same period in 2007. In the last 22 years, 2,669 trade union activists had been assassinated and 193 abducted, while the State had only brought 86 of those responsible to face sanctions.

He drew the Committee's attention to the fact that due to the attitude of employers and the Government in refusing to recognize the mechanisms that were put in place and their misuse, this progressively eroded the working methods that had been founded on tripartism and dialogue. It was for this reason that when the Government and the employers were asked for explanations relating to their intentions, it was to help promote dialogue and the exchange of opinions.

He requested the Committee to adopt conclusions and a special paragraph urging the Government and the employers to immediately implement the recommendations of the ILO supervisory bodies and to align the legislation and practice with Conventions Nos 87 and 98.

Stressing that in Colombia trade unionism was threatened with extinction and its life depended on international solidarity and ILO support, the speaker demanded that the threat to the existence of trade unionism be stopped, through bringing an end to the violence against trade unionists and ensuring respect for ILO Conventions.

The Government member of Canada stated that his Government had been following with keen interest the implementation of the Tripartite Agreement signed in 2006. He commended both the Office and the Government of Colombia for the high-level commitment they had made to move the Agreement forward. The implementation process, he noted, was a delicate and difficult one. It was also urgent, as trade unionists and human rights defenders were still being threatened and often killed. The ILO high-level mission's point that the Agreement lay in the hands of the Colombian Government, workers and em-

ployers was a critical one; the ILO had a valuable role but, in the end, it was for the parties themselves to ensure the successful working of the Agreement.

His Government welcomed that Colombia had created, in 2006, a special unit of the Office of the Attorney-General tasked with investigating and prosecuting violent acts against trade unionists. The Government was encouraged to increase its efforts to bring such cases of violence to a conclusion. He concluded by expressing his Government's commitment to supporting Colombia in strengthening its labour legislation for the benefit of workers and promoting an open dialogue amongst the social partners.

Another Worker member of Colombia stated that the denial of trade union freedoms were motivated by an anti-union culture and policy on the part of the employers and the Government, which breached trade union rights through the use of civil contracts, pseudo associated work cooperatives, outsourcing, service provision work and contracts (which were a fraudulent form of work), controlling influence in public entities, and which not only created precarity of employment but also denied the right to freedom of association and collective bargaining.

Resolution No. 0626 of 22 February 2008 of the Ministry of Social Protection not only created obstacles to registration of new trade unions but also delegated to low-level civil servants decisions on union registration, which had negative consequences and were not in conformity with the recommendations of the Committee on Freedom of Association.

It was no incentive to the unions that the negotiations were at such a critical stage for the few collective agreements that existed in the country and for the low rate of coverage. In addition, the practices of public and private employers relied on to use "collective pacts". This was a system of individual membership imposed to the workers by employers when a new union was set up in order to reduce bargaining power.

The Government was continuing to interfere with the right to strike and the new regulations no longer fully guaranteed this right. The only change introduced by the new law was that illegality had to be declared by a judge of first instance and that there was a right to appeal. The ban on federations and confederations exercising their right to strike still applied, making permanent the restrictions noted by the ILO supervisory bodies.

Anti-union violence continued, at least 26 assassinations of trade unionists having taken place in the first five months of 2008 and six others abducted. He denounced the Government practice of determining the motives for the assassinations before beginning the investigation, as this led to erroneous sentences. Two years had passed since the signing of the Tripartite Agreement but it had still not been complied with; a timid start had been made in the field on Public Prosecutor's investigations. Impunity prevailed in 98 per cent of cases and the real instigators were never identified.

The Committee should adopt a special paragraph in order to support Colombian trade unionism's vocation for social dialogue along with a permanent requirement that it should be effective, useful and equitable, so that dialogue would be promoted.

Finally, the speaker noted that the Tripartite Agreement should go further, in view of the social crisis that Colombia was going through, and to that end the ILO Office in Bogotá should be strengthened in order to help bring about a Social Pact which would guarantee decent work through direct negotiations between workers and employers, and which would eliminate intermediaries and all other forms that disguised labour relationship, in order to allow complete freedom of association.

The Worker member of Australia, speaking on behalf of Australian unions and unions in the Asia-Pacific region, noted that the concerns expressed regarding the level of violence in Colombia – which fundamentally impacts

upon the lives of workers and trade unionists – were also present with respect to countries in her own region, such as the Philippines, Cambodia and others.

A state of persistent non-compliance characterized Colombian industrial relations and the labour law, particularly as regards the collective bargaining provisions – which excluded public sector workers, workers in the informal economy, those in precarious employment and those considered to be "independent" workers. In fact, the majority of workers simply were not covered by the provisions on collective bargaining. Aside from the widespread violence and intimidation, the Government and the employers were implicated, in other ways, in the creation of an environment where workers' rights were denied or seriously undermined. The problem, in essence, concerned the imbalance of power between the employer and the individual worker, which could only be addressed by effective freedom of association, genuine collective bargaining and a mature system of industrial relations.

Over the last ten years, Australia had witnessed an attempt by its former Government to undermine the role of trade unions and undermine collective bargaining provisions, in the law and in public discourse. It had also used derogatory language to imply that union leaders were not representative, were self-interested, and even "un-Australian". Unions and workers suffered in this environment, as it became more difficult to assert rights in the workplace and undertake collective action, including negotiations with employers or the handling of industrial disputes. This, however, was mild compared to the situation in Colombia over the past years, in which the labelling of trade unionists as "terrorists" directly contributed to an environment of threats and violence. In Australia, trade unionists never feared for their lives as a result of what the Government called them; nor were reasonable employers afraid to deal with them.

The Government of Colombia was pursuing anti-trade union and anti-worker policies in order to achieve its vision of a deregulated, pro-business and pro-multinational economy. The situation in Colombia involved not only the very serious killing of trade unionists, but also the killing of trade unionism itself. Serious efforts were needed to build a culture of negotiation, counter the culture of conflict and violence, and establish genuine social relations that apply to the workplace and are reflected in law. All these would contribute to wider peace building and conflict resolution.

She stated that serious problems persisted in the application of collective bargaining, one aspect of which was the lack of legislative provisions and promotion. Moreover, there were legal and practical barriers to the very existence of unions and their ability to carry out their activities in freedom. In practice, there was clearly a strategy by employers to either prevent new unions from forming or weaken those that existed. Many workers had lost their entitlements, and union coverage stood at less than 5 per cent. Half of the unionized workers were in the public sector, and of those workers, half again were denied the right to bargain collectively, so that the rate of collective bargaining was one of the lowest in the world: only 1 per cent of Colombian workers had recourse to collective negotiations.

According to the Colombian trade union federations, the number of workers covered by collective agreements was declining. In 2007, 463 collective agreements were negotiated, one more than in 2006. Union contracts represented a mere 1 per cent of workers – or 177,000 workers out of a working population of 18 million. At the same time, however, the number of workers covered by "collective accords" increased by 184 per cent. Collective accords with non-unionized workers had been used to undermine the position of trade unions; these agreements, which were imposed by the company on workers via its own nominated mediators, in practice put pressure on

workers to renounce their union membership, or at least undermined the effectiveness of genuine trade unions. She remarked that last year one of her colleagues had visited a flower farm that used “collective accords”. In discussions with two workers, which took place in the presence of the employer, the workers were unable to provide answers on the working conditions they were supposed to have negotiated. Adding that in many workplaces employers promoted a strong anti-union attitude and simply refused to deal with trade unions, she stated that some felt the labour relationship in Colombia to have been “de-labourized”. It was necessary to put an end to collective accords, or “pacts”, that were imposed by employers as an alternative to collective agreements.

In 2006, only 11 collective negotiations took place in the public sector – seven of those related to municipal workers, and two to employees of departments. According to Ministry statistics, collective bargaining was undertaken in only 2.74 per cent of the municipalities, which demonstrated how marginal it was in the public sector. Another problem, she added, was the absence of a reliable system for compiling labour statistics. In respect of collective bargaining, there was a lack of credible data regarding the number of collective agreements, the type of agreement, the type of enterprise, the nature of the trade union and the period of validity of the agreement. The administrative and data collection systems were very weak, as a consequence of the lack of priority given to labour administration. These needed strengthening, as it was difficult to build a solid industrial relations system when attention was not paid to the existing realities and there were no means of measuring change or progress, even if the will to promote improvements existed.

It was necessary to ensure the right to collective bargaining throughout the public service and put an end to “associated labour cooperatives”, which essentially provided unprotected labour under contracts for services. These cooperatives denied workers their employment rights and their right to trade union membership. The freedom of association rights of all workers, in both the public and private sector, was the basis of a mature and effective industrial relations system; it was the Government’s responsibility to implement Convention No. 87 and to create the legislative and political space for genuine industrial relations. She concluded by thanking the Government for appearing before the Committee. She called on the Government to maximize its efforts to ensure respect for freedom of association, and implored both it and the employers to engage constructively with independent and democratic trade unions in Colombia.

The Worker member of Swaziland observed that, just as every coin possessed a head and a tail, so too were there two sides to governance. Good governance, on one hand, thrived on unconditional and inclusive social dialogue. Bad governance, on the other, fed off abuse of power, totalitarianism, self-centredness, arrogance and egocentrism. The latter, moreover, was usually marred by intolerance, violence and an impunity that penalized the victim while protecting the perpetrator.

He reminded the Government that it had voluntarily ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and was therefore obliged to enforce its provisions in law and practice. Social dialogue brought together all stakeholders, including the tripartite social partners, to engage collectively in national economic and social policy-making to bring about peace, justice and social progress. He expressed sadness that the Government had disregarded its commitments under Convention No. 144 and, worse, had undermined the Tripartite Agreement to which it itself was a party – even after numerous reminders had been made by different labour organizations. He recalled that the purpose of consultation under Convention No. 144 was not merely the dissemination of information to the social

partners. Consultation, rather, entailed dialogue with a view to considering the contributions of the other parties concerned and its outcome ought to duly reflect the input of the social partners. Were it tantamount only to communication from the Government to the social partners it would not constitute genuine dialogue, but rather a monologue. The lack of dialogue was a recipe for disaster and, indeed, it was not surprising, therefore, that in Colombia intolerance and violence reigned supreme.

He called upon the Government to set a proper example in enacting social dialogue. Where social dialogue was not respected at the national level – as reflected in the Government’s disregard of Convention No. 144 and the Tripartite Agreement it was a party to – it would be impossible to have a working collective agreement at the shop floor level.

The Government, he declared, was a gross and chronic offender of the Conventions it had ratified. Moreover, it had treated the concerns of the social partners with intolerance and total disregard. He recalled that, according to the jurisprudence of the Committee on Freedom of Association, freedom of association could only be exercised in conditions in which fundamental human rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed. He concluded by calling for the conclusions in the present case to be endorsed in a special paragraph.

The Government member of Argentina declared that the case of Colombia was one of the most regrettable and shameful chapters in ILO history. The annihilation of the trade union movement was part of a systematic plan of repression of organized workers that employed fear, threats and terror to do away with the rights of this social group. He questioned what the State was doing to guarantee public freedoms, taking into account that these were, according to the ILO supervisory bodies, a necessary precondition to ensure freedom of association.

The Committee on Freedom of Association maintained that the cases related to Colombia concerned not only threats, abductions and assassinations but also mass anti-union dismissals, interference in trade union independence, strikes declared illegal and non-compliance with collective agreements, including refusal of the right to bargaining collectively. The sole responsibility for this critical situation fell on the Government and Colombian employers, which neither respected nor took account of the recommendations of the Committee on Freedom of Association to ensure effective application of the Conventions. It was necessary to take urgent action to prevent the situation extending to other Latin American countries, where new winds were blowing and where there were Governments implicated in eliminating hunger, poverty and unemployment.

The progressive deterioration of freedom of association and collective bargaining in Colombia had reduced rates of unionization and bargaining to its lowest levels, which had caused the Committee on Freedom of Association to note in its report that the exercise of trade union freedoms was almost totally blocked. The Workers’ Union of the Americas and the Union Coordination Centre for the Southern Cone unconditionally supported the struggle of the workers and trade union organizations of Colombia. Criminals had to be punished. The ILO had to continue with its mission with the aim of the establishment, without hypocrisy, of the fundamental rights and principles that were the basis of peace, democracy and social justice for Colombia.

The Worker member of France wished to discuss the Tripartite Agreement on Freedom of Association and Democracy, the signature of which, on 1 June 2006, sparked the hope of real improvement in the situation of trade unionists in Colombia and a genuine commitment of the authorities. Today, this hope gave way to deception and frustration, due to the fact that the Tripartite Agree-

ment did not bring the anticipated results because of its ineffective application. The list of violations to fundamental freedoms, the right to life and the right to strike, as well as of the incidences of interference in trade union activities, remained far too long. The enactment of the Tripartite Agreement, which rested on Conventions Nos 87 and 98, could only be realized through the respect and promotion of these two instruments. Yet, the 26 assassinations of trade unionists, which took place since the beginning of the year, showed that the measures taken by the Government to protect trade unionists and combat impunity were grossly insufficient, if not derisory. These were 26 deaths too many.

The Agreement in question was not a simple unilateral declaration, but rather the result of a compromise binding workers, employers and the Government. Consequently, its enactment implied a concerted, tripartite effort and good faith, all within the framework of genuine social dialogue which presupposed the possibility of constituting free and independent trade unions, able to express their demands and establish a power relationship, such as strikes, in order to defend workers' rights, free of interference and fear for their security. The speaker declared that the existence of such organizations is the testimony of social cohesion and peace and must not depend on the will of a government. Liberal trade unionism, where rights and prerogatives are respected, contributes to strengthening democracy, to transparency and to the rule of law.

The constituents of the ILO, whose presence in Bogota were an essential element in the Tripartite Agreement, were in charge of ensuring the follow-up of that text, by participating actively and in good faith in this vital dialogue, so that it did not become a dead letter. The speaker concluded by pointing out that the workers' representatives clearly expressed themselves and were ready to co-operate.

The Worker member of Brazil expressed solidarity with the Colombian trade union movement. While in a democratic society it was natural that capital and labour came into conflict, it was not natural that such a conflict should produce fatalities. Many governments could not fully understand the nature of this conflict, and the vision that certain Government representatives had presented on the situation in Colombia was cause for concern. For example, the submission of the representative of the US Government did not indicate any concern about the deaths. It almost seemed like the US Government believed that Colombia was a paradise and nothing bad was happening there. Above all, we needed to recognize the problem. It was not useful to hide it. In Colombia, some had recourse to violence and killed trade union activists to prove that democracy could operate without trade unions; that joining a union was not the solution for workers' problems; that workers would lose every single battle they faced against employers and the Government. But democracy did not stop with the election of the President of the Republic by universal suffrage. In a democracy, the right to life and the right to organize and to social dialogue were fundamental. But in Colombia, social dialogue did not exist. We believed there had been some improvements regarding democracy in Latin America but not in Colombia, where murders were used as an attack on democracy. After all, respect for the right to life and strong institutions were the precondition for an effective democracy. We needed to strengthen social dialogue in Latin America. In Brazil, for example, social dialogue had evolved through tripartite forums. It had to be re-established, and democracy and trade union organizations had to be strengthened in order to put an end to assassinations. It was therefore absolutely necessary that the perpetrators of these murders be pursued, brought to justice and convicted. An example had to be made and a change in the climate demonstrated. To this end, a stop had to be put to

associating trade unionists with the guerrillas in order to discredit them and thereby give paramilitaries an alibi. Let us stop the killings. Let us praise life.

The Government member of Mexico observed that the Committee of Experts had noted in its report that the overall situation continued to be difficult. Nevertheless, it also recognized that there had been progress, such as, for example, concerning the guarantee to protect trade union leaders, members and offices; the increase in the budget for the programme of protection set up in 1997 and the efforts of the Government to make progress with investigations related to violations of trade union members' human rights. The Colombian Government had reaffirmed its commitment to the Tripartite Agreement, the aim of which was to promote decent work and strengthen the defence of fundamental rights of workers and of trade unions and their leaders in the areas of respect for human life, freedom of association, the right to organize and freedom of expression, collective bargaining and freedom of enterprise.

The result of the high-level mission carried out in November 2007 was not contained in the report as it took place after the meeting of the Committee of Experts. However, in his own report, the Director-General noted the mission's satisfaction with the commitment of the Government and employers' and workers' organizations regarding the application of the Agreement and the budgeting of US\$4.7 million by the Government of Colombia to meet the aims of the Agreement; he also made reference to the Bills concerning employment presented recently in Congress.

Finally, the speaker noted that the Government of Mexico recognized the efforts undertaken by the Government of Colombia and that, as the reports mentioned stated, although there were issues pending, it was no less a fact that there was also political will, concrete results and a will continue the work in cooperation with the ILO.

The Worker member of the United Kingdom remarked that, despite the grief felt over the murder of 2,669 trade union colleagues, the context of the present discussion could not be limited solely to the issue of violence. The ILO supervisory bodies had shown that even if there were no violence in the country, Colombia would still be the most anti-union, pro-employer government in Latin America. The violence discussed had no bearing on the Government's failure to bring into conformity with the Convention legislation restricting trade union registration and collective bargaining, or its promotion of "collective pacts" and associated labour cooperatives. Violence had become a smokescreen for the Government's neo-liberal agenda and its disdain for social dialogue. But the State itself was directly and indirectly complicit in anti-union violence.

He recalled that on 6 February and 6 March 2008 protests were held in Colombia and around the world, to demand an end to all violence from wherever it emanates – the paramilitaries, the FARC or the State – and the immediate release of all hostages. Carlos Rodríguez, Miguel Morantes and other colleagues of delegation of the Single Confederation of Workers (CUT), the Confederation of Workers of Colombia (CTC) and the General Confederation of Labour (CGT) took part in protests in London, which also called for an end to UK military aid and a strengthening of humanitarian assistance. He stressed that the need to shift from military support to support for the ILO's mandate, as well as for social dialogue and peaceful, equitable development, had become all the more urgent as more politicians linked to President Uribe came under investigation for links with the paramilitaries – the main perpetrators of the anti-union violence. More than 60 politicians were under investigation, including the President's cousin, senior figures in the security service, four provincial governors, and numerous Congress members and senators. Of that number, half were in prison and

seven had been convicted. Further, paramilitary leader Salvatore Mancuso had claimed the involvement of the Vice-President, a former Defence Minister and three army generals, among others. He added that the 2006 Jamundi Massacre exemplified army complicity with narco-trafficking paramilitaries. There, High Mountain Battalion soldiers had murdered a US-trained anti-narcotics police squad as they were about to arrest a drugs gang. Such “parapolitica” scandals strengthened the conviction that military aid to the regime should end.

He strongly agreed with the Government of the United Kingdom that it was a flagrant breach of the Convention for Colombian Government figures to smear trade unionists by making public announcements accusing them of being terrorists. Such statements were invitations to the paramilitaries to target the accused. Several of the 26 trade unionists murdered this year – among them seven teacher trade unionists – were killed following the peace demonstration of 6 February, after which José Obdulio Gaviria, senior advisor to President Uribe, claimed that the protests scheduled for March had been convened by the Revolutionary Armed Forces of Colombia (FARC). As the demonstrations – which were supported by the trade unions, the Liberal Party and the Polo Democrático – condemned all violence and demanded the release of FARC-held hostages, that claim was patently untrue. Further examples of “parapolitica” were the scandals in Córdoba University, and Operation Dragon in Cali. Both had been examined by the Committee on Freedom of Association, and he urged all members of the Committee to examine those findings and the unfolding scandal to determine how to react to the Government’s unduly optimistic claims.

He underscored that the modest progress made on the still overwhelming impunity resulted largely from international pressure, not least from the Committee itself. Though those gains were small, and with convictions of defendants in absentia and never of the true intellectual authors of the crimes, they demonstrated the need for a strengthened and independent judiciary. Pressure and the careful and regular examination of the present case must not cease. He stated that mature industrial relations anchored in laws compliant with ILO standards were not only a good in their own right, but also showed that differences of interest could be resolved through peaceful negotiation. He called for the conclusions in the present case to include a repeated demand on the Government to desist from the public smearing of trade unionists, as well as a commitment to strengthen the ILO Bogota Office’s support for social dialogue, mature industrial relations and the struggle against impunity.

The Worker member of Spain indicated that, in addition to the intolerable level of anti-union violence reached in Colombia, the country suffered from other problems which obstructed the exercise of freedom of association; among them, the problem of trade union registration which restricted trade union activities and the deterioration of the employment relationship because of the abusive use of associated labour cooperatives and other forms of precarious work.

The administrative authority had discretionary power to refuse registration to trade unions if it considered that the organization might devote itself to activities which went beyond normal trade union activities; the Ministry of Social Protection could also refuse it, as in the recent case of the National Transport Trade Union on grounds of absence of an industrial link between the workers and the organization’s sector of economic activity. The trade union organizations should have sufficient autonomy so as to be able to organize in the manner which they consider best served their interests and without the need for previous authorization.

Despite the fact that the Committee of Experts had been raising for many years the abuse by Colombia of various

types of contractual arrangements in order to avoid the application of labour legislation and obstruct the right to organize and collective bargaining, cooperatives continued to be used as a way to disguise employment relationships. It was a case of clear legal fraud that the conditions of work of the members of cooperatives were worse than those of the enterprises in which they provided their services. Some enterprises dismissed their workers in order to afterwards promote with them an associated labour cooperative. The Government did not apply the criterion of the Committee on Freedom of Association in relation to Article 2 of the Convention, according to which both workers in a relationship of subordination and autonomous workers had the right to establish and join trade unions. A labour relationship which denied fundamental rights to workers was an updated version of age-old servitude.

The speaker proposed, as a result of the above, the adoption of a special paragraph urging the Government of Colombia to bring its legislation into conformity with Conventions Nos 87 and 98.

The Employer member of Colombia indicated that, even if one could have accepted that Colombia was not a viable country in 1998, when the establishment of a Commission of Inquiry had been requested to examine the application of the Convention in Colombia, no one could deny today that Colombia was a different country in which participation of the social partners existed and the judicial system functioned.

He underlined that in 2006 when the Tripartite Agreement had been signed, the belief existed that Colombia could change, and that it had indeed changed. The speaker indicated that the improvements made could be observed in the report of the high-level mission which had visited the country in November 2007 and drew attention in particular to paragraphs 6, 7, 8, 14 and 23 of the report. In fact, it was obvious that the Tripartite Agreement had produced results, which could be observed in the technical cooperation programme under way in the country: this programme had four components, one of which was social dialogue.

Other considerable improvements were the periodical meetings held between the workers, the employers and the Government in the framework of the National Consultation Commission on Labour and Wage Policies and the programme developed with judges and prosecutors.

All this demonstrated that the Tripartite Agreement was dynamic and that it had even greater possibilities of development and action. He underlined the active participation of the Office of the ILO Special Representative in these activities.

With regard to the progress made in the fight against impunity, he emphasized that, through a European-funded programme under way, the Attorney-General’s Office, together with the trade union confederations, tried to determine jointly the trade unionists who were the victims of violence. The speaker emphasized that the current statistics submitted by the Attorney-General’s Office ensured the transparency of the studies and of the results that had been communicated.

He indicated in particular that, out of the 105 sentences pronounced by the judicial authorities, by virtue of which 177 people had been convicted so far, it had been proven that, according to the statistics mentioned above, in 20 cases the motive behind the violent acts was anti-union violence; one case was due to an accident; one to political activities; one to drug trafficking; five to various factors; 14 to theft; one led to the identification of urban squadrons as the responsible parties; in two, the motives were the collaboration of the victims with paramilitary forces; in 27, the collaboration with the guerrillas; one was due to links with the military; nine to personal motives; 14 to motives which could not be elucidated; and two to violence by the FARC. At the same time, even if one ac-

cepted a recent increase in violence, the justice system responded to it and the state institutions functioned.

In this respect, he indicated that by virtue of the policy for the protection and security of democracy, action had been initiated against the guerrillas and the paramilitaries. Fourteen paramilitary chiefs who had recourse to the Justice and Peace Act had been extradited to the United States for not having complied with the provisions of this law. Moreover, decisive blows had recently been inflicted on the guerrillas and this allowed the employers to increase and develop their activities.

The speaker emphasized the wide participation of the opposition in the political life of Colombia. Various local governments and departments were entrusted to representatives of the opposition and members of the trade union movement. These also sat in Congress.

The Employer member described the considerable progress realized by the Colombian economy in recent years: the increase of the GDP and of the per capita wage, the tripling of exports and imports, the reduction of inflation and the fiscal deficit. He also referred to legislative improvements and reiterated the commitment of the employers to join forces with a view to modifying the legislation and bringing it into conformity with the provisions of the Convention.

With regard to judicial proceedings initiated against many members of Congress accused of having ties with the paramilitaries, he added that recently investigations had been initiated with regard to the possible link of some members with the FARC. This demonstrated that justice had been reinforced and that politics were no longer accepted as a means of promoting the objectives of the armed groups. Moreover, measures had been adopted to reinforce the armed forces which were present in all the villages of the country.

With regard to the comments made by the Worker member of Australia, he indicated that a study was recently made within a group of affiliated enterprises of a total turnover representing 20 per cent of GDP, and that according to the results of that study 21.6 per cent of enterprises had enterprise unions and 29.3 per cent had sectoral unions. This was above the national average in other countries.

As for the question of the registration of trade unions, he indicated that, after the adoption of Act No. 584 on this subject, the Constitutional Court handed down a judgement which allowed the existence of more than one trade union by enterprise. This had given rise to abuse since many trade unionists became members of various trade unions in order to obtain trade union immunity and thus, attain employment stability. Thus, it was not a question of lack of good will on behalf of the Government or the employers, but rather a question of putting an end to an abusive practice.

With regard to recruitment, he indicated that the questions raised were similar to those which existed in the rest of the world. Within the ILO as well, discussions had been taking place on the various forms of recruitment and the use of atypical and disguised employment. However, he underlined that direct hiring for an indefinite period of time, was nowadays not the only available avenue.

He concluded by indicating that, in light of the information provided, Colombia had been making concrete progress which permitted to consider this case as a case of progress.

The Worker member of the United States thanked the Colombian Government for appearing before the Committee and stated that there was no legitimate reason for the case being vetoed in last year's session. Such obstructionism fundamentally undermined the *raison d'être* of the Conference Committee. In his opinion, the veto had been exploited by the Colombian Government and by advocates of the Colombia-US Trade Promotion Agreement, who had asserted that Colombia was no longer subject to

ILO scrutiny due to its compliance with fundamental international labour standards. If similar types of distortion are made to the current session, they would be publicly denounced and corrected.

He noted that a conventional wisdom promoted by the Government and advocates of the Colombia-US Free Trade Agreement was that the financial resources expended to combat anti-union violence and impunity had yielded results, with a decline in assassinations between 2006 and 2007. Even if, for the sake of argument, this artificial focus were accepted, the conclusion could be drawn that the murder of trade union activists was not essential in order to destroy trade unionism in Colombia, because, for all intents and purposes, trade unionism was already repressed. In the face of the tragic events to date in 2008, he rejected this focus. As admitted by the Government, 26 trade union activists had been killed to date in 2008, a 71 per cent increase over the same period in 2007. Clearly, even a repressed trade union movement represented too much of a threat to powerful anti-union forces.

As noted in the Committee of Experts' report, and as the Government had declared, millions of dollars had been budgeted and spent on special protection measures, for the Special Sub-Unit in the Attorney-General's office and on a mere three special judges whose term was limited to six months, as the good Judge Sanchez discovered to his own rude awakening. But no special protection programme would ever succeed unless impunity, now at over 97 per cent for all assassinations from 1986 to the present, was effectively addressed, because the intellectual and material authors of trade union violence are obviously loose and reorganizing, even if we assumed the best of original intentions behind the Justice and Peace Law. Moreover, the public statements from the highest levels of Colombian Government only fed the beast of impunity, for example, Vice-President Santos labelling as guerrillas the three legitimate unionists assassinated in 2004 by the Colombian army.

The Government extolled the over 80 convictions since 2001, but there was a backlog of well over 2,200 trade union member murder cases since 1991, and the convictions to date only applied to 59 cases, and only 22 applied to the over 400 trade union activist assassinations since the present administration took office. Of these 22, 18 were still pending in the courts, subject to appeal and reversal. Of the 187 priority cases agreed to by the Government and the trade union movement in 2006, less than ten had had complete and closed convictions. At this rate, it would require 36 years to overcome impunity on these cases alone. According to the Attorney-General's office, 45 per cent of those convicted were not even in custody. These assassinations would continue unless there was real political will and judicial capacity to eradicate impunity, however much money was spent on personnel of the Attorney-General's office and on bodyguards.

The Government representative of Colombia said that his Government had accepted the session voluntarily with the aim of finding mechanisms which would help to improve the situation and considered that statements which aimed at condemning or absolving, perturbed a constructive process. He said that the deaths brought grief to everyone and that, despite the significant progress, the fight against impunity had to continue. He said that his Government had the support of 86 per cent of the population and referred to the fact that every month and a half, the President of the Republic met with workers, employers and ILO representatives in order to analyse issues raised by the ILO. It would be interesting to ask how many of the Worker members present here had the opportunity to meet the President of their country every month and a half. He insisted that the judicial system was working, proof of which was the independence of the system in the case of the Members of Parliament who had been arrested. He

referred to the need to support the persistent and voluntary efforts made in the legislative sphere. without optimism or fatalism his Government would maintain his Government maintained its decision to continue improving the situation.

Responding to the statement by the Worker member of the United States, the Government representative rejected the claim according to which, Colombian trade unionism was being repressed. To accept such a claim, in his opinion, was to deny the efforts being made in Colombia by union leaders, such as Carlos Rodríguez, Apecides Alvis and Julio Roberto Gómez. The Government and the workers had gone a long way and had participated in negotiations despite their ideological differences. He quoted a CUT bulletin, the title of which was "The beginning of the end of impunity". He wondered whether the same vehemence would have been used in the past when trade unionists were Ministers of Labour. It seemed to him that seeking confrontation was to overlook 25 years of accumulated impunity. Regarding the Free Trade Agreement, he stated that it had been an election campaign theme of the Government and that the population had voted in favour of it. Alternatives that would allow unionism to revitalize itself in the global economy should not be discarded and that ideological differences were desirable in the face of issues such as, for example, the said free trade agreement. Finally, he noted that the Government had extended an invitation to the American Federation of Labor Congress of Industrial Organizations (AFL-CIO) to take part in the National Coordination Committee.

The Employer members noted that the Colombian Government has appeared voluntarily before the Committee. The Employers stated that this was not a case but a dialogue and, as there was clearly consensus, a special paragraph would be inappropriate. The Employer members had taken a principled approach to addressing the Committee of Experts' observations on Convention No. 87 involving Colombia. During 25 years of discussion in the Conference Committee only limited progress had been made, but, since 2005, substantial progress had been made with the opening of an ILO Bogotá office, a decline in violence, an increase in funding for protection, the judiciary, tribunals and labour inspection. The continuing dialogue was a reflection of this progress.

The picture showed mixed results. There had been progress in difficult circumstances, but, at the same time, and as the Government acknowledged, there was still much to be done. There was clear consensus that the 2006 Tripartite Agreement needed to be fully implemented; there was consensus that more needed to be done with the issues of impunity, cooperatives and other labour law questions. The Government had indicated that more positive developments were forthcoming. The Government's presence had furthered understanding with both the Committee and the global community and provided clarity on the steps needed in going forward.

The Worker members concluded by pointing out that all the elements discussed by the different Worker members remained valid. Two clarifications had to be made concerning the declarations of the Government representative. Firstly, the Worker members did not indicate four or five times that progress has been realized, but rather recognized that slight progress has been accomplished in the functioning of tribunals. Furthermore, as concerns the discussion on the free trade agreement, the Colombian Government did not invite the AFL-CIO, but rather the international trade union movement.

The Worker members recommended that this Committee request the Government to explain why Conventions Nos 87 and 98 were persistently violated in legislation and in practice; in a special paragraph of its report, to immediately put into effect the recommendations formulated by the supervisory bodies; to amend the legislation to recognize the right to strike and guarantee it for all

workers, put an end to interference in trade union-related activities and recognize and guarantee the right to organize freely and the right to bargain for all workers, whether in the public or private sectors and in any type of contract; concerning impunity, to intensify its efforts throughout the Ministry of Justice and the judicial authorities and to authorize international experts to ensure that the investigations undertaken are done so in a manner ensuring that the authors of these crimes and their instigators are identified, as well as the potential role of state institutions.

The speaker declared that the Governing Body should take measures to strengthen the Permanent Representation Office of the ILO in Colombia with the presence of experts on the Tripartite Agreement, so as to promote an efficient social dialogue, relevant to the implementation of the recommendations of the supervisory bodies and to the recognition and guarantee of the fundamental rights and freedoms of workers. It should also take measures to ensure the follow-up of the recommendations of the Committee on Freedom of Association.

Finally, the Committee of Experts should request the Government to respect delays in sending reports and to deliver them in the form required by the Governing Body. When examining the application of the Convention, the Committee of Experts should consider the observations that the Colombian trade union organizations systematically send to the Office.

Conclusions

The Committee took note of the oral information provided by the Government representative and the discussion that followed. The Committee recalled the steps that had been taken by the Government and the social partners aimed at achieving a greater application of the Convention since the last occasion upon which it had reviewed the Convention's application in 2005. The Committee wished to recall more specifically the tripartite high-level visit to the country in October 2005 at the invitation of the Government and its recommendations, the Colombian Tripartite Agreement on Freedom of Association and Democracy of June 2006, the setting up of the Office of the ILO representation in Colombia, and the ILO high-level mission of November 2007 and its report. The Committee considered that all of these initiatives represented initial important steps towards keeping the vital issues relating to the application of this Convention within the central focus of national dialogue and debate. It trusted that additional important steps would be taken, within the framework of respect for the tripartite agreement, to achieve rapid and full application of the provisions of this fundamental Convention.

The Committee noted that the comments of the Committee of Experts referred to continuing acts of violence against trade unionists and a prevailing situation of impunity, but had further observed the significant efforts made by the Government to bolster the special protection programme. The Committee of Experts had also noted the efforts of the Public Prosecutor (*Fiscalía General*) to secure progress in the investigation of serious human rights violations against trade unionists, as well as the appointment of three judges especially dedicated to hear cases of violence against trade unionists. The Committee took note of the Government's statement relating to the significant increase of funds budgeted for the protection of trade unionists and the continuing decrease in violent murders in the country, including those of trade unionists.

While taking due note of these indications, the Committee expressed its concern over an increase in violent acts against trade unionists in the first half of 2008. In view of the commitments made by the Government and referred to above, the Committee urged it to take further steps to reinforce the available protective measures and to render more efficient and expedient the investigations of murders of trade unionists and the identification of all of its instigators. Such meas-

ures should include an enhanced investment of necessary resources in order to combat impunity, including through the nomination of additional judges specifically dedicated to resolving cases of violence against trade unionists. All of these steps were essential elements to ensure that the trade union movement might finally develop and flourish in a climate that was free from violence.

As regards the practical and legislative matters pending, the Committee observed that the Committee of Experts had noted with interest some steps taken by the Government to amend its legislation to bring it in line with the Convention, but had further observed that several other matters still had to be resolved. The Committee noted the Government's statement according to which dialogue was continuing with a view to adopting legislation relating to essential public services and concerning cooperatives and that important measures had been taken to reinforce the labour inspectorate.

The Committee observed that the matters relating to legislative divergences with the provisions of the Convention have been commented upon by the Committee of Experts for many years now and that the efforts thus far made by the Government had not come to fruition. It trusted that the Government would continue to seek the assistance of the Office in addressing all remaining difficulties and that the necessary steps would be taken in the very near future so as to ensure the full and effective application of the Convention in law and in practice. In particular, the Committee expected that legislation would be adopted rapidly so as to ensure that service contracts, other types of contracts, cooperatives and other measures were not used as a means of undermining trade union rights and collective bargaining. It called upon the Government to ensure that all workers, including those in the public service, may form and join the organization of their own choosing, without previous authorization, in accordance with the Convention. In this regard, the Committee called upon the Government not to use discretionary authority to deny trade union registration.

The Committee once again emphasized the importance of full and meaningful social dialogue in ensuring a durable solution to these serious matters. The Committee believed that the strengthening of the ILO representation in Colombia was needed to facilitate the effective implementation of the tripartite agreement. The Committee requested the Government to provide a detailed report, in consultation with the social partners, on all of the above matters for examination at the forthcoming session of the Committee of Experts.

EGYPT (ratification: 1957)

A Government representative considered that generally the criticism of the Egyptian trade union system was a result of a certain misunderstanding of the trade union situation in the country. The Government attached great importance to the respect of international labour Conventions, 61 of which it had ratified. The Labour Code reform started by the public authorities aimed at addressing concerns raised by the Committee of Experts and ensuring that the legislation took into account global economic developments. This process, which had lasted for ten years, brought together the social partners. With regard to mediation, the new provisions stipulated that a mediator was to be designated by employers and workers and that arbitration could take place only when mediation had failed. In accordance with the new legislation, peaceful strikes were legal. Furthermore, the social partners participated in the social dialogue, including through its innovative forms such as workshops and seminars. The sound functioning of social dialogue was illustrated by the fact that in 2007 over 80 collective agreements were signed. The number of demonstrations (strikes, sit-ins) which took place at enterprises showed that workers were free to present their demands. As a general rule, workers' demands were peacefully resolved through negotiations.

The social dialogue project was under way, with the technical assistance of the ILO.

To respond to the criticism of the Committee of Experts with regard to the alleged government interference in trade union affairs, the Government representative declared that trade union elections were conducted in conformity with the rules adopted by the trade unions at their general assemblies, the particulars of which would be provided to the Committee of Experts. All candidatures were registered, under legal supervision, in the framework of this election cycle, and over 18,000 persons were elected to the workers' representative bodies at the enterprises and undertakings of the country. Among them, there were over 8,000 young trade unionists and 1,000 women. Moreover, 23 new trade unions were established. The Central Council of the Confederation of Trade Unions held a general election and thus renewed 70 per cent of its executive committees. Naturally, a process of such large scale, which mobilized over 4 million workers, gave rise to rivalry and incidents and required the intervention of the security forces. However, such intervention could not be seen as a Government's intervention into trade union affairs. The principle of trade union unity reflected the solidarity of workers. Trade union pluralism could contribute to the fragmentation of the trade union movement, followed by its subjection to the political parties. The existence of a single trade union organization indicated the unity of the goals of the working class. Trade union pluralism was automatically followed by division and weakening of the trade union movement. A single trade union system allowed the trade union movement to function democratically. The transformation of the economy would be followed by the evolution of the trade union movement. In practical terms, there were 23 general trade union organizations, which drafted their rules at the regional level before their adoption by the general assembly.

With regard to the allegations that members of the executive committee of trade unions were removed from office for having participated in a sit-in pursuant to section 70 of the Labour Code, she explained that this provision did not provide for such sanction. With regard to section 14 of the Labour Code which required trade unions to obtain prior approval of the Confederation of Trade Unions before a strike could be organized, the rationale of this provision – which should not be questioned – was based on the premise that a strike was a particularly powerful instrument and that it was therefore legitimate that the Confederation monitored the use thereof. The new Code regulated strike action and other protest action in order to protect the population. Section 194 of the new Code prohibited strikes in essential public services, where a strike would have a direct impact on security. In public services, if the conflict was not settled through negotiations, it was referred to arbitration. In general, when employers and workers did not accept the recommendations of a mediator, they were free to resort to arbitration. The Confederation's monitoring of the financial administration of trade unions observed technical rules governed by the need to ensure transparency of the accounts of these organizations.

The Worker members remarked that, coming from the worker movement and having attended the Governing Body, the Minister was aware that freedom to organize could not be granted partially, selectively or under state control. For several years, the Committee of Experts' comments had been referring to a series of discrepancies between the Convention and the national legislation. The right to form and join independent free trade unions was heavily restricted by Egyptian law. The law foresaw the institutionalization of a single trade union system; a minimum membership requirement of at least 50 workers in the same enterprise; the authorization for unions to operate subject to their joining of one of the 23 industrial

federations affiliated to the only legally recognized trade union centre, the Confederation of Trade Unions; and the possibility to fire workers acting outside that centre without any justification. While trade union unity was important, it should not be imposed by means of monopolistic legislation but left to the trade union organizations.

According to Article 3 of the Convention, each workers' organization should be able to elect its representatives in full freedom. On 17 May 2006, security forces had barred engineers from voting in the Engineers' Syndicate's General Assembly. Various other acts of interference were reported as the Government tried to control candidates in union elections, preventing some of them from standing for such elections. The Committee of Experts had to underline once again that procedures for the nomination and election to trade union bodies should be defined by the organizations concerned, without any interference by public authorities or by the single trade union central organization designated by law.

The Worker members wished to illustrate by way of example recent problems of freedom of association encountered in Egypt. In 2007, several local branches of the Centre for Trade Union and Workers' Services (CTUWS), had been shut down pursuant to an administrative decision. The CTUWS was an independent civil society organization that assisted workers in defending their rights, monitored trade union elections, provided legal support and called for the removal of administrative barriers to the right to be a trade union candidate. In April 2007, the main premises of the CTUWS in Cairo had been surrounded and attacked by security forces and also shut down pursuant to an administrative decision. On 12 October, an Egyptian court had sentenced the CTUWS General Coordinator and his lawyer to one-year imprisonment, thus violating the freedom of expression guaranteed by the Egyptian Constitution. Finally, on 30 March 2008, the Administrative Court overturned the Government's refusal to allow CTUWS to operate.

The existing legislation did not allow the financial independence of unions and foresaw the control by the Confederation of Trade Unions over the administration of workers' organizations. Lower level unions had to pay a certain percentage of their income to the higher level national centre. While trade union income from workers' dues might well be distributed through the structure of a trade union, such decision should be taken by the organization's governing bodies and not imposed by law. Under Article 3 of the Convention, workers' organizations had the right to determine their administrative structure and manage their financial activities without interference from public authorities, thus allowing workers' organizations to affiliate independently.

As to the right to strike, the Committee of Experts had urged the Government to amend section 192 of the Labour Code, according to which strikes should receive prior approval of the trade union organization board. The Committee of Experts had underlined that any restrictions on the right to strike should be confined to public servants exercising authority in the name of the State and workers in essential services in the strict sense of the term. Section 192 also provided that the notification of strike action should specify its duration. The Committee of Experts had previously considered that such mandatory specification of the strike duration represented a restriction of the right of workers' organizations to organize their activities. Furthermore, section 69(9) of the new Labour Code, providing that workers who participated in strike action infringing section 194 of the new Labour Code and could be dismissed, was contrary to the Convention. Sanctions for strike action should only be possible where the prohibitions in question were in conformity with the Convention. Workers who had participated in legitimate strike action should not be sanctioned because the duration had not been specified.

The strikes of the workers in the largest state-owned textile factory in Mahalla Al Korba and their refusal of the decision to refer some workers to the General Prosecutor, also deserved the Committee's attention. Their fight had been supported by the International Trade Union Confederation (ITUC) and the General Board of the International Confederation of Arab Trade Unions (ICATU) that called for a halt to retaliatory action against the workers and respect for workers' rights. Thanks to negotiations between the President of the Confederation of Trade Unions, the President of the General Union of Garment and Textile Workers, the President of the Textile Industries and the company, the protest finally produced a positive agreement. Another violent intervention of the police against protestors recently took place in the industrial city of Mahalla Al Korba. The police used live ammunition to suppress the protests against low wages and high prices for basic goods. The Ministry of Interior issued a statement asking all citizens to refrain from participating in the strike. In Mirs Spinning and Weaving factory, a strike was cancelled after security agents surrounded and entered the premises.

Regrettably, the legislative changes that the Committee of Experts had been requesting for many years had not been initiated by the Government. The Worker members urged the Government to modify the labour law so as to overcome the institutionalization of a single trade union system, which excluded the possibility to form different trade union federations, independent from the Confederation of Trade Unions. The Government should also take the necessary measures to amend the Labour Code to ensure that national law neither interfered in the freedom to organize nor in the definition of electoral procedures, there was no legal obligation for workers' organizations to specify the duration of a strike, and workers who had participated in legitimate strike action were not penalized on the grounds that the strike notice did not specify the duration. The Government should further take immediate action to ensure that the categories of workers excluded from the Labour Code enjoyed the right to strike.

The Worker members also supported the Committee of Experts' requests to urgently amend legislation concerning the removal from office of the executive committee of a trade union which had provoked work stoppage in the public or community services, the requirement of the prior approval of the Confederation for the organization of strike action, the restriction on the right to strike in services which were not essential in the strict sense and the penalties for breaches of section 69(9) of the new Labour Code. The Worker members called on the Government to comply with the Convention and the recommendations of the Committee of Experts, in particular as regards the independence of trade union organizations, the right of workers to join organizations of their own choosing, the elimination of intervention in union elections, financial management and all other forms of interference, and the right to strike. ILO technical assistance could help the Government to amend national legislation to that effect.

The Employer members noted that the Committee of Experts' observation, despite being short, raised serious matters. There appeared to be problems with Act No. 35, as amended. The Convention required respect for trade union pluralism. However, several sections of the Act imposed the institutionalization of a single trade union in violation of Article 2 of the Convention. The Act also adversely impacted on the ability of high-level unions to establish their election procedures, in violation of Article 3. Similarly, the Government interfered in the financial independence of trade unions. Accordingly, the Government was asked to make legislative changes to address these issues.

With respect to the right to strike, the Employer members recognized a generalized right to strike but the State

had the discretion to regulate it in accordance to its needs and conditions. However, during a strike, the human rights and civil liberties of the individuals in the action must be respected. In conclusion, the Government was requested to provide a comprehensive report on the issues raised. There was also a need for ILO technical assistance.

The Employer member of Egypt stated that as a resident of El Mahallah City, he had witnessed the recent strikes and could report that the security forces intervened only after being attacked with stones and Molotov canisters by the demonstrators who had burnt schools and other public buildings, causing considerable damage. The Egyptian employers believed in human rights, democracy and freedom of expression but these rights should be exercised in a framework of respect for national legislation and public order. Laws and regulations could not be the same everywhere and should reflect cultural specificities.

With regard to the issue of elections, he said that, as a representative of the Egyptian Chamber of Industry and Commerce, he had never witnessed government interference in elections. This having been said, strong competition among trade unions had recently led to questions about the legitimacy of elections in certain cases. He also noted that the number of strikes had recently increased and this was something that the Egyptian society was not used to. As a result of the strikes, a number of companies had reached agreements with the trade unions and had paid workers' salaries agreed upon in negotiations. The right to strike was guaranteed to all workers, but strikes were not supposed to be used as a means to intimidate, pillage and burn. He concluded by emphasizing that employers' organizations in Egypt strongly believed in social dialogue and were continually involved in consultations with the Government and the workers, attaching great importance to their counterparts who had a specific role to play in this process.

The Worker member of Egypt indicated that he had asked for the floor in order to answer certain comments touching upon the dignity of the trade union movement in Egypt which was more than 100 years old. The latest trade union elections had taken place in accordance with the applicable procedures in a democratic atmosphere and without Government intervention. Elections had led to changes in 40 to 60 per cent of the trade union leadership. These changes were an eloquent answer to those who accused trade unions of monopolizing trade union action. A monopoly could not exist where the trade union movement renewed itself every five years through elections in conformity with the Convention. The workers' and employers' organizations in Egypt had enjoyed pluralism and democracy since the 1920s in defending the interests of their members. The workers themselves realized that their interests could be effectively defended only through solidarity and the will of the workers to this effect was reflected in the law and the statute of their trade unions. Moreover, any development in the status quo had to come from within the trade union movement in the country, taking into account cultural specificities. In Egypt, there were no restrictions in joining or leaving a trade union in any sector. The role of the Confederation of Trade Unions in relation to trade union statutes was to draft a model statute so that it could serve as guidance for unions in drafting their own statutes. These statutes varied among the 23 trade union organizations, taking into account their specific circumstances. The Worker members had acknowledged in their intervention the role played by the Textile Workers' Federation and the President of the Confederation of Trade Unions in settling the strike in El Mahallah City. This testified to the successful functioning of tripartite relations and cooperation in Egypt.

Finally, he indicated that the CTUWS General Coordinator had never been a trade unionist and had established a centre to provide workers with services, which was by

no means a trade union. It was rather a mere individual initiative to set up a commercial establishment. He expressed his surprise that this international forum took the trouble to refer to this issue.

The Government member of Qatar indicated that he had listened carefully to the Government representative who had provided detailed information and expressed the hope that the Committee would examine this information and make good use of it.

The Government member of Morocco underscored the importance of the full enjoyment of trade union rights not only for the workers themselves but also for all the social partners. The Convention, which was the point of reference for the workers in terms of their rights, could also have an important impact on a country's economic and social development. However, any changes needed to come from within the society. The Government representative of Egypt had referred to the efforts made in the country so as to adjust to world economic circumstances. The Government was working relentlessly to ensure social development and the resolution of labour disputes in the best way possible. The Labour Code of 2003 had been adopted to regulate this process and major efforts had been made to raise awareness of the partners regarding social dialogue and improve working relationships. These efforts had begun to bear fruit, which was very important for the further development of labour relations. All these measures were bound to lead to a positive atmosphere and to the overcoming of obstacles between the national legislation and the Convention. The Government's efforts should also be praised since it was playing an important role in realizing peace in the Middle East and had a major role in the work of the Arab Labour Organization. He concluded by stating that the Committee should look into the information provided and take into consideration the views expressed by the Government.

The Government member of Tunisia emphasized that the Egyptian legislation, including the Labour Code of 2003, was in conformity with international labour standards and that the enactment of legislation depended, notably, on the development of tripartism and social dialogue. Moreover, encouraging results had been obtained in this regard through the elaboration, in 2006, of the foundation and principles of social dialogue as a basis of social justice, the importance given to a constructive and serene social dialogue, and the organization of training for the social partners. The speaker also emphasized the openness demonstrated by the Egyptian Government for dialogue and supported the efforts made by the Government to comply with the Convention.

The Government member of Sudan indicated that his Government attached special importance to cooperation with the Conference Committee. The Government representative of Egypt had shown that the Government action was compatible with the comments of the Committee of Experts. The Government was willing to accept technical assistance and benefit from it. It had made strenuous efforts to reach agreement so as to resolve the disputes. Egypt, a country with a long history steeped in civilization, was currently facing new experiences and needed time so as to select the model which best suited its conditions. Change should be gradual so as to enable the social partners to reap the benefits. He concluded by stating that Egypt should not have been included in the list of individual cases.

The Government member of Belarus welcomed the intention of the Government of Egypt to bring the legislation into line with the Convention in the framework of social dialogue. The Government's intention to further develop trust and confidence with the social partners through social dialogue had been demonstrated through the organization of seminars on a wide range of issues including economic reforms and improvements in conditions of work. He noted the positive evolution in the

number of women trade unionists were a result of the Government's efforts to promote gender equality. It was important to continue the dialogue with the Government.

The Government member of the United Arab Emirates associated himself with the statement made by the Government member of Qatar. The issues raised by the Committee of Experts did not constitute fundamental violations of the Convention and could be dealt with through technical cooperation between the ILO and the Government. He praised the Government of Egypt for showing openness to the comments of the Committee of Experts and for its readiness to continue to cooperate with the ILO. He expressed the confidence that the Government would take every possible measure for the implementation of all the Articles of the Convention in dialogue with the social partners.

The Government member of the Libyan Arab Jamahiriya indicated that his Government had the utmost respect for the comments of the Committee of Experts. The Government representative of Egypt had given ample explanations and information in reply to the comments of the Committee of Experts and had also provided detailed information on the events that had taken place in El Mahallah City, which showed that the right to strike was guaranteed in Egypt. Strikes should take place in line with the law. The issue had been dealt with in a democratic manner and in conformity with the law through a decision of the independent judiciary. The information provided should be taken into consideration when conclusions were drawn on this case.

The presence in person of the Minister of Labour of Egypt showed the value placed by the country on the implementation of ILO Conventions. In her statement, the Minister had referred to the provisions of the Labour Code respecting the single trade union system and its beneficial aspects for workers. She had added that strikes had occurred at various levels, while explaining the conditions determining such strikes. She had also explained the procedures for the election of members of the executive boards of trade unions, which were held under judicial supervision, with any interference being prohibited. New leaders had been elected, including women (40 per cent), with in some cases achieving the level of 70 per cent. The security forces only entered election halls to ensure order. Their role was to guarantee security, but they never intervened in trade union elections. The Minister had clearly explained the various stages of negotiation and how labour disputes were settled, including through conciliation and arbitration. This information needed to be taken into account when drawing up the Committee's conclusions.

The Government member of Cuba commended the efforts made by the Government of Egypt to seek, through social dialogue, appropriate alternatives to confront the economic and social challenges of globalization. Furthermore, the Government promoted dialogue between employers and workers and organized training sessions aimed to prepare both parties to undertake economic reforms that benefited workers and ensured respect for their fundamental rights. The speaker trusted that the Committee would take due note of the explanations provided by the Government of Egypt.

The Government member of China stated that she had taken note of the Government's statement in particular with regard to the legislation adopted to give effect to the Convention and the measures taken to promote social dialogue. The ILO should continue to cooperate with the Government in order to achieve full compliance with the Convention.

The Government member of the Russian Federation stated that the Government of Egypt was taking special measures to fulfil its international obligations concerning the rights of workers. The solution to the problems raised by the Committee of Experts lied in tripartite negotiations

at national level and cooperation between the ILO and the Government. He called on all interested parties to continue the dialogue and on the ILO to give, if necessary, appropriate technical assistance.

The Government representative of Egypt expressed her appreciation for all those who had taken the floor during this important sitting. She assured the Committee that being a trade unionist herself, she would not tolerate any violation of trade union rights in her country and she would seek to remedy any divergence between the national law and the international Conventions. She wished to reply to the comments made by the Employer and Worker members which had been prepared apparently before hearing the Government's statement. She expressed the hope that the Worker members would re-examine their position. In Egypt, there were no strict constraints placed on the right of workers to join or leave a trade union. It was the basic statute of trade unions which determined the rules and procedures for affiliation, as long as the worker was still active in service. The Trade Union Act guaranteed the full freedom of workers to join or not to join any trade union. There was therefore no question of constraints.

With regard to the issue of trade union unity, she fully supported the view that this unity should spring from the trade union organization itself, and not be decided upon by law or by the administrative authority. The application of the by-laws of trade union organizations reflected the desire of the workers themselves, who opted for a pyramidal trade union structure, based on unity, as set out in the current Trade Union Act. Things could evolve in the future as the country developed, and tripartite dialogue on this issue was continuing.

Concerning the procedures governing the nomination and election of trade union members, which according to the Committee of Experts should be decided by the trade unions and not by the public authority, the single trade union central organization or the law, she emphasized that the Government had no involvement in the choice of trade union representatives during elections which took place in full freedom. The matter raised by the Committee of Experts had been resolved in a meeting of the General Assembly of the Confederation of Trade Unions held on 18 October 2006. She promised to furnish a copy of the minutes of the meeting to the Committee of Experts along with a copy of a model regulation of the by-laws of trade union organizations. This was further proof of her Government's good will.

With respect to the group of professionals representing engineers, she clarified that the specific entity was a professional organization and not a trade union, and had been set up only to defend its members' specific interests. She added that no person had been stopped from entering the meeting place of the entity as long as he or she was a member – entry being denied only to non-members. The presence of the police force outside the building was only to ensure security and protect the safety of individuals and undertakings and was not aimed to intervene in any gathering.

As for the closure of the Centre for Trade Union and Workers' Services and its branches in El Mahallah, Nagaa Hamadi and Helwan, she informed the Committee that the Centre was not closed on account of its trade union activity, but on account of its violation of the licensing conditions as a non-governmental organization, in accordance with the provisions of Non-Governmental Organizations Act No. 84 of 2002. She added that a judicial decision had been rendered ordering that the closure be annulled. Dialogue was ongoing between the representatives of the Centre and the Ministry of Social Solidarity to correct its status, in accordance with the Non-Governmental Organizations Act.

With reference to the strikes in El Mahallah, these had taken place on 6 April 2008 in the city of El Mahallah al-

Kubra and not in a factory. Acts of vandalism had been committed by persons with motives unrelated to the promotion of professional interests. More than 27,000 workers in the El Mahallah factory had not joined the strike as they had engaged in negotiations with management under the auspices of the Ministry. Those persons who had gone on strike had been paid full wages even during the period of strike, although the Labour Code required the deduction of wages during the strike period; this was due to the discretion enjoyed by the Government in this regard and the respect paid by the Government to workers and their rights. She stressed that the April event in El Mahallah was an operation aimed to cause damage in the city and not at all a strike called by workers.

She concluded by underlining the importance of consultation and collaboration with the social partners through the Labour Consultative Council which had been set up on the basis of the Labour Code. She assured the Conference Committee that the comments of the Committee of Experts would be submitted to the Labour Consultative Council so as to take the necessary measures to review the Labour Code and the Trade Union Act and bring them into conformity with the provisions of the Convention.

The Worker members thanked the Minister of Labour for the information provided. They pointed out that Egypt had ratified the Convention 51 years ago. In view of the number of years that had since elapsed, it was time for the Government to align its laws with the Convention's requirements. Regarding the representatives of various Governments who had taken the floor in support of the Government of Egypt, they noted that many of those countries did not fully uphold freedom of association principles and workers' rights. Indeed, cases concerning the application of the Convention by several of those Governments would be discussed in the Committee. They acknowledged the Government's remarks and noted that the Minister of Labour was formerly a colleague of theirs on the Workers' bench. They hoped, therefore, that the Government would act upon the commitments it had made before the Committee in good faith and with due haste.

Recalling the Minister's remarks on the freedom to join the sole trade union, they maintained that the crux of the matter was the freedom to join a trade union, not the trade union – that is, the single trade union established by law. Until workers enjoyed the freedom to join other organizations, the legislation would remain non-compliant with the Convention. The situation of trade union monopoly was also to blame for the refusal to grant workers the right to hold union elections in a manner of their own choosing. Underscoring that the trade union monopoly had not been freely chosen by workers but rather originated in the legislation, they called upon the Government to introduce the necessary legislative changes, in line with the comments of the Committee of Experts.

As concerned the Government's remarks on the importance of social dialogue, they emphasized that it was equally necessary to promote collective bargaining and sound industrial relations. This, in turn, required the appropriate legislative framework. They recalled that conflict naturally occurred within sound industrial relations environments – in the form of industrial action and strikes. The right to strike needed to be ensured for Egyptian workers; it was therefore necessary to remove the restrictions on the right to strike contained in section 192 of the Labour Code, as well as the imposition of compulsory arbitration in services which were not essential in the strict sense of the term.

They stated that the CTUWS was recognized by well-respected international organizations, including the ITUC and the International Federation for Human Rights (FIDH). If the monopoly on trade unions were lifted, the CTUWS would be able to become a fully fledged trade union, rather than a civil society organization.

As concerned the strike in El Mahallah al-Kubra, they recalled that many non-governmental organizations – including Amnesty International and the ITUC – had eyewitness reports that the riot police were shooting with live ammunition. They emphasized that even should a strike turn violent, this did not authorize the authorities to react with equal or greater violence.

They accepted the Government's proposal to convene a tripartite body on the matters discussed and reiterated their strong hope that legislative amendments would soon be introduced, particularly in respect of the trade union monopoly situation, the control by higher level organizations of union election procedures, the control by the Confederation of Trade Unions of the financial management of trade unions, and the right to strike.

The Employer members thanked the Minister for her comprehensive reply. They emphasized that the Convention was a fundamental one and a cornerstone of the ILO. Compliance with this Convention was therefore not an evolutionary process; there could be no concessions or "middle ground" in securing respect for its provisions. Social dialogue and tripartism was a second cornerstone of the ILO. The existence of dialogue and consensus, however, could not veto the requirements of the Convention. They recalled that the present case concerned two fundamental aspects of the Convention. The first, which concerned the situation of trade union monopoly, was inconsistent with the requirement that a multiplicity of trade unions be allowed to exist and flourish. The second aspect touched upon the right of trade unions to set their own rules and govern themselves without government interference.

They maintained that countries that had ratified the Convention must completely fulfil the attendant obligations. In this respect, technical assistance in the form of an ILO mission was necessary. They requested the Government to indicate whether it was prepared to accept such a mission and recalled that it was also obliged to prepare a report fully responding to the ITUC allegations and the comments of the Committee of Experts.

The Government representative of Egypt stated that although her Government was ready to cooperate in all respects and welcomed any assistance offered, it had a precise agenda and she could not, therefore, promise that the legislation would be reviewed so rapidly. It was not certain whether amendments to the laws could be submitted before the end of Parliament's present term, hence she could not promise that the amendments would be enacted by next year; more time was required to review the legislation and prepare the necessary changes.

Conclusions

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

The Committee observed that the comments of the Committee of Experts concerned serious allegations of government interference and violent intervention by the security forces against trade union members during union elections, as well as a number of discrepancies between the labour legislation and the provisions of the Convention, in particular as regards the institutionalization of a single trade union system through a variety of means.

The Committee noted the Government's statement according to which the amendments made to the Labour Code were the result of intensive social dialogue. In addition, a draft concerning social dialogue was in the process of being prepared with the assistance of the ILO. The Government representative asserted that there was no interference in union elections, which were held in accordance with the organizations' by-laws, except where necessary to ensure the peaceful settlement of internal conflicts. Nevertheless, the Government representative assured the Committee that all

comments made by the Committee of Experts would be taken seriously into account within the framework of the national tripartite consultative committee.

The Committee noted with deep concern certain elements of the Government representative's statement which appeared to show a lack of commitment to the fundamental principles consecrated in the Convention, in particular with respect to the most basic right to form and join organizations of one's own choosing, even if outside the existing trade union structure. It regretted that no progress had been made on these fundamental points since the ratification of this Convention over 50 years ago. It also expressed concern at the references made by several speakers to ongoing, grave violations of the Convention. In this respect, the Committee recalled that basic civil liberties and fundamental rights must be respected during strike action. The Committee asked the Government to fully implement the judgement of the Egypt Administrative Court so that the Centre for Trade Union and Workers' Services may operate freely. The Committee encouraged the Government to continue on the important path of democratic reform it had embarked upon in the country.

The Committee urged the Government to take tangible steps in the very near future to ensure that all workers could be ensured the full enjoyment of their fundamental right to freely organize and, in particular, to guarantee the independence of trade union organizations and the elimination of all forms of interference in workers' organizations. The Committee invited the Government to accept an ILO technical assistance mission and welcomed the Government's readiness in this regard. It requested the Government to provide detailed information to the Committee of Experts on the measures taken to bring the law and practice into conformity with the Convention, as well as full particulars in reply to the allegations of violent attacks against trade unionists and acts of interference in internal union affairs, in its report when it was next due.

The Government representative of Egypt reiterated her Government's commitment to the application of standards. With respect to ILO assistance mentioned in the conclusions, she indicated that ILO assistance was currently being provided to her country on social dialogue, and that there was therefore no need for further assistance on the issue under discussion. What was needed was assistance in the training of trade unionists and employers. She expressed her hope that Egypt would always meet its obligations under ILO Conventions.

EQUATORIAL GUINEA (ratification: 2001)

The representative of the Secretary-General informed the Committee that the delegation of Equatorial Guinea was not accredited to the Conference.

The Chairperson of the Committee, referring to the working methods of the Committee, stated that the refusal of a government to participate in the work of the Committee represented a considerable obstacle to the achievement of the main objectives of the International Labour Organization. In the case of governments which were not present at the Conference, the Committee did not examine the substance of the case, but would bring out in its report the importance of the issues raised. A particular emphasis would be put on steps to be taken to resume the dialogue.

The Worker members recalled that Equatorial Guinea was not accredited to the present session of the Conference. Equatorial Guinea had been included in the list of individual cases because of two footnotes in the report of the Committee of Experts under Conventions Nos 87 and 98. The Government had justified the lack of legislation giving effect to the principles contained in these Conventions due to the absence of a trade union tradition in the country. An immediate consequence of this lacuna was the impossibility to bargain collectively. The lack of dialogue between the Committee of Experts and the Gov-

ernment on this point had already been noted under other Conventions, in particular those relating to seafarers. The Government also found it difficult to explain the deficiencies in the application of numerous other Conventions. The negative attitude of the Government had been the subject of criticisms from the International Trade Union Confederation (ITUC) for several years, as trade unionism had been driven underground, whereas several organizations hoped for their official recognition, such as the Trade Union of Workers of Equatorial Guinea (UST), the Independent Services Union (SIS), the Teachers' Trade Union Association (ASD) and the Agricultural Workers' Organization (OTC). This situation showed the will of the workers to engage in a process of social dialogue that would finally allow for the conclusion of collective agreements. The Worker members recalled the possibility for governments encountering difficulties in applying ratified Conventions to benefit from ILO technical assistance. Concerning collective bargaining, its establishment required specific capacity-building for dialogue. The Worker members expressed the wish that the ILO propose to the Government of Equatorial Guinea assistance in the field of freedom of association.

The Employer members drew attention to the reference to Equatorial Guinea in the general observations contained in the 2008 report of the Committee of Experts, which indicated that contacts had been maintained between the Government and the Office through technical assistance. It was hoped that such contacts would bear fruit so that this Committee would be able to discuss the case at its future session.

The Worker member of Spain, speaking on behalf of the General Union of Workers (UGT) and the Trade Union Confederation of Workers' Commissions (CC.OO.), regretted the absence of dialogue with the Government of Equatorial Guinea. She also highlighted that the evident disinterest of the Government of Equatorial Guinea to participate in this annual Conference could be used as a means to avoid the supervision and criticism of this Committee. In view of the absence of fundamental rights in Equatorial Guinea, the Spanish trade unions demonstrated their solidarity and concern at the deplorable conditions existing in the country.

GUATEMALA (ratification: 1952)

A Government representative stated that the objective of achieving full respect for freedom of association, which was the reason why his country had ratified the Convention in 1952, was still relevant as a fundamental pillar for the development and reinforcement of collective bargaining, and he reaffirmed his commitment to this objective. Labour issues were at the centre of the Government's policies and touched upon practical issues, including the need to modernize labour legislation so as to harmonize it with the provisions of the ILO Conventions ratified by his country, the establishment of more responsive procedures and the strengthening of labour and business, especially in the current context of the country's participation in a globalized world.

The State had the obligation to prepare a fertile ground so that the Guatemalan people could accede to decent employment, have sufficient resources to satisfy basic needs and raise their standard of living, in an environment of respect for individual rights and access to the protection of an efficient social security system. The Political Constitution of the Republic envisaged a series of individual rights and guarantees for workers and ensured that these could only be improved upon and never reduced. These guarantees could be improved upon through collective bargaining. Moreover, international human rights Conventions and treaties, including those on labour law and freedom of association, were recognized as having supremacy.

He indicated that in April this year a high-level mission had taken place as recommended in the conclusions of this Committee in 2007 with encouraging results, resulting in the signature of an agreement in the framework of the Tripartite National Committee. Moreover, he informed the Committee of the existence within the Public Prosecutor's Office, of a Special Office of the Public Prosecutor for Offences against Journalists and Trade Unionists, which had been entrusted with the follow-up of the pending cases. It should be emphasized that there was no institutionalized policy of violence against trade unionists or any other social group, and that the Government had accepted its duty to facilitate the investigation of these cases with all available means.

Trade union rights, in the same way as the rights of every citizen, could only be exercised in a climate of peace and tranquillity, without an individual's actions being subject to any kind of violence, especially for the exercise of a legitimate right such as the right to associate, whether in respect of labour matters or in any other area. The report of the Committee of Experts referred to the specific case of the Secretary-General of the Union of Workers of the Quetzal Port Enterprise; he should recall that until now, the investigations carried out had not produced any proof of a murder as a result of trade union activities. The investigation was continuing in order to determine the true reason for the murder and to punish those responsible.

As for section 215(c) of the Labour Code, which established the need to have 50 per cent plus one of those working in the occupation to establish industry trade unions, as noted in the report of the Committee of Experts, it should be noted that draft texts already existed to amend the Labour Code along the lines indicated by the Committee of Experts.

With regard to the delay in or the refusal to register trade unions, the legislation did not allow such a refusal vis-à-vis any trade union unless it failed to comply with a requirement provided for in the law. In cases where a formal requirement had not been met, the omission was rectified by giving the opportunity to the applicants to comply with the requirements. Moreover, work was being undertaken to reform and modernize the labour legislation, while maintaining the concepts and principles which should reinforce relations between employers and workers.

In order to speed up judicial procedures, nine courts of first instance had been created in addition to those that already existed and efforts were being made for the establishment of courts in areas in which the labour force was concentrated, such as the Department of Izabal, Alta Verapaz, Santa Rosa, Suchitepéquez and El Petén. In these departments four tribunals of second instance had also been created in order to facilitate access to justice. Moreover, work was under way on a legislative initiative to amend the Act on the protection of constitutional rights (*amparo*); considerable progress had been made with the draft text which was awaiting the opinion of the Constitutional Court.

With regard to the Civil Service Bill, he said that it had been withdrawn from discussion at the plenary session of Congress taking into consideration the objections formulated by the regular supervisory bodies. In fact, the elaboration of a new draft was under consideration in order to bring it into line with the provisions of the Convention, with the assistance and technical and financial support of the ILO.

With regard to the export processing sector, the staff of the General Inspectorate of Labour had been increased to focus exclusively on this sector. The Government had requested the ILO Subregional Office, in the framework of the technical and financial assistance requested, to address the subject of freedom of association and collective bargaining in the export processing sector, by carrying out

monthly tripartite seminars on freedom of association and collective bargaining in the export processing industry. He took advantage of the present opportunity to reiterate this request.

He stated that the Tripartite National Committee had already been established and dialogue had commenced in order to obtain a solution to the problems raised by the workers and employers and agreements on legal reform. To this effect, a specific subcommittee had been created and met every 15 days in the Ministry of Labour and Social Insurance.

The agreement signed during one of the meetings of the Tripartite National Committee between employers, workers and the Government as a result of the visit of the high-level mission in April this year, demonstrated the good faith and political will of the Government to look for solutions through the reinforcement of social dialogue and through agreements reached by consensus.

With regard to labour statistics, he said that the Government was working on the restructuring and modernization of the Ministry of Labour and Social Insurance, including the strengthening of such areas as the directorate of labour statistics. The following tasks had been given priority: surveys and statistics on all aspects of labour matters, an ongoing programme of studies on labour markets and the corresponding technical areas (economics, statistics, sociology, etc.) aimed at ensuring training and research on labour issues.

Finally, he referred to the signature of a collective agreement on labour conditions with one of the most important organizations of the country, the National Teachers' Assembly, which brought together approximately 14 unions from the education sector; the signature of a collective agreement on conditions of work with the Trade Union of Employees of the Ministry of Labour and Social Insurance; the authorization of various trade unions which resolved the formalities for their establishment, including the Union of Investigators of the Office of the Public Prosecutor, the employees of the export processing sector and the trade unions of agricultural employees. As a result of the above, he requested once again the necessary technical and financial assistance to continue improving the system for the application of ILO Conventions. The text of the Agreement was as follows:

Agreement in the framework of the Tripartite National Committee

In the City of Guatemala, the Government of Guatemala, represented by the Ministry of Labour and Social Insurance, the representatives of the trade union movement, the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF), gathered together in the context of the Tripartite Commission, for the purpose of the ILO high-level mission (21–24 April 2008), to agree to examine the following subjects with a view to drawing up draft reforms or guidance for the purpose of the improved application of ILO Conventions Nos 87 and 98:

- (1) Evaluation of institutional action, including the most recent, and particularly the special protection measures to prevent acts of violence against trade unionists under threat. Also, the evaluation of the measures that are being taken (increases in budget allocations and in the number of investigators) to guarantee effective investigation with sufficient resources to permit the elucidation of the crimes against trade unionists and the identification of those responsible.
- (2) Examination of the dysfunctions of the current system of labour relations (excessive delays and procedural abuses, lack of effective enforcement of the law and of sentences, etc.) and particularly of the machinery for the protection of the right to collective bargaining and the rights of workers' and employers' organizations and their members as laid down in Conventions Nos 87 and 98 in the light of technical considerations

and the comments of a substantive and procedural nature of the ILO Committee of Experts on the Application of Conventions and Recommendations.

Bearing in mind that the problems indicated have persisted for many years, the parties undertake to examine these matters rapidly through monthly meetings for the purpose of preparing progress reports.

Considering that the supervisory bodies have placed emphasis on the problems indicated, the parties undertake to work intensively in a consensual manner with a view to drafting reforms or guidance and to inform the Committee of Experts before its next session in November 2008, on the understanding that the progress reports are to be submitted every two months to the International Labour Office.

The high-level mission undertakes to provide appropriate technical assistance in relation to these matters.

The Employer members expressed their appreciation for the continued positive attitude of the Government. They recalled that the application by Guatemala of Conventions Nos 87 or 98 had been discussed by the Committee every year since 1991, and very frequently throughout the 1980s. A review of the Committee of Experts' comments over this period showed that there had been a steady and ongoing implementation of both Conventions. The list of issues raised by the Committee of Experts was decreasing, and this was to be commended.

They noted that there had been a new Government since 14 January and that, as the Government representative had indicated, a Tripartite Agreement had been signed in April 2008 as a result of the ILO's high-level mission. This agreement committed the Government and the social partners to meet on a monthly basis to work together on draft legislation and guidelines. In this respect they reiterated the need for the commission established by the agreement to take into full consideration the comments made by the Committee of Experts.

The recent rise in the number of deaths and murders of trade unionists was deeply regrettable; noting the Government's indication that it would expand the office of the Public Prosecutor to address this problem, they expressed the hope that the Government would soon do so and undertake other measures to protect trade unionists. It was a central principle of Convention No. 87 that freedom of association could only be realized in an atmosphere free from violence and intimidation.

They concurred with the Committee of Experts that the requirement of half plus one of those working in the occupation to establish a trade union was too high. The requirement to be of Guatemalan origin to run for trade union office was also not in conformity with the Convention. As concerned strikes, they emphasized that due account must be taken of the different circumstances, conditions and level of development pertaining to each country. No single rule applied in this respect, as what could be considered an essential service in one country might not be essential in another.

The Worker members emphasized that Guatemala was once more on the list of individual cases because of its regular violations of the fundamental rights of workers, notably to freedom of association and the right to negotiate – violations that went as far as murders of trade union leaders and militants. Guatemala was one of the most dangerous countries for trade unionists, with a serious situation of impunity and corruption. The fact that a newly elected Government had taken office had produced a glimmer of hope. At the end of January 2008, during the International Conference on Impunity, the new President of the Republic had declared his will to do everything possible to eradicate violence towards trade unionists and to put an end to endemic impunity. Unfortunately, since then, the situation had deteriorated further.

The previous year, the Worker members had condemned the acts of violence committed on trade unionists. Yet, the list of victims continued to grow and practically

nothing had been done to identify and punish the culprits. The complaints submitted by unions had either been declared irreceivable or without merit and the persons who had submitted them suffered acts of intimidation and threats. In this regard, it should be noted that the Government representative had expressed a commitment to strengthening the prosecution services. A series of attacks – notably at the headquarters of the General Central of Workers of Guatemala (CGTG) and at the home of the leader of the Confederation of Trade Unions of Guatemala (CUSG) – of assassinations, including that of Carlos Enrique Cruz Hernandez, member of the trade union of workers of banana plantations, and of arrests, proved that the situation had worsened and that the intolerable climate of violence and impunity was continuing. In this context, they said that it would be useful to know the initial conclusions of the ILO mission in Guatemala in April 2008.

Concerning the non-conformity of the legislation with the Convention, they emphasized that this restrictive legislation prevented de facto the organization of legal strikes. The Government had not replied to the request of the Committee of Experts to prepare a thorough reform of the legislation in that regard. Restrictions on freedom of association and collective bargaining remained common practice in the 250 export processing sector *maquilas*, where there were not even seven trade unions, as indicated by the Government representative, but only three. The weakness of the labour inspectorate did not improve the situation.

With reference to the legislation on the civil service, which was contrary to the Convention, they said that nothing has been done to amend it and, in practice, trade unionists had been laid off, notably at the National Credit Bank and the Office of the Public Prosecutor. The Committee of Experts had noted that dialogue was not effective in the National Tripartite Committee and that the Government did not show a will to make it work, using as a pretext to gain time the lack of consensus between workers and employers. No decisions were therefore being taken to amend the legislation.

In conclusion, the new Government and the International Conference on Impunity had raised hopes, but, unless the reports of the mission conducted by the ILO in April 2008 indicated otherwise, the information currently available showed a continued failure to comply with international labour standards. Promises and statements did not count when faced with the reality of systematic violations of trade union rights, in a climate of daily increasing violence.

The Worker member of Guatemala said that an examination of the observations of the Committee of Experts demonstrated that since 1999, the different governments of Guatemala had systematically demonstrated their indifference to tripartite efforts to overcome the serious problem of failure to comply with the Convention. Neither the continued discussion of the case by the Conference Committee nor the ILO's direct contact technical missions had led to measures by employers and governments to slow down the incessant killings of trade union leaders. It was clear that the situation in his country had worsened, as the following persons had been murdered: Marcotulio Ramirez Portela and Carlos Enrique Cruz Hernandez in the Izabal district banana plantations; Sergio Miguel Garcia and Miguel Angel Ramirez Enriquez on the Olga Maria plantation, as well as many other unionists murdered in previous years. There was a climate of violence, intimidation and threats. There had been illegal dismissals as a result of attempts to establish unions, for example: the Petén workers' distribution union, the Workers' Union of the Southwest and the union of the Instalcobra enterprise, which had been subcontracted by the DEOCSA company, part of the Spanish transnational enterprise Unión FENOSA. In the latter case, 32 unionists had been dismissed. Salaries had been illegally withheld for six

months in the case of the workers at the Crédito Hipotecario Nacional. There were also 18 notifications of dismissal. All this had led to a climate of terror and the impossibility of having decent work.

The shameful institutional inability of the Office of the Public Prosecutor and the law courts to bring the guilty to justice had led to a feeling of impunity. While it was true that a special office had been established in the Office of the Public Prosecutor against journalists and trade unionists to investigate crimes, there had been no real strengthening of its powers, which on the contrary had been weakened, as it had reverted to a mere local Office of the Public Prosecutor, with no national structure or capacity.

The main reason for failure to comply with labour provisions lay in the absence of effective enforcement. The legislation needed reforming in order to eliminate obstacles which prevented the exercise of freedom of association, and the general labour inspectorate, the Office of the Public Prosecutor and labour tribunals needed to take the necessary action. Effective and efficient internal controls were also needed for civil servants, including the application of the rules governing judges.

He added that the establishment of trade unions at the industrial level was limited because a figure of 50 per cent plus one of the workers concerned was required, which was a trap, as it was difficult, if not impossible, to know what 100 per cent of the workforce was in any specific activity. Nor did the employers or the Government know such figures.

Regarding strikes, section 241 of the Labour Code required that the strike be announced by a majority of workers and not by a majority of those voting. Given this impossibility, some unions had attempted to organize de facto strike action, only for the police to be given immediate orders to break up the strikes or for the Government to invent a pretext to end the strike, as had happened recently with the transport workers where, instead of giving precedence to dialogue, the Government had declared preventive measures to avoid an emergency, with the result that 49 workers had been imprisoned and one murdered. Sympathy strikes were also banned.

With regard to the export processing sector of *maquilas*, he stated that it was almost impossible for unions to be established as there was a climate of anti-union discrimination and violence, with all kinds of subtle methods and actions used to prevent unions from being set up. In view of the above, he called for the case to be included in a special paragraph.

The Government member of Peru, speaking on behalf of the Latin American and Caribbean Group (GRULAC), noted that as a result of the conclusions of the Conference Committee adopted by the 96th Session of the Conference in 2007, Guatemala had accepted a high-level mission, which had taken place from 21 to 24 April 2008, and that the country continued to show signs of openness and co-operation with the ILO supervisory system. He added that, as a result of the mission, a Tripartite Agreement had been signed which gave priority to certain subjects, with a view to the preparation of draft reforms and guidelines to improve the application of Conventions Nos 87 and 98.

He asked the Committee and the Office to respond positively to the request for technical assistance by the Government of Guatemala in order to support its efforts to achieve full respect for trade union rights in the country.

The Worker member of Colombia stated that because of anti-union practices there was virtually no freedom of association in Guatemala. According to information from the organizations concerned, the percentage of unionized workers was less than 1 per cent. The Committee of Experts had been insisting for some 20 years on the urgent need to protect the rights of the working classes, including the right to life, as murders of unionists in Guatemala was a constant menace. He expressed concern and asked for a full investigation of the trend towards the feminization of

killings; according to information available, in the last eight years, more than 3,000 women had been murdered.

He expressed concern that despite the repeated promises to comply with and give effect to the recommendations of the Committee of Experts, reality showed that restrictions on the exercise of freedom of association persisted, both in the public and the private sector, and prevented any possibility of collective bargaining. He reminded the Government that the very existence of a tripartite body was not enough to ensure the existence of dialogue; all sides had first to show their determination to comply with international labour standards. He urged the Government to adopt measures to protect the lives of unionists, to intensify the fight against impunity and to bring an end to anti-union activities so as to prevent the continued extension of bad practices across the region. Finally, he asked that the case be included in a special paragraph.

The Worker member of the United States reported that two months ago he had witnessed a candid speech by recently elected Guatemalan President Alvaro Colom at George Washington University in Washington, DC. The President had emphasized the critical need for labour rights and social justice in Guatemala, and had lamented the destruction of Guatemalan unionism over several violent decades. Although the President's welcome words seemed sincere, he warned that good intentions alone would fail to reverse the chronic violations of freedom of association and collective bargaining rights in Guatemala, which the Committee had reviewed for most of the last ten years, and which had only worsened.

The American Federation of Labour and Congress of Industrial Organizations (AFL-CIO) had been assured by the Bush Administration and by advocates of the US-Dominican Republic-Central American Free Trade Agreement (DR-CAFTA), implemented two years ago, that the trade pact would improve the labour rights situation in the region, including Guatemala, by providing an incentive for good behaviour by incorporating a labour chapter. But implementation of the trade pact had not improved Guatemala's compliance with its existing laws on freedom of association and collective bargaining, as was fully documented in the joint complaint submitted by the Guatemalan labour movement and the AFL-CIO on 23 April 2008, pursuant to Chapters 16 and 20 of DR-CAFTA.

Moreover, the only really effective review criterion under the labour and dispute settlement mechanisms of the trade pact was whether the parties were complying with their own labour laws, no matter how substandard they might be in terms of Conventions Nos 87 and 98.

As was evident from the 2008 report of the Committee of Experts and from the session under way, Guatemalan law on its face continued to be in flagrant violation of the Convention. Section 379 of the Labour Code continued to impose liability on individual workers for damages resulting from a strike, creating a chillingly fatal effect on the exercise of Convention No. 87 rights. The law still empowered national police to function as strike-breakers.

Anti-trade union violence and impunity had only worsened since the implementation of the DR-CAFTA. Cases since July 2006 that he could mention were: an officer of the Union of Banana Workers of Izabal (SITRABI) shot at three times on 26 November 2006 after visiting union members at the Chickasaw plantation; Pedro Zamora, General-Secretary of the Quetzal Port Workers brutally murdered in front of his children on 15 January 2007, with evidence of some involvement by the former governmental administration, as well as continuing death threats against other leaders of the same union; Walter Anibal Ixaquic Mendoza and Norma Sente de Ixaquic, leaders of the Frente Nacional de Vendedores de Guatemala, shot and killed in downtown Guatemala City on 6 February 2007, as they were attempting to resolve a labour conflict related to the safety of street vendors;

SITRABI Cultural Secretary Mario Tulio Ramirez assassinated in September 2007; on 22 January 2008, Rosalio René Gonzalez Villatero, General-Secretary of the San Benito Independent Farmworkers, murdered immediately after filing a complaint with the local prosecutor regarding a labour dispute; on 2 February 2008, Sandra Isabel Ramirez, daughter of the General-Secretary of the Union of Banana Workers of the South (SINTRABANSUR), whose members produce for Chiquita, abducted and raped by four masked men who interrogated her about her father's trade union work; on 29 February 2008, the son and nephew of José Alberto Vicente Chavez, a leader of the Union of Workers in the Coffee and Coca Cola Drinks Industry (SITINCA) at Retalheu brutally murdered at a bus stop while awaiting the return of their father and uncle from the city where ironically he had filed a complaint about his own personal safety; on 1 March 2008, shots fired into the home of the General-Secretary of CUSG, an affiliate of the International Trade Union Confederation (ITUC); and on 2 March, Miguel Angel Ramirez Enriquez, General-Secretary of SINTRABANSUR assassinated.

However, the report of the Committee of Experts mentioned a paltry record of only two convictions for anti-union violence and a grand total of 17 unionists in a protection programme. Impunity for the intellectual and material authors of anti-union violence in Guatemala had reached crisis proportions. He called for a special paragraph in the case as false promises of improved labour rights through trade agreements and other ruses could no longer be tolerated.

The Worker member of Norway recalled that the Committee had been discussing grave violations of Conventions Nos 87 and 98 in Guatemala for many years, but that the situation had only worsened. In Guatemala the judicial system was almost non-functional. In addition, only between 1 and 2 per cent of workers were organized and few complaints were sent by workers to the Ministry. This was due to fear of harassment, loss of job, threats and even murder.

She described the case of the SINTRABANSUR union organization in the Olga Maria banana plantation. The union had been formed in July 2007 to negotiate a collective agreement and the legal minimum wage. After the union leaders had given the local office of the Ministry of Labour and Social Insurance a list of members' names, as required by law, the names had been immediately leaked to the employer, who had used private security agents to threaten and harass workers, both at work and in their homes. In November 2007, the employer had threatened to close the plantation if the workers continued to participate in the union. If they renounced they would receive €400. Protests by union leaders to local authorities and labour inspectors had achieved nothing. The General-Secretary of the union had refused to concede, had been kidnapped and tortured, before agreeing to resign. On 2 February 2008, his daughter had been interrogated by four men, raped and thrown down a river bank. One of the union founders, Miguel Angel Ramirez, had been assassinated in his own home in the same month. Danilo Mendez had later been threatened by armed and masked men who had surrounded his home.

Transport workers had organized peaceful protests in May 2008 against a decree that would force them to drive at night when the threat of attacks and killings was highest. Their request for dialogue with the President had been refused unless they ceased their protests. A new decree had been issued cancelling the drivers' contracts, limiting the right to strike and forbidding demonstrations for which approval had not been given. The drivers had been dispersed by special police units.

These were not isolated cases. Four shop stewards had been killed during 2008 and the perpetrators would cer-

tainly enjoy impunity, as courts and police lacked capacity and the will to bring the guilty to justice.

She asked the Government for an assurance that it would cooperate with the ILO to comply with Conventions that it had ratified.

The Government representative of Guatemala recognized the fact that there were problems in the country and stated that the new Government was aware of them. Referring to the issue of transport, he said that the Government considered it as an essential service subject to a special regime, and denied that force had been used in the case of the demonstration that had blocked all access to the country for three days. The solution had been achieved through dialogue. With regard to murder of trade unionists, he noted that in slightly less than four months since the Government had taken office, none had occurred. Regarding the export processing sector of *maquilas*, he emphasized that the Government's job was not to set up trade unions but to register them and that, contrary to what had been said by other speakers, and as the high-level mission had seen for itself, seven unions had been registered.

He called for reflection and stated that violence in the country was not institutionalized, that individual and collective rights were respected and that social dialogue was making progress. Technical and financial assistance was necessary in order to help the Government to modernize its labour legislation and bring it into conformity with international labour conventions and recommendations, in order to improve the living conditions of all Guatemalans.

The Employer members stated that a different strategy was needed. The Government had started slowly years ago to meet its obligations under Conventions Nos 87 and 98 in law and practice, and the recent Tripartite Agreement, drawn up under the auspices of the ILO high-level mission, had set an active timeline for reforms and guidelines to bring Guatemala's laws in line with Convention No. 87. These reforms would have to be reviewed and commented on by the Committee of Experts.

But they stated that the root cause was the violence in the country. Without a dedicated focus on protecting society and trade unions, there was no Government programme to address the violence, especially with respect to protecting trade unions.

Annual discussion in the Committee was not the solution. What was needed was ongoing engagement with the ILO with a focus on violence and working with the Government and other governments to set up a bona fide trade union protection programme with an adequate law enforcement, investigation and labour inspection system. Moreover, through the Tripartite Committee and with ongoing ILO engagement, the work on reform and guidelines could be completed. Enhanced efforts were required by the ILO, the Government and Guatemala's neighbours to address comprehensively the problem of violence and lack of compliance with the requirements of Conventions Nos 87 and 98.

The Worker members indicated that, following the discussion, they wished to formulate strict conclusions. The Government had to take all the necessary measures to ensure that the commitment made by the President of the Republic was respected and to put an end to the climate of violence and impunity. To halt the assassinations and acts of intimidation towards the trade union movement, the Government had to ensure that prosecutions were undertaken and that the perpetrators of these crimes, as well as their instigators, were convicted. It seemed necessary to opt for a different strategy and to propose the adoption of a special programme against violence, as well as the establishment of an ILO Office in Guatemala, to ensure the constant monitoring of the situation and the application of the Convention. In so far as, as demonstrated by the Committee of Experts, the legislative framework was in flagrant violation of the Convention, the Government had to prepare, with the social partners, a new legislative

framework that guaranteed respect for fundamental labour standards in the public and private sectors, as well as the trade union rights of workers in the export processing sector. Considering the lack of progress observed, the evident lack of will from the Government to make sure that things moved forward, the worsening of the situation and the numerous acts of violence, the Worker members proposed the inclusion of this case in a special paragraph in the Committee's report.

Conclusions

The Committee noted the Government representative's statements as well as the discussion which followed and the cases examined by the Committee on Freedom of Association. It expressed its concern at the pending problems persisting for many years concerning serious acts of violence against trade unionists, as well as to the law and practice restricting trade union rights. The Committee further expressed its deep concern at the acts of violence and intimidation against trade unionists referred to in the comments of the International Trade Union Confederation (ITUC).

The Committee noted that the high-level mission it had invited the Government to accept last year when discussing Convention No. 98 had recently visited the country. It also noted with interest that during this mission, the Government and the social partners signed a tripartite agreement including a plan of action to solve pending problems regarding Conventions Nos 87 and 98 and involving ILO technical assistance.

The Committee noted the goodwill expressed by the Government and the information provided on various bills aimed at better implementing the Convention, the creation of new labour judges and of a special section of the labour inspectorate for the export processing zones. The Government had further pointed out that the Office of the Public Prosecutor had increased the number of investigators of crimes against trade unionists with the corresponding budget. The draft law on the civil service which had been criticized by the Committee of Experts had been withdrawn and a new draft had been elaborated in full conformity with the Convention.

The Committee expected that the Committee of Experts would examine the report of the high-level mission and would thus provide this Committee with the most relevant and up to date information on the application of the Convention. The Committee also hoped that, in the light of the mission's conclusions, the Government, in consultation with the employers' and workers' organizations and with the support of ILO technical assistance, would promptly take the necessary measures to make the necessary changes to the law and practice in order to resolve the pending matters concerning violence and of the labour legislation including the situation of enterprises in the export processing zones.

The Committee deeply deplored the recent murders and death threats of trade unionists. It once again reminded the Government of the urgent need to adopt additional measures to bring an end to the violence against trade unionists and guarantee the security of all those who were victims of threats. The Committee emphasized the need to finish with the prevailing situation of impunity and to ensure that the material and intellectual instigators of these crimes were punished. The Committee recalled that trade union rights could only be exercised in a climate that was free from violence.

The Committee considered that the ongoing problems in this case required an ongoing engagement with the ILO with a focus on violence in the country, including the possibility of an ILO office. The Government should also work with neighbouring governments in setting up a bona fide trade union protection programme with adequate law enforcement, investigation and labour inspection system.

The Committee took note of the Government's request for technical support from the ILO and expressed the hope that, with this assistance the work on reforms and guidelines would be completed so that it would be in a position in the very near future to note significant progress in law and practice.

The Committee requested the Government to take prompt action and to submit a detailed report for examination at the forthcoming session of the Committee of Experts.

The Committee invited the Government to accept a mission made up of the Employer and Worker spokespersons to assist the Government in finding durable solutions to all of the above matters.

The Government representative of Guatemala welcomed the conclusions of the Committee and accepted the invitation for a tripartite mission to visit the country. He hoped that the tripartite mission would make firm proposals for solutions to the existing problems. He also hoped that the Government would be able to report on the positive progress made with ILO technical assistance next year.

JAPAN (ratification: 1965)

The Government communicated written information in the form of an organizational chart of the Fire Defence Personnel Committee System, composed of "liaison facilitators", the Fire Defence Personnel Committee and the fire chief. The newly established liaison facilitators help employees submit their opinions to the committee and make supplementary explanations. The opinions may concern wages, working hours, working conditions, welfare, protective clothing and equipment. The committee is composed of the chairperson and usually eight members appointed by the fire chief from fire defence personnel; half of the members are appointed on the recommendation of the personnel. The results of the discussions in the committee are reported to the fire chief who should deal with each case with serious attention to the results of these discussions. A new feedback process has been added whereby the results of the committee's discussions are to be communicated to the personnel and to the liaison facilitators, who could make comments on the operation of the committee.

In addition, before the Committee, a Government representative of Japan presented his Government's position regarding the observations of the Committee of Experts on the application of Convention No. 87. The Government had drafted the Civil Service Reform Bill which defined the fundamental principles of civil service reform and basic policy, based on discussions with trade unions and employees' organizations, and had submitted it to the Diet on 4 April 2008. The Bill had passed the House of Representatives with amendments on 29 May 2008 and was under deliberation in the House of Councillors.

Regarding the basic labour rights of public service employees, the Bill provided that the Government should present a complete overview of the reform, including the costs and benefits, in such a case where the range of public service employees who had the right to conclude collective agreements was expanded and, with the understanding of the people, take measures for a transparent and autonomous labour relations system. This was the result of partial amendments to the original Bill; the latter was based on the report of the Special Examination Committee which featured members having knowledge of and experience with trade unions and the relevant employees' organizations as well as the report of the Advisory Group for Comprehensive Civil Service Reform, made up of intellectuals and including a trade union representative. The Government would examine it in detail after the Bill was adopted and would continue to do its utmost to promote civil service reform, including an examination of the right to conclude collective agreements, based on the idea that a frank exchange of views and co-

ordination were necessary. The Government would be grateful if the ILO would recognize its basic policy while awaiting the conclusion of domestic consultations.

With regard to the right of fire defence personnel to organize themselves, he recalled that Japan had ratified Convention No. 87 in 1965, based on the conclusion of the Committee on Freedom of Association which had shown twice that this matter caused no problems in the application of Convention No. 87 in Japan regarding fire defence services, which were assimilated to the police. Meanwhile, the report of the Special Examination Committee provided arguments on whether or not the right to organize should be accorded to fire defence personnel. Since 1996, Japan had implemented the Fire Defence Personnel Committee System to guarantee the participation of fire defence personnel in decisions on working conditions and to protect their rights. The system was based on the Fire Defence Organization Law and the agreement between the Government and the All Japan Prefectural and Municipal Workers' Union (JICHIO).

The Government also continued to improve the system. In 2006, the Committee on Freedom of Association had welcomed introduction in 2005 of the liaison facilitator system. The Government recognized the importance of the Fire Defence Personnel Committee, which had contributed substantially to improving working conditions, and was determined to continue its smooth operation. Regarding the improved system, he asked those present to look at the figures presented in the written information provided by the Government.

The Worker members said that this case concerned the recognition of the fundamental trade union rights of workers in the public sector in Japan. The Committee of Experts had repeated the same observations for a number of years with regard to the prevailing system in Japanese public services. These observations dealt first of all with the refusal to recognize the right of workers in the public sector, such as firefighters, to organize. The Government refused them this right on the ground that they performed equivalent duties to the police, and were therefore excluded from the application of the Convention. A system of fire defence personnel committees and "liaison facilitators" to relay information to personnel had been established ten years ago. Investigations had revealed that these committees had a limited role. Furthermore, the Committee of Experts had been obliged to recall for more than 35 years that fire defence personnel could not be excluded from the application of the Convention.

The Worker members recalled that a second criticism made by the Committee of Experts concerned the general prohibition of strikes in the Japanese public sector. This general prohibition existed although the Committee of Experts had maintained for more than 30 years that both public and private sector workers should enjoy the right to strike, with the exception of public servants exercising authority in the name of the State and workers employed in essential services in the strict sense of the term. The latter should, however, be afforded appropriate compensatory guarantees to defend their interests, in particular through appropriate conciliation procedures.

The Worker members raised another matter which revealed gaps in Japan's labour relations system, namely the very limited capacity of civil servants to enter into collective agreements, particularly with regard to determining salaries. The Worker members highlighted the Government's inaction on all the above points. This inaction had been going on for several decades now. The non-conformity of Japan's labour relations system with the Convention was first indicated in the 1965 Dreyer report. In addition, both the Committee on Freedom of Association and the Conference Committee had examined the matter on several occasions without any progress being made.

The Worker members drew attention to the Government's change of course at the end of 2005 with the adoption of a fundamental policy on civil service reform, including reviewing labour relations and fundamental labour rights in the public sector. The draft Act being discussed in the Diet, Japan's Parliament, had been amended following pressure from trade unions and political parties. This draft Act, which provided for the right to bargain collectively, represented a step forward, but did not go far enough, since it covered neither the right of firefighters to organize, nor did it recognize the civil servants' right to strike.

The Worker members observed that a developed country such as Japan could not reasonably invoke economic, social or political problems as an obstacle to full compliance with the Convention.

The Employer members recalled that this case concerned three elements in connection with the Convention: denials of the right to organize of the firefighters; prohibition of the right to strike of public servants and the reform of the civil service. When the case had been dealt with in 2001, it had concerned only the first two items mentioned. The Committee of Experts' 2006 report had shown progress in those areas.

The case differed from many of the cases before the Committee because it related to public sector employees. This Committee had dealt with cases concerning public employees before, such as the 2007 cases concerning Cambodia, Ethiopia and Turkey. There were three aspects in which public employees differed from private employees. The employer of public employees could not go bankrupt and could not, in any other way, involuntarily leave business. In many cases, public employees were prohibited from striking, but this differed very much from country to country.

The Employer members recalled that there were special exceptions in the Convention for some public employees, as provided in Article 9 of the Convention. Further, the Convention included special clauses for the armed services and the police. There were good reasons for their exclusion. The Committee of Experts had a much narrower interpretation of these provisions than the Japanese Government. The Government might have good reasons for its position, taking into consideration the historical circumstances of the Japanese ratification and the traditional view of firefighters in Japan. However, the Employer members did not agree with the Government's reasoning.

In 2001, the Employer members noted that full freedom of association had not been achieved. They recognized, however, that the Government had taken steps to remedy the situation.

The fundamental right to organize without interference from the Government could not be compromised in Japan. The Employer members therefore welcomed that the Japanese Government had informed the Committee of new and positive initiatives in the law-making process.

Furthermore, the Employer members emphasized that during the discussion, before the adoption of the Convention, the question of whether there should be a paragraph on the right to strike was thoroughly discussed. It was decided that the Convention would not include such a provision, and it was adopted and ratified without it. The Employer members were well aware that the Committee of Experts had tried for many years to reverse the original decision in such a way that they read into the Convention a right to strike. The Employer members did not acknowledge this right.

In the Employer members' view, the question whether public employees had a right to strike had to be determined at a national level. However, there was nothing wrong with the Japanese Supreme Court maintaining the prohibition of strikes by public servants as constitutional.

This Committee could not regulate the right to strike for public employees.

The Employer members noted that governments and public employers worldwide restructured the civil service. It was a way of improving and making the public service more effective. But these attempts were hardly a violation of the Convention. The reform process concerning the attempts to bring the public sector in line with the Convention played a fundamental role. In 2001, this Committee had urged the Government to undertake efforts to encourage social dialogue with the concerned trade unions. The civil service reform process that took place since then included union representatives. The non-involvement of the unions participating in this Committee's discussion did not mean that other unions did not participate in the preparation of the reform. The Employer members found that it was natural and advantageous for all parties, including Japanese society as a whole, to include the workers in the reform process. Genuine social dialogue in the public sector was a well-established means to help such reforms.

The Employer members noticed that the new reform in Japan seemed to consider establishment of a new negotiating system for firefighters and asked the Japanese Government to proceed with the process. While the Government was putting in place a new negotiation system, it should, simultaneously, pursue the reform so as to recognize the right of firefighters to form organizations without any interference from the authorities.

The Worker member of Japan reiterated that, in violation of the Convention, the fundamental labour rights of public sector employees in Japan were severely restricted. This had been repeatedly pointed out by the Committee on Freedom of Association and the Committee of Experts, as well as by the Fact-Finding and Conciliation Commission on Freedom of Association in 1965. The Government had kept ignoring the recommendations without taking remedial measures.

Under the "registration system for employees' organizations", public employees were not allowed to join together with other employees beyond their own ministries or administrative units, to form one united union. Firefighters and prison staff were prohibited by law from forming a union, which constituted a severe restriction of the right to organize. The Government reiterated that efforts would be made to improve the working conditions of firefighters through the smooth operation of the Fire Defence Personnel Committee. While the Fire Defence Personnel Committee could be regarded as a form of labour-management consultation, it was not equivalent to giving firefighters the right to organize. Among all member countries of the Organization for Economic Cooperation and Development (OECD) having ratified the Convention, Japan was the only state denying the right to organize.

There had also been a case of an unfair labour practice against teachers staging a strike in January 2008. The wage increase recommendations of the personnel committee, which were supposed to constitute compensatory measures for the restriction of fundamental labour rights during the past nine years, had not been implemented due to difficult fiscal constraints. After having reduced the wages by 10 per cent per year for an agreed period of two years, the Government had unilaterally broken the promise it had given to the union and, as of 2008, imposed a further wage reduction for four years. When the Hokkaido Teachers Union staged a one hour strike in protest, disciplinary measures were immediately taken under the Local Public Services Act against all strikers (over 10,000 teachers). The case clearly showed a lack of effective recourse against unilateral wage reduction of public service employees, and the malfunctioning of the compensatory mechanism, because local autonomous bodies ignored the personnel committee system due to fiscal difficulties.

In February 2002, his organization along with the International Trade Union Confederation (ITUC), formerly known as the International Confederation of Free Trade Unions (ICFTU), and other international organizations had filed a complaint with the Committee on Freedom of Association against the Government of Japan for denying public service employees the right to organize in conformity with Conventions Nos 87 and 98 (Case No. 2177), since Government plans to reform the civil service system maintained the restrictions on fundamental labour rights. The Committee on Freedom of Association issued recommendations on three occasions to redress the violations, namely in November 2002, June 2003 and March 2006.

In 2006, the Government finally set up the Special Examination Committee and allowed union representatives to participate. The Special Examination Committee submitted its report in October 2007, concluding that the existing system should be changed so that labour and management could autonomously determine working conditions. Further, certain non-operational white-collar public employees should be granted the right to conclude collective agreements. Although these conclusions appeared to be insufficient in the light of the Convention, his workers' organization considered they could represent a possible first step towards reform and demanded their implementation.

However, the Government has submitted to the Diet a Bill that totally diluted the conclusion of the Special Examination Committee. The National Public Services System Reform Basic Bill stated the Government would "further examine" the issue of fundamental workers' rights of public service employees, so as to leave room for maintaining the status quo. The workers' organizations and opposition parties' demands for amending the Bill were reluctantly accepted. The words "to further examine" were changed to "to take measures for an autonomous labour-employer relation system". Obviously, the repeated recommendations of the ILO supervisory bodies had put pressure on the Government. The amended Bill passed the Lower House on 28 May and was now under discussion in the Upper House. The direction indicated by the amended Bill was a small but positive step forward. The Minister in charge stated in the Diet that another reform bill would be submitted within 3 years in order to take measures for an autonomous labour relations system. After the Diet's approval, the Government would have to establish, without delay, a competent body to design the system. His organization urged the Government to undertake to establish without delay an autonomous labour relations system based upon the principles of freedom of association, to further commit itself to establishing a competent body with union representation and to cooperating in good faith.

The Government representative of Japan stated that civil service reform was an important issue, which should be addressed promptly in view of the significant public interest in public service employees. The Civil Service Reform Bill, which included an examination of the right to conclude collective agreements, was based on the reports of the Special Examination Committee and the Advisory Group consisting of members with experience with trade unions and relevant workers' organizations. The civil service reform was developed with the assistance of the social partners concerned. Following in-depth discussions in the Diet, partial amendments had been made to the Bill. As a result of the amendments, the Bill required the Government to present to the people the whole picture of the reform, including the costs and benefits in the event that the range of public service employees who had the right to conclude collective agreements was expanded and, with the understanding of the people, to take measures for a transparent and autonomous labour-employer relations system. In cooperation with social partners concerned and

based on an exchange of views and listening to all parties concerned, the Government of Japan would decide on the necessary legislative measures within about three years after the enactment of the law. Indeed, social dialogue would be fundamental throughout all stages in order to achieve a fruitful civil service reform.

With regard to the fire defence personnel's right to organize, the Government established the Fire Defence Personnel Committee, based on the agreement with the All Japan Prefectural and Municipal Workers' Union (JICHIRO), a trade union grouping of local public service employees. Moreover, due to the introduction in 2005 of the liaison facilitator system, the percentage of the opinions submitted through the liaison facilitator rose from 52.9 per cent in 2005 to 78.6 per cent in 2007. In addition, the percentage of the fire defence headquarters notifying the personnel and the liaison facilitators of the results and reasons of the deliberations rose from 48.4 per cent in 2005 to 73.9 per cent in 2007.

The Government representative emphasized that his Government was continuously committed to further improving the smooth operation of the Fire Defence Personnel System and, through exchanges of views with workers' unions, the working conditions of the fire defence personnel.

The Worker members recalled that the question of respect for the fundamental rights of workers in the Japanese public sector had been raised since 1965, and that it had been examined by the ILO's supervisory bodies on many occasions. The Government had finally adopted a draft Act to reform the public services system, which was currently being discussed by the Diet. The Worker members maintained that the draft Act should be adopted, as it would finally allow the right of civil servants to bargain collectively to be recognized. As a result, an autonomous labour relations system could be established in the public sector. Nevertheless, provisions recognizing the right of civil servants to strike and the right of firefighters to organize should be added to the draft Act as a matter of urgency. The Worker members requested the Government to initiate discussions with the trade unions without delay on these additional reforms and hoped that the ILO would provide the necessary technical assistance in that regard. Japan's civil servants should not have to wait several more decades for the recommendations of the Committee of Experts and the Committee on Freedom of Association to be implemented in practice.

The Employer members highlighted the Government's efforts to address civil service reform through an exchange of views with concerned trade unions. The progress towards adopting an amended Civil Service Reform Bill based on discussions with the unions was welcome. It was necessary that the parties concerned further discussed the issue of labour rights of public service employees.

The Employer members asked the Government to separate the processes of building up a new negotiation system for firefighters from the improvement of freedom of association of fire defence personnel. In this regard, they encouraged a de facto recognition of the firefighters' union by the authorities for the purpose of consultation and negotiation. The Government was also asked to develop the reform in such a way as to recognize the firefighters' right to organize as a matter of law.

Conclusions

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

The Committee observed the comments made by the Committee of Experts which referred to the right to freedom of association of firefighting staff and the rights of civil servants' organizations.

The Committee noted the Government's statement according to which the Civil Service Reform Bill was currently pending before the Diet on the basis of recommendations made by the Special Examination Committee. The Government was committed to a full and frank dialogue with the social partners concerned on the matter of the fundamental rights of public employees. As regards firefighters, the Government recalled the special measures taken, in agreement with the municipal workers' union, to institute the system of fire defence personnel committees and the recent addition of liaison facilitators.

The Committee welcomed the steps taken by the Government over the last few years to ensure full and meaningful consultations with the social partners concerned on the issue of the provision of fundamental labour rights for public employees within the context of civil service reform. It encouraged the Government to pursue this approach of full and open social dialogue in the further elaboration of the texts necessary to ensure full application of the Convention in law and in practice. In this respect, the Committee recalled the need to ensure the right of Convention No. 87 to public servants and to guarantee the right of firefighters to organize without interference from the public authorities. It encouraged the Government in the meantime to proceed to a de facto recognition of the firefighters' union so that they might participate in the relevant consultations and negotiations. The Committee trusted that the Government would be in a position in the near future to provide detailed information to the Committee of Experts on the tangible steps taken to ensure the full respect of the Convention for all workers.

ZIMBABWE (ratification: 2003)

The Chairperson of the Committee invited the Government representatives to participate in the discussion. In addition, to confirm the absence of the delegation of Zimbabwe, which had been duly accredited and registered before the Conference, she referred to the working methods of the Committee. The refusal of a government to participate in the work of the Committee represented a considerable obstacle to the achievement of the main objectives of the International Labour Organization. For this reason, the Committee could discuss the substance of those cases regarding governments registered and present at the Conference who decided not to appear before the Committee. The discussion regarding such cases would be reflected in the appropriate part of the report, concerning both individual cases and the participation in the work of the Committee.

The Worker members indicated that the Government of Zimbabwe had embarked in a systematic and malicious spate of activities in violation of the Convention, including arrests, detentions, brutality and harassment of trade union leaders, activists and human rights defenders. Under the same government administration, Zimbabwe had once been a democracy and a food basket for the southern African region, with a strong currency, but had since allowed itself to degenerate into a despotic State that had let its economy run into the abyss through bad governance.

The Government's flagrant disregard for the Zimbabwean people manifested itself by discretionary denial of civil liberties through the constant use of the Criminal Law (Codification and Reform) Act of 2006 and the Public Order and Security Act (POSA) to regulate trade union activities. The Worker members reported that, regrettably, Mr Wellington Chibebwe had been arrested for the second time, together with Mr Lovemore Matombo, the President of the Zimbabwe Congress of Trade Unions (ZCTU). They had been incarcerated in remand centres for 12 days and were currently out on bail. A request of the subregional ILO representative to visit them had been rejected. Both ZCTU members and ordinary workers had become victims of torture, arrests, victimization and displacement. In the rural areas, many teachers had been victimized and

brutally beaten in front of their pupils; 67 teachers had to be hospitalized, and Mr Raymond Mazongwe had been arrested and later released.

The Government should be reminded of the Resolution concerning trade union rights, adopted by the Conference in 1970, which pointed out that the absence of civil liberties such as those enunciated in the Universal Declaration of Human Rights removed all meaning from the concept of trade union rights. Similarly, the Committee on Freedom of Association had stated that the rights of workers' and employers' organizations could only be exercised in a climate free from violence, pressure or threats against the leaders and members of the organizations, and that it was for governments to ensure that this principle was respected.

The Government of Zimbabwe had deliberately boycotted this Committee and perennially undermined its advice concerning trade union rights and civil liberties. The Worker members therefore called upon the Committee to strongly urge the Government to stop using the POSA in trade union affairs; to repeal the Criminal Law that criminalized trade union activities; to stop demanding prior authorization of trade union activities; to discontinue violence, harassment, detentions and brutality against both trade unionists and ordinary citizens; to withdraw all cases against trade union leaders; to compensate all victims of torture; allow displaced citizens to return peacefully to their homes; to resuscitate social dialogue and to apply the Convention in law and in practice. Finally, the Worker members wished to call for an ILO mission to the country and urged the Committee to include the conclusions in a special paragraph.

The Employer members stated that the Government of Zimbabwe continued to enact legislation that paralysed freedom of association, in particular the POSA, and to initiate criminal proceedings against trade union leaders participating in public demonstrations. The Government had also refused a high-level technical assistance mission of the ILO. However, by ratifying the Convention, the Government of Zimbabwe undertook international obligations to bring its law and practice into line with the Convention. This included the protection of civil liberties.

Regrettably, this was the second year that the Government had not appeared before the Committee, although it had participated in the discussions of the Committee this year. In accordance with the Committee's working methods, as revised at the present session, the discussion of this individual case would therefore be included in Part II of the Committee's report, and should also be mentioned in a special paragraph for continued failure to apply the Convention.

This case involved flagrant violations of the most basic elements of freedom of association. There was evidence of assaults, arrests, torture and police violence against trade union leaders. There was an absence of civil liberties, including freedom of speech, movement, association, assembly, as well as freedom and security of persons. This case was about a country that rejected human rights, including the most fundamental cornerstone of the ILO, freedom of association.

The Employer member of South Africa stated that the events in Zimbabwe were a tragedy. The atrocities and human suffering were beyond description. Workers were being denied rights and were persecuted for standing up for justice. The situation also affected employers. The Government's refusal to appear before the Committee was evidence for its disrespect for the ILO and its fundamental principles. Given the continuing violation of the Convention by the Government, it was time for introspection not only for Zimbabweans, but also for African and international leaders to use all appropriate means to avert further human suffering. Millions of workers had left the country and families were being split.

The Worker member of Zimbabwe stated that Convention No. 87, one of the pillars by which democracy was measured and tested, was under threat due to the Government's refusal to abide by the previous conclusions of the Conference Committee. The issue before the Committee was whether Zimbabwe had improved with respect to its observance and application of the Convention since the Committee's discussion in 2007. This was unfortunately not the case.

In 2007, the Committee had discussed the need for labour law reform to allow public servants to be part of mainstream unions, with the authority to negotiate their conditions of service by way of a National Employment Council. He noted with grave concern the Government's dithering on this distortion in the country's industrial relations which had been criticized by the Committee of Experts. Surprisingly, after the 2002 harmonization of the Public Service Act (PSA) with the Labour Act, the Government had reverted to the PSA in 2005 without consultation with relevant industrial relations stakeholders. Furthermore, prison service staff and the police were still not allowed to form trade unions.

The Worker member also recalled that the Labour Act was not in compliance with even the minimum international labour standards. Chapter 28:01, section 2A, merely referred to international labour standards, and the courts refused to apply them because the relevant Conventions had not been incorporated into domestic law. This was the essence of the problem faced by trade unions in their everyday struggle to protect their members.

The Zimbabwe Congress of Trade Unions (ZCTU) had suffered its fair share of brutality from the Government. The Government refused to learn from its previous acts and omissions. On 13 September 2006, a number of workers, among them ZCTU leaders, who had gathered to raise the authorities' awareness of the unbearable poverty levels and the need for access to anti-retroviral drugs, had met with the worst kind of police brutality. The torture they had gone through merely for expressing themselves was beyond any description. Arrests and detentions remained the norm.

After May Day commemorations organized by the ZCTU, on 8 May 2008, police had visited the homes of its leaders, including the speaker himself, and arrested them. They had been charged with "communicating falsehoods which were prejudicial to the State" and later released on bail, on condition that they made no political statements. However, it was impossible to know what exactly was considered political or non-political when dealing with issues in the workplace and at national level. ZCTU members had also suffered violence in the context of the 2008 elections, with civil servants and teachers having been targeted the most because they were thought to be opinion-makers in their communities. Yet, the ILO supervisory bodies had requested the Government to respect the right of workers to operate in a free and democratic environment.

Although the POSA was rarely being used at present, its place had been taken by the Criminal Law (Codification and Reform) Act of 2006. The Worker member stated that this Act had been used to infringe the right of the ZCTU and its affiliates to express their views on the Government's economic and social policy. He himself was due to stand trial under the Act on 23 June 2008.

The Government member of Slovenia spoke on behalf of the Governments of Member States of the European Union, and the candidate countries of Turkey, Croatia and The former Yugoslav Republic of Macedonia, the countries of the Stabilization and Association Process and the potential candidates Albania, Bosnia and Herzegovina, Montenegro, the EFTA countries Norway and Switzerland, as well as Ukraine, the Republic of Moldova and Armenia.

He deeply regretted that the Government of Zimbabwe once again refused to participate in the discussion of the Committee and urged the Government to resume its dialogue with the ILO immediately and to accept a high-level technical assistance mission of the ILO under the terms requested by the Committee in 2006. The deterioration of the situation relating to trade unions rights in Zimbabwe remained alarming. He shared the continuous concerns of the Committee of Experts with respect to the POSA. The Government should take all necessary measures to ensure that the POSA was no longer used to infringe the rights of workers and their organizations.

He further noted with great concern acts of anti-union discrimination and interference under the Criminal Law related to political activities of trade union members and agreed with the relevant findings of the Committee on Freedom of Association. The Government should drop all charges connected to trade union activities and abstain from measures of arrest and detention of trade union leaders or members for reasons connected with such activities. The Government was requested to provide full and detailed information with respect to the cases of Mr Matombo and Mr Chibebe.

He further stressed the interdependence between civil liberties and trade union rights. A truly free and independent trade union movement could only develop in a climate of respect for fundamental human rights. The Zimbabwean people had the right to enjoy freedom of expression without harassment, intimidation or violence and to live under the protection of the rule of law. He therefore urged the Government to restore full respect for the rule of law and take immediate steps to end the continuing human rights violations.

The Worker member of Botswana declared that the acts of violence in Zimbabwe were also targeting teachers, students and education communities. The Zimbabwe Teachers' Association (ZIMTA) and the Progressive Teachers' Union of Zimbabwe (PTUZ) witnessed many acts of violence such as killings, torture and other forms of abuses against teachers in rural areas.

In the context of the national elections of 2008, teachers had been accused of influencing the vote as role models of their communities. In some areas, teachers had been told to vacate their schools or to relocate, while others had been threatened. Most violence had allegedly been perpetrated by war veterans and the youth militia. Some teachers had been arrested or abducted by the Central Intelligence Organization operatives. Furthermore, thousands of teachers had been prevented from voting in the first round because they had deliberately been deployed outside their voting wards as polling officers. This was a violation of the constitutional right of teachers to elect their political leaders.

The PTUZ had reported that at least 250 schools in 23 districts throughout the country had been affected by some forms of violence in the period between 3 and 9 May 2008. In some instances, teachers had been beaten in front of pupils and community members. Sixty-seven teachers had been hospitalized in Harare, Kotwa, Karoi, Rusape, Bonda, Howard, Guruve, Marondera and elsewhere; 139 teachers had to flee their schools and 213 teachers' houses had been looted. Many teachers had fled to neighbouring countries and were unlikely to return, worsening the brain drain in the education sector.

On 15 May 2008, Mr Raymond Majongwe, the General Secretary of the PTUZ, had again been briefly arrested by the police at the High Court of Zimbabwe where he had been attending a hearing of trade union leaders. His arrest had occurred following advertisements posted by the PTUZ deploring the fact that teachers were being beaten and harassed at their workplaces. Mr Raymond Majongwe had regularly been harassed and detained for voicing demands aimed at improving the crippled education system in Zimbabwe. On 6 October 2007, the police had inter-

vened brutally to disperse a World Teachers' Day celebration, arrested Mr Majongwe and interrogated him for hours. Earlier, his passport had been seized to prevent him from leaving the country to attend an international trade union meeting. The acts of violence committed by the Government against teachers and trade unionists were to be condemned. The Zimbabwean authorities were urged to respect all human rights and trade union rights. Public Service International, Education International and the ILO should send special missions to Zimbabwe.

The Government member of the United States stated that her Government noted with profound regret that the Committee was discussing this extremely serious case without the participation of the Government of Zimbabwe. Her Government was deeply disturbed by the pervasive and systematic abuse of worker and human rights in Zimbabwe. The Government of Zimbabwe's unequivocal record regarding trade union rights, confirmed by both the Committee of Experts and the Committee on Freedom of Association, included obstruction, harassment, imprisonment, and reprisals, constituting massive, flagrant and defiant violations of Convention No. 87, freely ratified by Zimbabwe. Recent events demonstrated that respect for the rule of law in Zimbabwe continued to deteriorate.

Despite the fact that the offer of ILO assistance did not constitute a sanction but help which might have positive effects, the Government regrettably and persistently refused to accept an ILO high-level mission to deal with the ongoing violations of Convention No. 87. Regardless of whether it accepted a high-level mission, the Government of Zimbabwe had an immutable international obligation to implement the provisions of Convention No. 87 both in law and practice, and to report to the ILO on its actions in this regard. She hoped that the Government would reconsider its attitude towards the ILO supervisory system, but stressed that as a minimum it must urgently take the necessary steps to grant all citizens their fundamental worker and human rights.

The Worker member of the United Kingdom stated that on 13 September 2006, the ZCTU had planned a demonstration to protest against the high cost of living and high taxation and to demand anti-retroviral drugs for HIV sufferers. The notification under the POSA had been given to the police, which authorized the demonstration. Soon after the demonstration had begun, the leaders of the ZCTU and affiliated unions had been rounded up by the police and ordered to sit on the road. ZCTU leaders, including President Matombo, General Secretary Chibebe and Vice-President Lucia Matibenga had been taken to the Matapi police station. After having been subjected to severe and prolonged physical violence by police officers, they had been charged on the spot under the POSA with planning an illegal demonstration intended to overthrow a constitutionally elected Government.

The ZCTU leaders had suffered numerous injuries, including broken bones and lacerations during this incident, but had been denied medical assistance and access to lawyers for two days. On 15 September, they had been taken to a hospital. Nevertheless, only Mr Wellington Chibebe received treatment and only after the intervention of the ZCTU lawyers and a member of the non-governmental organization Doctors for Human Rights (DHR). Despite having suffered several serious injuries, he had only been operated on four days later and had been tried in secret on the hospital premises. The other colleagues, including Lucia Matibenga, Denis Chikwara, James Gumbi and George Nkiwane, had been returned to the police cells, without any treatment. They had been sent to court the next day and were granted bail. The court ruled that the beatings in the cells had to be investigated and the perpetrators brought to justice. However, since the police had been responsible for the investigation, almost two years after these horrific events, no charges had been brought against the officers who had

committed the torture, nor the senior officers who had ordered it.

The Worker member of the United States stated that the case was a testimony of the ZCTU fight against labour injustice and state tyranny. The Government had repressed a peaceful mass demonstration by ZCTU in September 2006. The atrocious detention, beatings and injuries inflicted on ZCTU leaders and members at the time were widely known. The President of Zimbabwe seemed to have thought that the truth could be covered up by refusing entry into Zimbabwe of a delegation of the Coalition of Black Trade Unionists, a constituency organization of the American Federation of Labor – Congress of Industrial Organizations (AFL–CIO). The AFL–CIO had already started distributing information on the repression of the ZCTU's demonstration.

The Government could not hide the truth when it came to de jure violations of the Convention. For example, the 2005 Labour Amendment Act denied public service employees the right to form and join trade unions, collectively bargain or strike. Authentic labour organizations were undermined by the legal recognition of so-called workers' committees. Moreover, the law impeded the right to strike by imposing a 50 per cent voting requirement, compulsory conciliation periods, compulsory two-week advance notice and unilateral referrals to compulsory arbitration. Employers had a legal right to permanently replace strikers, and individual strikers were liable for economic damages. The Government's definition of essential services was not in line with ILO jurisprudence, and illegal strikes could result in five years imprisonment upon conviction. Given these flagrant violations of the Convention, the Committee was urged to mention this case in a special paragraph of its report.

The Worker member of South Africa provided examples of the severe violations of trade union rights and harassment of trade union leaders in Zimbabwe. On 28 February 2008, the General Secretary of the ZCTU had applied for authorization to hold a Women's Day commemoration meeting on 8 March. The Government had not authorized the meeting and the ZCTU therefore had taken the matter to the court, which ruled in favour of the union.

For May Day this year, the ZCTU had applied for 34 venues, out of which five had been denied. The reasons for the refusal had not been given immediately in some cases, while in others the refusal had been notified on the day of the event. The ZCTU had had to cancel the commemoration events despite the fact that some workers had already gathered and that costs had already been incurred for the events.

The harassment and victimization of ZCTU leaders had further escalated on 6 May, when the police had gone to the houses of the ZCTU's General Secretary and President. The two leaders had been arrested, interrogated for more than six hours and charged with incitement to rise against the Government and with falsehoods because they had told workers that people were being killed during the current political violence. Bail had initially been refused on the ground that the two leaders were dangerous. It had later been granted, but under the unacceptable condition that they should not speak at any political gatherings. Their cases would be heard on 23 June 2008, and they were liable to a fine of level 14, imprisonment for a period of 20 years or both. Violence was the order of the day in Zimbabwe. Parents were being beaten in front of their children. People were fleeing to neighbouring countries. She expressed distress at the way the Zimbabwean authorities were treating trade unionists and requested that the charges against the two ZCTU leaders be dropped.

The Government member of Cuba stated that her interventions had always aimed at encouraging the governments to fulfil their obligations regarding both the submission of reports and the cooperation with the ILO supervisory bodies. In this case, the situation was not clear

and the reason for the absence of the Government unknown. Consequently, increased efforts should be made to establish contacts with the Government of Zimbabwe. The defiance shown by the Government could be the effect of its dissatisfaction over the results achieved by the Committee. Her delegation did not support any decision regarding the application of measures or sanctions against any government before having exhausted the contacts and technical assistance required.

The Government member of Canada also speaking on behalf of the Government members of Australia and New Zealand, expressed profound concern about serious violations of freedom of association in Zimbabwe, which was essential to the existence of democratic society. He shared the view of the Committee that a truly free and independent trade union movement could only develop in a climate of respect for fundamental human rights. Failure to establish such a climate was among the root causes of the crisis in governance in Zimbabwe.

Following the general elections on 29 March 2008, trade union leaders, including the President of the ZCTU and its Secretary-General, Mr Lovemore Matombo and Mr Wellington Chibebe, and the Secretary-General of the Progressive Teachers' Union, Mr Raymond Majongwe, had been subjected to harassment and arrest. In Zimbabwe, trade unionists suffered serious infringements of their rights. They were subjected to politically motivated violence, killing, intimidation and harassment. In order to overcome the current political and economic crisis, the Government must ensure that social and political actors were given the space to defend workers' rights so that they could play a constructive role in resolving the crisis.

The POSA, despite amendments made, had been used to infringe the rights of workers' organizations. The Government was urged to ensure that trade unions were allowed to carry out their activities and exercise their rights guaranteed under the Convention, to restore full respect for the rule of law and to end human rights violations. Canada, Australia and New Zealand supported the work of the Committee of Experts, especially its effort to solicit further information and its suggestion that Zimbabwe receive a high-level technical assistance mission.

The Worker members pointed out that, while the Government of Zimbabwe advocated impunity, the workers called for dialogue; while the Government propagated violence, the workers called for peace; while the Government advocated injustice, the workers called for justice; and while the Government perpetuated brute force, the workers advocated the force of truth. Evidence of violence after the 2008 general elections was available on the Internet.

The Government of Cuba had supported sanctions against Apartheid in South Africa, but its position concerning Zimbabwe now seemed to be considered hypocritical. The Government of Zimbabwe was now taking people's identification documents away so that they could not obtain food rations or vote. It had also decided to prohibit non-governmental organizations from supplying food. Such desperate and inhuman measures must be discouraged.

The Worker members suggested that the Conference Committee take certain measures. First, the Committee should consider sending a tripartite high-level mission, composed of members of the Governing Body, to conduct inquiries and to assist the Government in finding solutions to the current problems. Second, the Committee should ask all Governments which had a diplomatic presence in Zimbabwe to observe the trial of Mr Chibebe and Mr Matombo, due to start on 23 June 2008. Their presence would serve as the eyes and ears of those who could not be there. The Worker members also called on the Government of Zimbabwe to take various measures. Social dialogue must be restored. The Criminal Law (Codification and Reform) Act must be repealed. All charges

against trade unionists must be withdrawn. It must be ensured that the POSA would not be used against trade unions. No victimization, harassment, detentions or arrests against trade unionists or citizens should take place. Victims of torture must be compensated. Those who had been displaced from their homes must be given other accommodation.

The Employer members endorsed the statement by the Worker members and their recommendations. This discussion marked a shameful day for Zimbabwe. The Government had lost its legitimacy and moral authority. It could have and should have accepted an ILO high-level mission, taken ILO advice on how to implement Convention No. 87, provided freedom of speech, guaranteed political freedom, ensured security, provided for a right of assembly, realized the right of association and protected basic civil liberties, but it would not have. The Employer members recalled that the most serious cases could be subject to a complaint under article 26 of the ILO Constitution. The Employer members urged the 147 other Members of the ILO which had ratified Convention No. 87 to join such a complaint against Zimbabwe and the Governing Body to approve a commission of inquiry provided for under this procedure.

The Government member of Cuba specified that the attitude of her Government with regard to apartheid could by no means be considered hypocritical. She recalled that the fight against apartheid, far from having been limited to mere statements, involved the sacrifice of many Cuban people. She reiterated that her Government would not support any decision regarding the application of measures or sanctions against any government before the contacts and technical assistance required had been exhausted.

Conclusions

The Committee deeply deplored the persistent obstructionist attitude demonstrated by the Government through its refusal to come before it in two consecutive years and thus seriously hamper the work of the ILO supervisory mechanisms to review the application of voluntarily ratified Conventions. The Committee recalled that the contempt shown by the Government to this Committee and the gravity of the violations observed had led this Committee to decide last year to mention this case in a special paragraph of its report and to call upon the Government to accept a high-level technical assistance mission.

The Committee further deplored the Government's refusal of the high-level technical assistance mission that the Committee had invited it to accept. The Committee observed with profound regret that the comments of the Committee of Experts referred to serious allegations of the violation of basic civil liberties, including the quasi-systematic arrest and detention of trade unionists following their participation in public demonstrations. In this regard, the Committee further regretted the continual recourse made by the Government to the Public Order and Security Act (POSA) and lately, to the Criminal Law (Codification and Reform) Act of 2006, in the arrest and detention of trade unionists for the exercise of their trade union activities, despite its calls upon the Government to cease such action. The Committee also observed that the Committee on Freedom of Association continued to examine numerous complaints regarding these serious matters.

The Committee took note with deep concern of the vast information presented to it concerning the surge in trade union rights and human rights violations in the country and the ongoing threats to trade unionists' physical safety. In particular, it deplored the recent arrests of Mr Lovemore Matombo and Mr Wellington Chibebe and the massive violence against teachers as well as the serious allegations of arrest and violent assault following the September 2006 demonstrations.

The Committee emphasized that trade union rights could only be exercised in a climate that was free from violence, pressure or threats of any kind. Moreover, these rights were intrinsically linked to the assurance of full guarantees of basic civil liberties, including freedom of speech, security of person, freedom of movement and freedom of assembly. It recalled that it was essential to their role as legitimate social partners that workers' and employers' organizations were able to express their opinions on political issues in the broad sense of the term and that they could publicly express their views on the Government's economic and social policy. The Committee therefore urged the Government to ensure all these basic civil liberties, to repeal the Criminal Law Act and to cease abusive recourse to the POSA. It called upon the Government immediately to halt all arrests, detentions, threats and harassment of trade union leaders and their members, drop all charges brought against them and ensure that they were appropriately compensated. It called upon all Governments with missions in the country to be present at the trial of Mr Matombo and Mr Chibebe and follow closely all developments in relation to their case.

The Committee urged the Government to cooperate fully in the future with the ILO supervisory bodies in accordance with the international obligations that it voluntarily assumed by its membership in the Organization.

The Committee firmly urged the Government to ensure for all workers and employers full respect for the civil liberties enunciated in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights without which freedom of association and trade union rights were void of any meaning. It urged the Government to accept a high-level, tripartite, special investigatory mission in this case of flagrant disregard for the most basic freedom of association rights. It urged the other governments that had ratified this Convention to give serious consideration to the submission of an article 26 complaint and called upon the Governing Body to approve a commission of inquiry.

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

The Worker members highlighted the exceptional statement of the Employer members on this case and expressed their thanks in this regard.

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

GEORGIA (ratification: 1993)

The Government communicated the following written information, with specific reference to the Committee of Experts' observation.

Georgian legislation clearly prohibits any type of discrimination, including anti-union dismissals and protects against violations of these rights. Therefore, the Georgian Government does not see a need at this point to initiate amendments to the Labour Code. Georgian legislation is in compliance with the requirements of the Convention as it prohibits discrimination on the grounds of membership:

- (1) *Constitution of Georgia*. According to article 14 of the Constitution, "Everyone is free by birth and is equal before law regardless of race, colour, language, sex, religion, political and other opinions, national, ethnic and social belonging, origin, property and title, place of residence." Article 26 of the Constitution regulates that "Everyone shall have the right to form and to join public associations, including trade unions."
- (2) *Law of Georgia on trade unions*. According to section 11, "No discrimination shall be admitted against

an employee on the part of an employer by reason of membership or non-membership to a trade union.”

- (3) *Labour Code of Georgia*. According to section 2(3), “Any type of discrimination due to race, colour, ethnic and social category, nationality, origin, property and position, residence, age, gender, sexual orientation, limited capability, membership of religious or any other union, family conditions, political or other opinions are prohibited in employment relations.” According to the Code “in the course of employment relations the parties should adhere to basic human rights and freedoms as defined by Georgian legislation” (section 2(6)).
- (4) *Criminal Code of Georgia*. According to section 142, “Violation of equality of humans based on race, colour of skin, language, sex, attitude to religion, confession, political or other view, national, ethnic, social belonging, or based on membership to any association, origin, place of residence and material condition, that violated their human rights, shall be punished by a penalty or by corrective labour for a period up to one year, or by imprisonment for up to two years.” Thus, dismissal of an employee because of his/her membership in trade unions is subject to punishment by the Criminal Code of Georgia. If an employer discriminates with regard to an employee’s right to join a trade union, the employer will be criminally liable.
- (5) No application has been submitted to the relevant governmental agencies for the last several years regarding the restriction of the rights of trade union members. The new Labour Code prohibits anti-union discrimination.

It should be noted that the comment of the Committee of Experts regarding section 142 of the Criminal Code is based on a translation error. In fact, “public association” should be understood as any type of association including civil association. The new Labour Code streamlined requirements for establishment of associations. Existing legislation permits the establishment of any kind of organization or membership of any association, including trade unions. As under the USSR Code, a trade union had a monopolistic position, workers had no other alternative than to become a member of a trade union (article 2(3,d)). Under the Georgian legislation, procedures of establishment of an association are simple. Only, a registration fee of 26 euros is to be paid. There is no minimal requirement for the number of persons who can establish an association. Georgia is characterized with one of the highest association densities in the region. At the same time Georgian legislation does not at all restrict activities of associations.

Georgian legislation regulating collective agreements is in full conformity with the relevant Convention and it is believed that there is no need to amend the legislation.

- (1) The Committee had noted that according to section 13 of the Labour Code, the employer (unilaterally) is authorized to introduce internal operation rules (internal labour charter). The Government states as follows:
 - the Georgian legislation clearly stipulates minimum working conditions that are in compliance with ILO Conventions and cannot be subject to change;
 - it is prohibited to worsen the minimum working conditions envisaged by the Labour Code;
 - the employer shall take into account the minimum working conditions envisaged by the Labour Code in case he/she is elaborating operation rules (internal labour charter). If not, it is a violation of the Labour Code and is punishable by law;

- in cases when working conditions are regulated by labour agreement (either individual or collective) the labour agreement prevails over internal operation rules. The preference to the operation rules (internal labour charter) is given only when working conditions are not regulated by labour agreement (either individual or collective). Even in this case, working conditions defined by employers must be in full compliance with the requirements of the Labour Code.

- (2) The Committee considered that sections 13 and 41–43 read together are in contradiction with the notion of collective agreements in the sense of Convention No. 98, i.e. agreements regulating terms and conditions of employment negotiated between employers or their organizations and workers’ organizations. The Committee noted that the legislation seems to put in the same position collective agreements concluded with trade union organizations and agreements between an employer and non-unionized workers. The Government states as follows:

- the observation is not clearly formulated. Therefore it is difficult to understand its essence. It is not clear on what basis consideration of articles related to collective agreements are compared with section 13 (internal operation rules), since working conditions are regulated by section 13 of the Labour Code only where they are not envisaged by labour agreements (both individual and collective);
- Convention No. 98 does not stipulate that collective agreements must prevail over the individual agreement;
- according to the Committee’s comment, it seems that non-unionized and unionized workers have to be put under unequal conditions. The latter, in our understanding, means discrimination of non-unionized workers. The Georgian legislation, to the contrary, prohibits any kind of discrimination and protects the rights of both non-unionized and unionized workers equally.

- (3) The Committee noted that the Government recognized the need to improve the legislation, as Georgia does not have a collective agreement tradition and there are not too many collective agreements concluded in practice. The Government states that in this case it seems that the Committee of Experts’ observation requests more than is envisaged by the relevant Convention. The extent to which collective agreements should be used in practice is not regulated by the Convention and therefore the reference that “there are not too many collective agreements concluded in practice” is not justified. At the same time, Convention No. 98 does not establish any superiority of collective agreements over individual ones.
- (4) The Committee considered that the provisions of the new Labour Code do not promote collective bargaining as called for by Article 4 of the Convention. The Government states as follows:

- “promotion of collective agreement” under Article 4 of Convention No. 98 does not mean “promotion” on the legislative level through amending the legislation;
- the Labour Code does not restrict any form of promotion of collective agreements. Moreover, the entire Chapter III of the Labour Code is dedicated to collective agreements. It fully regulates the rules and conditions of conclusion of collective agreements and defines its essence (section 41). It allows having a representative while concluding, changing or terminating a

collective contract, or for the purposes of protecting the employees' rights (section 42) and describes the rules of termination of labour relations and annulment of contract;

- the Law on trade unions stipulates that labour norms, labour remuneration systems, forms of benefits, tariffs and wages can be defined with the participation of employers, the employers' associations (unions, associations), and relevant trade unions. This, as a result of mutually established agreement, is reflected in the collective (tariff) contracts (agreements) (section 10(5));
- the Law on trade unions contains the rules and conditions of a collective agreement. Section 12(2) obliges employers to conduct negotiations with trade unions, in response to the latter's initiative, about labour, social and economic conditions of employees. Trade unions have the right to participate in collective, as well as individual labour disputes;
- Law on trade unions. According to section 12(1) "The authorized representatives of a trade union, association (federation) of trade unions, primary trade union organization, on behalf of a working collective, shall hold negotiations with the authorized representatives of an employer, association (union, federation) of employers, bodies of the executive authority and local self-governing bodies, conclude collective agreements and contracts and control their implementation in accordance with the procedure provided for by these agreements (contracts)";
- Law on trade unions. According to section 12(2) "The employers, associations (unions, federations) of employers, bodies of the executive authority should hold negotiations with the primary trade union organizations, trade unions, associations (federations) of the trade unions on labour and socio-economic matters, provided that the primary trade union organizations, trade unions, associations (federations) of the trade unions put forward such initiative, and in case of reaching an agreement to conclude collective agreements (contracts)".

It should be emphasized that, according to the Labour Code, the right of collective bargaining belongs not only to trade unions, which organize only 12 per cent of the labour force, but also to other unions or groups of employees. This regulation puts workers organized in various unions, including trade unions, under equal conditions, and thus excludes their discrimination based on union membership.

In the report of 2007 sent by the Government of Georgia to the ILO, it was mentioned that "within the Government of Georgia there is discussion about specifying the formulation of the eighth part of the fifth paragraph". The discussion led to the conclusion that the labour legislation of Georgia does not require any amendments as the Georgian legislation adequately regulates all the aspects of labour relations, and Georgian legislation is in full compliance with the requirements of the ratified ILO Conventions.

In addition, before the Committee, a **Government representative of Georgia** stated that more than two years ago, in spring 2006, the Parliament of Georgia had adopted a new Labour Code that replaced the previous one adopted in Soviet times in 1973. The reasons for the adoption of the new labour legislation were twofold: firstly, to introduce labour rules that would be in compliance with ILO Conventions ratified by Georgia, and secondly, to stimulate higher employment in the light of national conditions, reduce informal employment and thus address the most serious challenges of Georgia's economic and social de-

velopment. The new Labour Code replaced relatively rigid Soviet-type labour relations by more flexible and modern regulations, gave adequate and equal protection both to employer and worker rights and better responded to the social and labour market needs of the country.

The observations made by the Committee of Experts on the compliance of Georgian labour legislation with the Convention were being carefully reviewed by the Government and discussed in a consultative process with workers' and employers' organizations. After the publication of these observations, the Government held intensive consultations with the ILO on the matter. As a result of a joint initiative of the ILO and the Georgian Government, it had been decided to undertake, for the first time, an independent and impartial assessment of the labour legislation. Tripartite consultations had been held with employers' and workers' organizations prior to presenting their views to the ILO on the objectives and deliverables of the assessment. It had been jointly decided that the assessment would concentrate on two main objectives, namely: (i) assessment of the compliance of the labour legislation with ratified ILO Conventions; and (ii) assessment of the impact of the new Labour Code on the labour market and labour relations in Georgia. The study would be financed by the United Nations Development Programme (UNDP) and undertaken by independent experts. In order to draw maximum benefit from the results of the assessment, it would be followed by an inclusive, transparent and open process of consultation with employers, workers, the ILO and all other interested parties, domestic and international. The jointly agreed objective was to complete the assessment by fall 2008.

With regard to the observations made by the Committee of Experts, the speaker presented orally the written information submitted by her Government.

The speaker concluded by stating that, as indicated by the information presented to the Committee, the Georgian labour legislation was in compliance with the Convention. Moreover, according to the preliminary assessment of the economic impact of the new Labour Code, it appeared that the new legislation encouraged employment and thus contributed to the growth of average salaries. In addition, flexible labour rules contributed to the reduction of informal employment, the increase of the tax base and consequently, increased budget revenues from income tax. Despite these preliminary findings, the Government remained committed to undertake an independent assessment of the impact of the Labour Code on the labour market and of its compliance with the relevant ILO Conventions. The Government very much looked forward to cooperating with the ILO and all interested parties in this regard, and to engaging in an open, inclusive and transparent process of discussion as soon as the study was completed.

The Employer members indicated that the observations of the Committee of Experts concerned two points: a supposedly insufficient protection against acts of anti-union discrimination and interference, and a supposedly insufficient regulation of collective bargaining.

In relation to protection against anti-union discrimination, four failures to comply with the Convention were raised. The fact that the employer was not required "to substantiate his/her decision for not recruiting the applicant" represented "an insurmountable obstacle". The absence of express provisions enumerating in an exhaustive manner all aspects covered by the principle of non-discrimination did not mean that the effective guarantee of this principle was denied. There were many ways to guarantee non-discrimination in recruitment. The selection and recruitment processes were sometimes informal and on occasions involved a large number of candidates. It would be absolutely excessive for the enterprises concerned if the regulator required that in every one of the stages of selection or pre-selection the employer justify in

writing the decision not to recruit someone. The reasons for such a decision could be many and relate to the skills, abilities, experience, suitability, capacity and even psychological elements relating to whether the person had an affinity with the employer; these elements could not always be expressed. This did not mean that hidden reasons existed based on unjustified discrimination. The existence of a formal justification for not recruiting someone would not guarantee the non-existence of discrimination. What mattered was that there was no discrimination in practice, and the comments of the Committee of Experts did not contain any indication to this effect.

As for dismissal upon payment of an indemnity, but without justification, this was, for the Committee of Experts, a source of discrimination. The absence of a requirement to give reasons justifying a dismissal could not be used to cover unjustified discrimination. However, the absence of an express provision in the Labour Code prohibiting dismissals by reason of trade union activity, did not necessarily amount to lack of protection. Another legal basis could exist, like the Constitution or a general prohibition of anti-union discrimination would be a sufficient guarantee of this right. Again, what counted was that discrimination be avoided in practice, and there are no observations of the Committee of Experts in this regard.

The same could be said with regard to the lack of an express provision in the Criminal Code which prohibited discrimination on the basis of trade union membership. In Georgia, economic sanctions for violation of the legislation protecting workers could be substantial (up to 200 times the labour remuneration). For the Committee of Experts it was not sufficient that the Criminal Code categorized as unlawful conduct actions based on affiliation to a public association as it did not contain an express reference to trade union organizations. But what mattered was to know whether the concept of public association encompassed trade union organizations and whether there were clear cases of impunity due to the existence of a legal vacuum. Regulations against interference could take various forms and the appeal procedures could be the same as those provided for in case of undue interference with regard to other types of organizations and not only trade unions.

With regard to collective bargaining, the Committee of Experts had its doubts with regard to certain sections of the Labour Code: firstly, regarding the agreements with non-unionized workers being on the same level as those concluded with trade unions; secondly, concerning the scope of the Law on trade unions and the protection of collective bargaining in the light of the abolition of earlier laws which regulated collective contracts and agreements in the communist period.

The Convention did not impose any specific collective bargaining model. It could be centralized or decentralized, with a strong presence at the sector level or at the enterprise level; it could be regulated in detail or be organized in a more informal manner. What mattered was that the model be adapted to the needs flowing from developments in labour relations and abide by the principles and requirements of the Convention, that is to say, that it protect the full development and use of voluntary collective bargaining procedures and collective agreements. The Employer members considered that the trade union status of a worker, or the absence thereof, was not as important as the recognition and due protection in practice of the value of voluntary negotiations and of the agreements reached collectively.

A different question was the supposed legal gap which according to the Committee of Experts could exist in Georgia as a result of the disappearance of the Law on collective contracts and agreements despite the continuing existence of the law which regulated trade union activities. It would be appropriate that the Government provide information in this respect.

The fact that the country did not have a collective agreement tradition was not either in and of itself a violation of the Convention, given that this element should be analysed along with others in order to have a full picture. This could result from the nascent development of collective agreements and pacts between free and autonomous employers' and workers' organizations. Finally, the Convention did not impose any specific collective bargaining model and therefore the Employer members did not share the view that the new model of negotiations in Georgia was contrary to the provisions of the Convention.

The Worker members recalled that the case of Georgia had never before been subject to discussion within the Committee but that the cases presented to the Committee on Freedom of Association generally demonstrated a rarely cooperative Government. The situation denounced by the International Trade Union Confederation (ITUC) concerned the adoption of the Labour Code without prior consultation, the insufficient protection afforded against acts of anti-union discrimination and interference, as well as the inefficient management of collective bargaining-related issues.

The Convention laid down the principle of the protection of workers and trade union organizations against acts of discrimination and interference which tended to harm freedom of association. It also provided for the adoption of measures aiming to encourage and promote collective bargaining to settle conditions of work. Together with Convention No. 87, these instruments constituted the backbone of an efficient and organized social dialogue with a view to achieving social progress and reaching further than purely economic and regulating considerations.

The Committee of Experts considered that the drafting of a few provisions in the Law on Trade Unions and the new Labour Code, while formally prohibiting anti-trade union discrimination, did not ensure the protection necessary at the times of recruitment and dismissal in practice. Thus, employers were not bound to justify their decision when they did not hire a candidate, which therefore put this person in an impossible situation where he/she must take on the burden of proof to demonstrate that the decision was related to his/her trade union activities. There existed no express provision which clearly prohibited the dismissal of workers for their participation in trade union activities. The application of the protection laid down in the Convention was therefore not guaranteed.

Furthermore, sufficiently dissuasive sanctions did not clearly appear to exist in case of anti-trade union discrimination, nor did there clearly seem to be accessible legal recourses to the victims of such acts and, in the affirmative, their application was also unclear. Obviously, when sanctions were hindered by complex procedures of application, they lost their purpose and the rights they supposedly guaranteed became devoid of substance. This was confirmed by the recent events of the Port of Poti, where five trade union representatives had been fired in October 2007 due to having organized protests. In conformity with the Labour Code, the employer had provided no justification for their dismissal and had not been convicted by the tribunals. Nine other workers in the BTM textile factory practising trade union activities had also been dismissed without explanation immediately after having been elected in March 2008. More than 30 trade unionists had been dismissed during the last six months for having exercised their right to become members of a trade union organization or having participated in collective bargaining.

Moreover, concerning the interference of employers in trade union activities, the Committee of Experts once again emphasized the lack of legal measures which, if the will to respect the Convention was genuine, should rightly exist. It should also be noted with regret that, according to the current legislation in force, the determination of work-

ing conditions depended solely on the unilateral will of the employer. The law also contained a series of provisions that totally contradicted the clear definition of the collective bargaining agreement, as laid down in the Convention.

The existence in the Law on Trade Unions of the general provision on the right of trade unions to bargain collectively, the repeal of the Law on Collective Agreements, as well as the way in which collective agreements were managed by the Labour Code, clearly established that the new Labour Code was in flagrant contradiction with the Convention. While it was true that the Labour Code had been amended, the truth remained that, in practice, employers were not encouraged to apply the legal provisions that were favourable to workers, to trade union rights and to the right to collective bargaining. Due to its failures and lack of precision, it clearly appeared that the Labour Code was used to render trade union activities and, consequently, collective bargaining in enterprises, difficult, if not impossible. Put in place in 2006, this reform had, rather, deregulated the labour market. Poverty had worsened from 2005 to 2006, whereas it had started to diminish in 2004. The unemployment rate was 13.6 per cent and the level of social protection was inadequate. The economic dimension seemed to take precedence over the improvement of the situation of workers' rights, and it was high time that the Government took the necessary measures to promote collective bargaining as intended by the Convention.

The Government member of Slovenia, speaking on behalf of the Governments of Member States of the European Union, noted the comments in the report of the Committee of Experts on a number of issues related to the implementation of Articles 1, 2, 3, and 4 of the Convention in Georgia. While acknowledging that the report addressed the lack of conformity of the new Labour Code with Article 4 on the promotion of collective bargaining, he noted that the report also reflected the Government's indication that the Ministry of Health, Labour and Social Affairs had prepared draft amendments to the Labour Code to bring it into closer conformity with international labour standards. He also noted the written information provided by the Government. He concluded by inviting the Government to fully and, as a matter of urgency, cooperate with the ILO, as well as to take the necessary measures to bring its legislation and practice into conformity with the Convention.

An observer representing Education International stated that there was a general reluctance on the part of the Government to engage in collective bargaining. The Committee of Experts had underlined that the new Labour Code adopted in 2006 did not promote collective bargaining and also indicated that Georgia lacked a tradition of collective bargaining.

In 2006, the Educators and Scientists Free Trade Union of Georgia (ESFTUG) initiated a legal procedure to guarantee provisions for an institutionalized system of collective bargaining in the education sector. The union won its case in February 2008, and the Appeal Court instructed the Ministry of Education to engage in meaningful collective bargaining with the teacher unions. The Ministry of Education initially appealed the union's victory to the Supreme Court, but subsequently withdrew the appeal. No collective bargaining had yet occurred. But on 13 May 2008, the union received a letter from the Ministry of Education indicating that it was ready to discuss a memorandum of understanding; however no further concrete indications have been received, as to when, the content of the Memorandum of Understanding or with whom.

She stated that Georgia was currently engaged in what was called a "school optimization process", which began in 2007 and aimed to close schools in rural areas and decentralize education. The school optimization process envisaged widespread reform, including in the areas of policy and curriculum, and was generally regarded as a

cost reduction exercise. This decentralization radically affected the employment relationship of teachers, who were now employed by the school director – or headmaster – of the school in which they worked. The school directors themselves were elected by the school boards, which in turn were created by the decentralization process and comprised representatives of parents, students and teachers. The Ministry of Education approved the election of the school directors and retained the power to dismiss them. Teachers now signed individual contracts of employment with school directors, who possessed the right to hire and fire them. Additionally, the 2005 general law on education required all teachers, regardless of experience and qualifications, to pass a national exam in order to be certified to teach. She underscored that, in this context of ongoing and widespread reform, the role of social dialogue was of vital importance.

In January 2008 a new teachers' union was registered – the Professional Education Syndicate (PES). This organization's founders were school directors, trainers from the Government-controlled teacher training centres, and a high official in the Ministry of Education; it appeared, moreover, that the Government was not only promoting but indeed favouring the PES, to the disadvantage of the existing teachers unions. Two weeks after the PES was created, all school directors and chairs of the boards of the public schools of the district of Bolnisi were invited to a meeting to be introduced to the new organization. The school directors were invited to encourage their employees to quit their present union affiliations and join the PES, which offered a 50 per cent rebate on the fees for teacher certification training. Such training, while not compulsory, was strongly recommended.

On 15 February 2008, the web site of the Ministry of Education of the Autonomous Republic of Adjara announced that the PES would commence free training for its members. The Ministry web site included a downloadable PES membership application form, and the Minister, who had since been appointed as one of three Deputy Ministers of Education for Georgia, also sent a letter to all teacher resource centres requesting that they introduce the new union to all teachers. She added that Georgia's Ministry of Education had also addressed a letter to the PES in which it "welcomed the initiative of the creation of a modern teachers union" and invited the latter to "share its viewpoint on the implementation of the planned education reforms" that were already under way. She underlined that inviting a new union to share its views on teachers' working conditions while ignoring the ESFTUG – which with over 100,000 members was the most representative teachers' organization – constituted favouritism and was therefore a clear violation of the Convention. The Government's actions, furthermore, were intended to place a workers' organization under the control of employers – the school directors – and therefore constituted interference, in further violation of the Convention.

Reiterating her grave concern over the alteration of the teachers' employment relationship, the new certification requirement, the short-term contracts, the absence of collective bargaining and, not least, the creation of a new organization that was clearly favoured by the Ministry of Education, she queried whether all of these developments, viewed as a whole, did not plainly constitute anti-unionism and discrimination.

The Government representative of Georgia stated that the claim that her Government had failed to address social and economic problems was unfounded. A whole set of measures to alleviate poverty had been initiated; furthermore, one-third of the previous year's total public expenditures had been allocated towards social concerns, including in the areas of social protection and health care. Such allocations clearly demonstrated the Government's commitment to social issues and poverty alleviation. She underscored that her Government would nevertheless

continue in its efforts to introduce flexibility into the labour market. The Soviet-era labour market regulations and their attendant rigidities exacerbated the problem of informal employment; the modernization of these regulations would, by allowing for greater flexibility in labour relations, encourage employers to formalize relationships with their employees through contracts.

As concerned the Worker members' statements on the five union representatives dismissed in the Port of Poti, she maintained that the dismissal of the five individuals was unrelated to their trade union activities but was due, rather, to their performance. Additionally, the employer concerned had submitted a letter expressing concern over the behaviour of the individuals' trade union; it also suggested that the union forced workers at the port to become members, made it extremely difficult to renounce union membership, and collected membership dues in an illegal manner.

Addressing the intervention of the observer from Education International, she emphasized that in many countries the responsibility for the administration of schools rested with regional authorities, a fact which did not give rise to any concern. Decentralizing the school system in Georgia was therefore perfectly appropriate, and moreover posed no problem with respect to the articles of the nation's Constitution. The closer schools were to their constituencies, the better. The school optimization process entailed a comprehensive set of reforms and would include a new law on higher education. This law would comply with international labour standards and also modernize Georgia's school system through greater harmonization with EU educational curricula; this, in turn, would encourage teachers to obtain higher qualifications.

With regard to the PES, she stated that any newly established organization would, upon informing the Government of its establishment, be welcomed and granted the opportunity to engage in dialogue. She affirmed that, as had earlier been underlined, Georgia lacked a tradition of collective bargaining. This was a consequence of the previous system, which was characterized by a single trade union monopoly all workers were required to join. The reforms ushered in by the new Labour Code, however, removed bargaining restrictions so that collective agreements could be concluded between an employer and as few as two employees. Individual agreements between an employer and employee had also been accorded equal status with collective agreements. This reform was particularly important in view of the fact that only 12 per cent of the working population was unionized, and the Government did not wish to discriminate against individuals who had not chosen to join a trade union. The Government's appropriate role, as captured in the new Labour Code, was to ensure that the rights of individuals and organizations were equally respected; she emphasized in this regard that the Government would not attempt to artificially create a tradition of collective bargaining where none existed. She concluded by reiterating that neither the new Labour Code nor the law on trade unions contained any provisions restricting the right to collective bargaining.

The Employer members stated that the absence of a requirement of formal justification of a refusal to hire, as well as the setting up of a system of contract termination without providing a reason, did not constitute a violation of the Convention. In the same way, this Convention did not impose a specific model for collective bargaining and he could not agree that the new model of negotiations in Georgia contravened the provisions of the Convention.

Nonetheless, the Employers' group considered the intense dialogue with the Committee of Experts to be very positive, as were the discussions held in the Conference Committee. They might have helped to essentially clarify the degree to which Georgia was complying with the provisions of the Convention. The speaker encouraged the

Government of Georgia to continue providing information in this respect to the Committee of Experts.

The Worker members took note of the information provided by the Government representative, but could not be satisfied in light of the flagrant violations to the rights of workers and trade union activities. To put an end to the suffering of the workers, referred to during the discussions, the Committee should formulate particularly strict conclusions.

While noting that the Government believed that the Labour Code did not need revision, the Worker members requested it to observe the demands and suggestions formulated by the Committee of Experts and to commit itself to revise the Labour Code so as to ensure its full conformity with the Convention in letter and spirit. Never, at any moment, had the experts overstepped their jurisdiction in the examination of the situation. Consequently, the revision would have to address the individual rights of workers and the conditions permitting the establishment of effective collective bargaining because, firstly, workers' rights should be respected; secondly, for employers, an effective social dialogue was beneficial to the performance of enterprises; and, thirdly, for the Government, a functioning social dialogue was a guarantee for social peace.

The workers' and employers' organizations must take part in the reform of the Code, while respecting the condition of tripartism underlined in the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). A tripartite round table could be organized to ensure that the counterproposals formulated by trade union organizations were heard within the common evaluation, which would take place after the consultation by experts of UNDP in Georgia had been conducted.

The Worker members recalled that technical assistance by the ILO could help a government accomplish a task that was both legal and centred on tripartism, and declared that this assistance would allow the Government of Georgia to take a step in organizing collective bargaining.

Conclusions

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

The Committee observed that the comments of the Committee of Experts referred to provisions in the recently adopted Labour Code which, according to the Committee of Experts, did not ensure the full application of the Convention, in particular as regards adequate protection against anti-union discrimination and meaningful promotion of collective bargaining.

The Committee observed the difference of opinion between the Government, the Workers and the Employers in relation to the issues raised.

The Committee took due note of the Government's statement concerning the constitutional and legislative provisions aimed at ensuring effective protection of trade union rights, including the recent adoption of the Labour Code. It further noted the information provided concerning the upcoming UNDP-financed study on the impact of the Labour Code on the labour market and labour relations in Georgia. It also noted that the Government intended to carry out full consultations with the social partners in this regard.

The Committee welcomed the Government's indication that it was cooperating with the ILO to look seriously at all these matters and noted with interest the steps taken to study the full impact of the Labour Code.

The Committee considered that a tripartite round table to address these issues in a context of full social dialogue, and the ongoing consultation process, together with ILO technical assistance, could facilitate further progress on matters relating to the promotion of collective bargaining and the

protection of the right to organize, both in law and in practice.

It requested the Government to provide full particulars and any necessary clarifications in respect of all the above matters to the Committee of Experts when its next report was due.

IRAQ (ratification: 1962)

A Government representative indicated that his intervention would focus on three topics. The observations made by the International Trade Union Confederation (ITUC) in 2006 on violations of trade union and collective bargaining rights; on serious cases of violence and other violations of freedom of association; and on the views of the Committee of Experts on the new draft Labour Code which had not yet been adopted.

For three decades, Iraq had suffered from oppressive conditions, wars, economic sanctions and isolation from the rest of the world. It was currently undergoing exceptional circumstances, outside its national will and desire, which had led to severe losses at all levels especially by the workers and trade union organizations, as well as other segments of the population. He recalled in that context the loss of one member of the Iraqi delegation who was supposed to be attending the ILO Conference, a victim of such turbulent times.

He referred to Act No. 52 of 1987 on trade union organizations which established the monopoly of the Confederation of Iraqi Workers' Unions, excluded any other union or federation, and deprived the public sector and the government departments from the application of Conventions Nos 87 and 98, with regard to trade union freedoms. That Act was only in force in form. As of April 2003, the situation had changed as the workers had set up several unions and federations, with different policies, programmes and affiliations. At the present time, such unions, including unions in the southern oil fields, exercised their inherent rights to full freedom in spite of the lack of a legal framework.

He pointed out that the crisis between the trade union and the Ministry of Oil was not a trade union crisis, nor a labour relations crisis. It concerned a serious threat to Iraq's oil wealth, which represented 95 per cent of the total GDP, the source of income of 28 million Iraqi citizens, adding that the wealth was exposed to piracy, theft and impediments to the exportation of Iraqi oil by armed political and professional groups. It was in that context that the Ministry of Oil had taken strict measures to protect oil, and Iraqi society from poverty and famine.

Referring to the Ministry's letter No. 1487 dated 20 September 2007, addressed to the Secretary-General of the ITUC, he highlighted the importance of oil, which was the bread of every Iraqi citizen. He emphasized that the Ministry of Labour appreciated any peaceful means used to obtain the rights of workers and trade unionists but was against any damage to the national interest, just like the trade union movement itself, known for its sacrifices and long struggle in safeguarding Iraq's wealth.

International terrorism and the repercussions of occupation in the last five years, causing the death of many innocent lives was the second subject he mentioned, indicating that terrorism was merciless as it did not distinguish between a trade unionist, an employer, a university lecturer or a child.

The third issue related to the views of the Committee of Experts on the draft Labour Code which had not yet been adopted. He pointed out that the draft Labour Code was the fruit of social dialogue, approved by the Government and the social partners as it met the ambitions of the tripartite partners. He stressed that the draft Labour Code was commended by the report of the Committee of Experts because the Iraqi Ministry of Labour had reviewed it in light of model labour acts in the Arab region, and with

a view to ensuring conformity with international labour standards.

He then cited several sections of the draft Labour Code such as sections 39, 41(a) and 139(a) which provided for the right of a worker to lodge an appeal against his/her dismissal before a committee or a labour court within a period of 30 days; the obligation of an employer to give notice to a worker, on ending a contract, or pay compensation within a delay of 30 days; and the dissolution of a trade union by virtue of a decision rendered by its governing board in accordance with the provisions of the trade union statute, and a judicial decision in the case of a trade union which no longer fulfilled the aims for which it had been set up.

The Government sought indeed to invalidate Act No. 150 of 1987, as there were extensive safeguards for workers and trade union organizations in the case of privatization or that of an employer's insolvency.

The speaker requested the review by the Committee of Experts of section 6 of the draft Labour Code, as civil servants had special regulations governing their recruitment, promotion, monthly wages and old-age pensions. There was no discrimination at work nor were they deprived of the provisions of the Convention.

With respect to the Committee of Experts' request on employees in the public service and old-age pensioners, he requested the Committee to review section 3(2) of the draft Code which did not apply to employees covered by the provisions of the Civil Service Act and the Consolidated Civil Retirement Act, members of the armed forces and members of an employer's household.

Section 5 of the draft Labour Code established trade union freedoms and freedom of association (Convention No. 87); the right to organize and to collective bargaining (Convention No. 98); the elimination of all forms of forced labour and child labour; the elimination of discrimination in employment and occupation, ensuring equal pay and social dialogue. The above section was a concrete example of the respect by Iraq for the fundamental principles and rights at work and an invitation to implement decent work.

The Worker members provided explanations as to the reasons why they had decided to add Iraq to the list of individual cases. Certainly, the situation of civil war and extremely difficult political circumstances in the country hindered the Government's work. Nevertheless, considerations of social justice argued in favour of the discussion of this case. Indeed, the population remained the first victim of the situation in Iraq and trade unionists faced many dangers, like the workers in the oil sector, in education and in the civil service, all of whom were considered targets for armed and terrorist groups. Hence, the discussion of this case by the Committee fell perfectly within the mandate of the ILO, which offered guidance and tools to reinstate social justice after crisis situations. The objective was to help the Iraqi Government to rebuild a real social dialogue, through collective bargaining that was close to reality and the specific needs of the population, and thus contributed to restoring employment, social security and the dignity of workers. Moreover, the Government had already accepted technical assistance from the Office for the preparation of the new Labour Code. However, problems remained in the application of the Convention, notably its Articles 1, 3, 4 and 6.

Concerning anti-trade union discrimination, section 41 of the draft Labour Code certainly offered some protection, but one article alone was not enough. It was imperative to anticipate the manner in which the complainant would obtain the proof of the discrimination they were subjected to, give them enough time to gather exhibits of their cases and, generally, guarantee them easy and free access to impartial justice. Furthermore, the provisions concerning the trade union founders and presidents did not provide for their protection against acts of discrimina-

tion throughout the entirety of their employment relationship. These provisions did not protect members of trade unions and former trade union leaders either.

The draft Labour Code apparently positively settled the issue of the representation of trade union members for any question concerning their collective interests, as well as the issue of the different levels of collective bargaining. However, the draft provision which stated that a trade union must gather the support of 50 per cent of the members of a bargaining unit to be recognized as official spokesperson was too restrictive. Finally, the question of the protection of civil servants and employees of the public sector who were not appointed to the administration of the State should still be examined, since the draft Code excluded "civil servants and those retired from the civil service" from its application.

The Government had certainly made efforts, but those efforts remained insufficient to ensure the full application of the Convention and an effective fight against anti-trade union discrimination. The Government should, without delay, take measures to find a solution to the problems that were very accurately identified by the Committee of Experts.

The Employer members recognized the Government's role with regard to collective bargaining as well as the climate of violence prevailing in the country, which affected most people, particularly workers and employers. However, by ratifying ILO Conventions, such as Convention No. 98, a building block in Iraq's future would be put in place. The ILO had provided assistance in drafting the Labour Code but there were still areas that required improvement. Collective bargaining in the civil service needed to be aligned with the Convention, especially regarding legislation on anti-union discrimination. But the Employers' group did not agree that all trade unions should be enabled to bargain collectively as this could lead to a proliferation of trade unions across the country and an untenable situation.

The Employer members did, however, agree that there was a need to bring all the leading actors to the table. Both the Employers and Workers had offered their assistance and this was an opportunity to be seized. Finally, they urged the Government to make use of the technical assistance that the ILO could offer.

The Worker member of Iraq referred to the suffering of Iraqi workers and trade union organizations due to Government laws and decisions which were contrary to the right to organize and other trade union rights set out in the ILO instruments, as well as the continued violations by the occupying forces and the risks confronted by Iraqi citizens in general, and by Iraqi trade unionists in particular, in the context of five years of terrorism.

After 2003, which saw the occupation of Iraq, the efforts of the workers of Iraq to set up independent and strong trade unions had resulted in the establishment of many trade union federations. Based on the workers' belief in pluralism and democracy, such federations functioned independently for more than two years, until the three largest trade union federations were united, on 20 September 2005, in the General Federation of Iraqi Workers. The latter continued to unify the voice of Iraqi workers and sought to protect Iraqi workers from the prevailing tragic conditions such as unemployment, child labour, and bad health conditions. He stressed that his federation continued to be committed to the trade union movement, free from discrimination and government intervention.

Unfortunately, unjust legislation and regulations imposed by the previous regime on workers continued to be in force, despite the changes which had occurred in the last five years. The two Acts on Labour and Social Security of 1987 and on Trade Union Organization, No. 52 of 1987, were still in force and the new Labour Code had not yet been adopted, in spite of the efforts made for its for-

mulation by his federation and the Ministry of Labour, through joint committees. The notorious Act No. 150 of 1987 was still in force, depriving public servants of the right to organize.

After April 2003, and the election of the Iraqi Government, his federation had initially been optimistic that the unjust laws would be changed through the voice of its workers and social partners. He expressed his surprise at the unjust Decision No. 8750 of 2005, taken by the Council of Ministers, by virtue of which the latter had seized the funds and property of all trade unions – an unprecedented move. After this, all trade union work ceased to be effective, although the federation continued its work. In April 2007, US forces had raided the premises of the General Federation of Iraqi Workers, destroyed furniture, and some property, besides seizing computers and other equipment, without any reason. He recalled that terrorism and its impact on trade union organization should not be forgotten as it had led to the assassination of trade union leaders.

In conclusion, the speaker declared his federation's opposition to the privatization of the wealth generated by Iraq's oil and the important service sectors, and called for the solidarity and assistance of the international community, to Iraqi workers and trade union organizations, so as to overcome such dire circumstances.

The Worker member of the United Kingdom, whose statement the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), the Global Union Federations of the International Federation of Chemical, Energy, Mine and General Workers' Union (ICEM), Public Services International (PSI) and Education International (EI) associated themselves, declared that Iraq's future depended on strong, free and independent trade unions. However, the occupation forces continued to raid their offices and confiscate their property, insurgents killed their leaders, and the Government continued to maintain restrictive laws on trade union activities, interfere in their internal affairs and finances and harass their leaders.

He addressed five concerns. First, the 1987 Act No. 150 banned public sector (80 per cent of the Iraqi workforce including the oil sector) trade unions. Second, Decision No. 8750 empowered the Government to take over trade unions at will and had been used to freeze their bank accounts. This Decree should be abolished. Third, the ILO-compliant labour law, under review for several years, had still not been adopted as promised. Fourth, the Government had still not released frozen funds for internal elections in the General Federation of Iraqi Workers (GFIW) and insisted that candidates must be Iraqi citizens and, in flagrant violation of the Convention, that they must have the support of their employer. Fifth, the Government also insisted that only unions in the private sector would be involved, which would forcibly restructure unions with both private and public sector worker members, and prevent the vast majority of GFIW members from having any say in their organization's leadership.

He reported that eight leaders of the ICEM-affiliated Iraqi Federation of Oil Unions were to be moved from their jobs and homes in the southern oil fields to a violent part of Baghdad, thus disrupting the activities of the union and deliberately putting them in danger. He noted that these complaints did not apply to Iraqi Kurdistan.

He called on the Government to explain the contradictions between its words and deeds, noting that the independent trade unions united workers across social boundaries and supported women's emancipation. He also called on the Government to halt anti-union repression and introduce a labour law promoting social dialogue, freedom of association and collective bargaining. He asked the Government to act without delay to bring law and practice into compliance with the Convention, and to move rapidly to ratify Convention No. 87.

The Employer member of Iraq stated that the Government's Decision No. 8750 of 8 August 2005, confiscating the funds of the social partners was not justified, and was considered unconstitutional because it intervened in the affairs of organizations in an undemocratic manner and was not in conformity with international labour standards.

That decision had a negative impact on the capacity of employers' organizations to provide services to their members and to participate in many internal and external meetings and weakened their capacity to participate in the formulation of policies and capacity-building programmes.

He indicated his full understanding of the preoccupations besetting the Government and its efforts to address terrorism and cases of violence afflicting the country and its people after the occupation, and of the great challenges emerging in the social and economic fields.

Such preoccupations could be a reason behind the adoption of the above decision, or behind the delay in taking decisive action on outstanding issues. He emphasized the employers' engagement in pursuing continued dialogue with the Government, represented by the Ministry of Labour, and the Minister, so as to annul the above decision, pointing out that there were many active players in the Government who were in favour of the annulment.

He expressed his hope that the national Government would annul the above decision as a gesture of good will towards the private sector and its representatives so as to enable it to participate effectively in the country's reconstruction, development and in the creation of jobs and reduce unemployment for the sake of social peace.

He concluded by requesting the ILO and its Regional Office in Beirut to help the social partners in building their capacity and in promoting social dialogue, so as to annul the above decision and help in meeting the current challenges and pressures with which the country was confronted at such a critical phase in its history.

The Government representative of Iraq welcomed the views expressed by the Employer members and expressed appreciation of their understanding of the complex situation in Iraq. He reaffirmed his Government's commitment to giving effect to the provisions of Convention No. 98, ratified by Iraq in 1962. He expressed gratitude to the Worker members for their support for Iraq's workers and their trade union movement and said that their technical comments on the new draft Labour Code would be taken into account. He noted that the events referred to during the discussion reflected the general situation in the country that affected society as a whole. He also welcomed the views expressed by the Worker member of Iraq, which coincided with those of the Ministry of Labour and Social Affairs. He added that the Ministry was seeking through all means to remove all obstacles encountered by the social partners.

He informed the Conference Committee of the correspondence between the Ministry of Labour and higher official bodies on the annulment of unjust Act No. 150 of 1987 and Diwani Decision No. 8750, dated 8 August 2005. The trade union movement in Iraq had established a preparatory and objective professional committee to supervise elections, in accordance with the established regulations, and progress was being made in preparing the mechanism needed for elections so as to ensure democracy.

He added that the vision described by the Employer members was fully in keeping with the expectations of the Ministry of Labour and expressed appreciation to the Employer members for their comments on cooperation between the Ministry and the social partners. He called on the ILO and its Regional Office in Beirut to make further efforts to strengthen the capacities of employers' and workers' organizations through the provision of material and technical cooperation. He reiterated his commitment to trade union rights and collective bargaining and em-

phasized the importance of social dialogue as an effective means of ensuring democracy and achieving progress. His Government was determined to achieve these objectives with a view to overcoming present realities and ensuring the prosperity of Iraqi employers and workers.

The Worker members said that the discussion illustrated the efforts made by the Government of Iraq to meet the objectives of Convention No. 98. Those efforts were, however, still insufficient. A reading of the draft Labour Code showed that at present acts of anti-union discrimination were not being effectively addressed and effectively eliminated. The comments made by the Committee of Experts were very precise and well argued. It was therefore for the Government to take measures without delay to guarantee genuine freedom of association, in particular by repealing the legislation which was in violation of these principles.

In 2007, the ILO had offered technical assistance for the preparation of the draft Labour Code, which had not sufficed. It was however difficult to criticize the Government, as it was confronted with a situation that it was not in a position to completely control.

The Worker members proposed that another ILO technical assistance mission should be undertaken, so as to allow the Government to respond adequately to the requests made by the Committee of Experts and to integrate the proposed solutions into national legislation.

Finally, the Worker members recognized the positive attitude demonstrated by the Government, which was not suspected of a lack of good will. However, the situation would be different if in a future survey carried out by the ITUC or in supervision by a body responsible for the application of standards it were to be found that such confidence had been misplaced.

The Employer members noted with concern some of the allegations made by the Worker members. However, they emphasized that the Government should note the consensus among the Employer and Worker members that the old decrees needed to be repealed and a new labour code introduced which took into account the comments made by the Committee of Experts. They reiterated that the establishment of a solid foundation would help to alleviate the current unacceptable climate. These included not only new legislation, but also a strengthening of social dialogue. The ILO could play an important role in this regard and the Employer members endorsed the proposal made by the Worker members for the further involvement of the Office.

Conclusions

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

The Committee observed that the comments of the Committee of Experts concerned serious allegations of anti-union violence, the absence of sufficient legislative measures for the application of the Convention and the issuance of directives in the oil sector contrary to the guarantees provided by the Convention.

The Committee took due note of the Government's statement regarding the ongoing process of reconstruction and the climate of violence in the country. It further noted that the draft Labour Code, prepared with the assistance of the ILO, was presently before the Shura Council, as well as the Government's statement that it would take the comments of the Committee of Experts on board before proceeding with its adoption. The Government added that, despite the current absence of an appropriate legislative framework governing the right to organize, trade unions were able to carry out their activities without interference. The Committee further noted the Government's statement relating to the labour dispute in the oil sector.

The Committee also took note of the statement made by the Iraqi Worker's delegate as to the difficulties faced in

organizing workers and the interference workers' organizations encountered in their activities, including the freezing of trade union assets. The Committee observed similar concerns raised by the Iraqi employers' organizations.

Observing that a draft Labour Code was prepared some time ago with the assistance of the ILO, the Committee expressed the firm hope that the draft Code would be modified along the lines requested by the Committee of Experts, in full consultation with the social partners, and would be adopted without delay. In the meantime, the Committee called upon the Government to ensure that the laws and practice of the previous regime were no longer applied. The Committee considered that the application of this Convention and vigorous efforts towards extensive and meaningful social dialogue were important building blocks to the process of reconstruction ongoing in the country. It hoped that it would be in a position in the near future to observe that all workers, including public servants not engaged in the administration of the State, could fully enjoy the effective protection of the provisions of the Convention.

Welcoming the Government's request for ILO technical assistance, the Committee urged it to accept an ILO technical assistance mission in the near future.

The Worker members said that they would have liked the conclusions to refer to the matter of the destruction of trade union premises.

Convention No. 105: Abolition of Forced Labour, 1957

INDONESIA (ratification: 1999)

A Government representative stated that, while her Government welcomed the Committee of Experts' comments on the application of Convention No. 105, some of the issues raised therein were not related to the Convention's implementation.

Since ratifying the Convention in 1999, Indonesia had made consistent progress towards its implementation. The Government had amended its legislation to prohibit the use of any form of forced or compulsory labour, and had enacted Law No. 26 of 1999 to repeal Law No. 11 of 1963 on the Eradication of Subversive or Rebellious Activities. Although rehabilitation programmes for prisoners existed, Presidential Decree No. 32 of 1999 on Requirements and Arrangements for the Implementation of the Rights of Prisoners ensured that these programmes functioned in compliance with the Convention.

Since independence in 1945, Indonesia had respected and upheld human rights, including the freedom of citizens to obtain decent employment, based on the principles of Pancasila, the national philosophy. Article 28(d) of the Constitution additionally provided that "every citizen shall have the right to work and obtain remuneration in employment relations". As a member of the United Nations, Indonesia was also obliged to uphold the principles enshrined in the Universal Declaration of Human Rights; it strengthened and reaffirmed these commitments by enacting Law No. 39 on Human Rights in 1999. Additionally, Law No. 13 of 2004 on Manpower, Law No. 21 of 2000 on Trade Unions, and Law No. 4 of 2004 on Labour Dispute Settlement collectively translated the principles contained in the ILO core Conventions into the national context.

As concerned Law No. 27 of 1999, concerning the amendment to the Criminal Code in relation to crimes against the State's security, she maintained that the said law, which was developed by members of Parliament and adopted through a national consensus, remained valid. With regard to Law No. 9 on freedom of expression in public, the sanctions provided for contraventions of this law were contained in sections 15, 16 and 17 of the same. She underscored that Law No. 9 was adopted in 1998, an era in which human rights came to occupy a central place

in Indonesian society; accordingly, Law No. 9 sought to provide fully for the right to freedom of public opinion, but also aimed to balance this right with the need for order, peace and the respect of others. A copy of Law No. 9 of 1998 would be submitted to the Committee.

She informed the Committee that a draft revision of the Criminal Code was being undertaken. The present code was a legacy from colonial times, and the revision would accordingly reflect the new developments in Indonesian society, including respect for fundamental human rights.

She reiterated that Law No. 11 of 1963 was no longer in force, having been repealed by Law No. 26 of 1999; a copy of the latter would also be submitted. With respect to the Committee of Experts' comments on Law No. 13 of 2003 on manpower, in particular sections 139 and 185, she clarified that section 139 contained no penal sanctions, much less imprisonment, for those participating in strikes. Additionally, in 2005, the Government took steps to review Law No. 13 of 2003, but the revision of the said law did not receive wide support from the social partners and was subsequently shelved. Instead, an independent team consisting of professors and researchers from five prominent Indonesian universities was established to review the various regulations on manpower and human resources. As with all questions relating to manpower policy, the revision of Law No. 13 of 2003 would be debated in the Tripartite Body. She concluded by underscoring her Government's commitment to implementing all ratified Conventions, including Convention No. 105.

The Employer members thanked the Government for the information provided. Indonesia, they noted, was making great strides as a young democracy, and it was appropriate to encourage the Government's endeavours to implement labour standards, particularly in view of the considerable geographic, political, ethnic and cultural variety that characterized the nation. They observed that the present case primarily concerned legislative matters with regard to two aspects of the Convention: the prohibition on the use of forced labour as a punishment for expressing views opposed to the established political, social or economic system; and the prohibition on the imposition of compulsory labour for participation in strikes. A significant freedom of speech element also existed.

They welcomed the updated report furnished by the Government on the Convention's application, but noted that according to the Committee of Experts' observation, the report lacked sufficient detail for it to assess fully the extent to which progress was being achieved on the issues it had identified.

Two instances of progress could be discerned, however. The first involved the development of amendments to the Criminal Code. In this respect, they underscored that it did not suffice for the Government to merely state that the reform of the criminal code was ongoing; they requested the Government to indicate more fully what precisely the substance of the reforms were, and, in particular, whether they directly addressed the matters raised in the Committee of Experts' observation.

The second matter in which progress could be noted concerned the two judgements of the Constitutional Court referred to in the Committee of Experts' observation. One judgement, handed down in 2006, found it inappropriate to maintain articles in the Criminal Code that laid down penalties for deliberate insults against the President or Vice-President. The other, handed down in 2007, found sections 154 and 155 of the Criminal Code – which prescribed penalties of imprisonment involving compulsory labour for publicly expressing hatred of the Government – to be unconstitutional. While noting this progress, they nevertheless regretted that the Committee of Experts were forced to retrieve these judgements on the Internet. Noting, moreover, that the Government had not addressed this matter in its intervention, they asked the Government

to indicate whether those decisions would be incorporated into the ongoing reform of the Criminal Code.

They recalled that the ILO supervisory bodies had developed a jurisprudence which distinguished between acts of violence against a State, on one hand, and mere expressions of opinion on the other, for purposes of assessing compliance with the Convention. According to the Committee of Experts, the Convention protected only the latter. Similarly, the 2007 Constitutional Court decision held that subversive acts needed to constitute more than mere criticism, but actually generate hostility towards the Government. The analyses of both bodies were convergent, therefore, and it was incumbent upon the Government to indicate whether the Criminal Code would be amended in line with the Constitutional Court's decisions and the Committee of Experts' comments.

They expressed support for further work at the national level to find solutions to amend the Manpower Act, Law No. 13 of 2003, as raised by the Committee of Experts. While noting the Government's indication that the proposal to amend the Manpower Act failed to find adequate support from the social partners, they underscored that the obligation to comply fully with the requirements of the Convention warranted the Government and the social partners giving further consideration to amending the Manpower Act, in line with the Committee of Experts' comments.

The Worker members emphasized that the objective of Convention No. 105 was to eradicate practices according to which work was imposed as a disciplinary measure, as a sanction against expressions of political opinions or protests against the political, social or economic order established, or as a punishment for participating in a strike. Consequently, this Convention targeted two pillars of democracy, namely freedom of expression and freedom of association. The Committee was examining the application of this Convention in Indonesia for the first time because, despite the repeated requests made by the Committee of Experts, the Government had not adapted its legislative framework, thus still allowing trade unionists and political opponents to become victims of forced labour. With its restrictive legislation, the Government aimed to neutralize all attempts at political dissidence and opposition, since activities of that nature could be sanctioned by prison sentences including the imposition of forced labour.

That Law No. 11 of 1963 on the Eradication of Subversive or Rebellious Activities was repealed constituted significant progress. The Worker members stated that, from now on, the Government must ensure that the persons who were prejudiced due to this Law were offered an indemnity.

They cited a series of provisions that were contrary to the Convention: the provisions of Law No. 27 of 1999 concerning the amendment of the Criminal Code relating to crimes against the State's security; the provisions of Law No. 9 of 1998 which provide for restrictions on the expression of ideas in public, the violation of which could be sanctioned by prison sentences; sections 154 and 155 of the Criminal Code which sanctioned the public expression of hostility, hatred or contempt towards the Government with prison sentences. These provisions were declared unconstitutional by the Constitutional Court in 2007, yet trade union leader Mr Sarta Bin Sarim, was imprisoned under them. The Worker members declared that the Government must revise the body of these provisions as soon as possible.

Further, they referred to the provisions which permitted the imposition of forced labour in the form of prison sentences which included compulsory work for persons who violated the provisions of Law No. 13 of 2003 which revoke the right to strike. Furthermore, this Law provided for restrictions on the right to strike that were contrary to Convention No. 87 and to the jurisprudence developed by

the supervisory bodies on the subjects of minimum and essential services. Furthermore, it imposed penal sanctions that were clearly disproportionate. The Committee of Experts quite rightly referred to the comments formulated on the application of Convention No. 87 – comments that illustrated to what extent the exercise of freedom of association was restrained in the country.

The Worker members referred to another worrying legal provision, namely section 335 of the Criminal Code which provided for sanctions in case of "unpleasant behaviour". This section was used against six workers who wished to participate in May Day celebrations during work hours.

In conclusion, not only were there problems in the legislation, but also serious problems in the application of that legislation, considering the corruption of the police and judiciary. The Worker members declared that even the best laws on the protection of trade union rights were ineffective if the Government did not see to the elimination of the risk of corruption.

The Worker member of Indonesia stated that while he welcomed the decision by the Indonesian Constitutional Court to delete sections 155 and 157 of the Criminal Code, as well as the setting up of a process to draft a new Criminal Code to replace the one that dated from Dutch colonial times, he regretted to inform the Committee that there was another section in the Criminal Code which was often used against trade unionists that had serious consequences for freedom of expression. This was section 335, which stipulated that a person could be sentenced to imprisonment for a maximum of up to one year for being "unpleasant" towards another person.

He gave the example of Mr Sarta Bin Sarim, an enterprise level leader of KUI SBSI at Tambun Kusuma Company Tangerang, West Java. Along with six other workers, he had been imprisoned for six months for expressing opinions about labour rights practices during May Day celebrations in 2007. Section 335, which made "unpleasant behaviour" a criminal offence, was used by the management of the company, which reported him and the six workers to the police. All were handed down six-month sentences.

With respect to essential services, he brought the Committee's attention to the case of airport workers at PT Angkasa Pura, Jakarta. The workers were fired and suspended from work following allegations that they participated in a strike in May 2008 in an enterprise that "served the public interest". The criteria of essential services fell under the Manpower Act No. 13/2003, and as the criteria set out therein did not match the criteria for essential services under Conventions Nos 87 and 98, the management fired Mr Arif Islam, Chair of the Angkasa Pura trade union and suspended seven members of the union for three months. The case was currently in court and the workers could be given a prison sentence of maximum four years.

The Government was called upon to restore the legal status of Mr Sarta Bin Sarim; to ensure the immediate end to violations of labour rights of airport workers and reinstate them in their jobs; to provide mediation to prevent the case being brought to court; to take appropriate measures to amend section 139 of the Manpower Act No. 13/2003 to bring the notion of essential services into compliance with Conventions Nos 87 and 98; and to speed up the process of the development of a new criminal code that did not criminalize trade union activities and was not used against labour activists and other civil rights defenders.

The Government member of the Philippines stated that his Government was proud to support Indonesia, not only as a fellow ASEAN member, but as a country that had also experienced the peaceful transition from military authoritarianism to democracy. Indonesia was now among the staunchest supporters of democratic principles, human rights and the rule of law in the ASEAN region.

The transition from authoritarian rule to democracy did not happen overnight, however. A steady, step-by-step approach was required, as was the encouragement and support of the international community. Indonesia nevertheless had taken bold strides to ensure respect for democratic principles, human rights and the rule of law. In this regard he noted, in particular, the establishment of the Constitutional Court and the national human rights commission. With respect to the latter, Indonesia was one of only four countries in the region to have established an independent body to promote and protect human rights. Indonesia had also prepared a national human rights action plan, now in its second phase, and cooperated with various international bodies in its implementation.

In light of the above, he expressed confidence that Indonesia would be able to address adequately concerns respecting human rights, including labour rights, through the procedures provided for within its national legal framework.

The Government member of Cuba took note of the fact that the Government of Indonesia was engaging in tripartite social dialogue with an aim to implement the Convention. The conclusions of the case should emphasize technical cooperation and open and respectful dialogue. They should also have the approval of the Government.

The Government representative of Indonesia thanked the speakers for their contributions. She reiterated that some of the matters raised in the present discussion did not relate to the application of Convention No. 105 and that the process of democratic and legal reform was ongoing.

In response to the reference to Mr Sarta Bin Sarim, she stated that that matter was being examined by the Committee on Freedom of Association (CFA), in the context of Case No. 2585. The Government had supplied comprehensive information on that issue to the CFA, and she expressed concern that the present discussion of the issues relating to Mr Sarta Bin Sarim would prejudice the CFA's later examination of that matter. She nevertheless indicated that Mr Sarta Bin Sarim had been released in October 2007.

As concerned the PT Angkasa Pura labour dispute, she indicated that a mediation procedure in respect of the dismissed workers had been initiated in March 2008; it was hoped that intensive dialogue would bring about a satisfactory solution to the dispute. She reiterated that Indonesia had been undergoing a process of democratic transformation over the past ten years and remained utterly dedicated to upholding human rights.

The Employer members noted the progress reported by the Government, and as demonstrated by the decisions of the Constitutional Court. They additionally noted the improved political and human rights climate over the past ten years, and the extraordinary progress made in moving from military to democratic rule.

They requested the Government to include the information it had provided to the Committee in its report to the Committee of Experts, as per the latter's request. They welcomed the ongoing reform of the Criminal Code and encouraged the Government to provide more details on the status of its amendment. As concerned the Manpower Act of 2003, while noting that the Government had sought advice from national experts in its review, they encouraged the Government to also avail itself of the technical assistance of the Office to bring that law into conformity with the Convention.

The Worker members requested the Government to take all steps necessary to bring the legislation and national practice into line with the Convention, eliminating restrictions on freedom of expression and the exercise of the right to strike in close collaboration with the social partners. The changes made to the legislation to promote freedom of association should be part of a global approach in which administrative and police practices should be examined and reformed. In addition to the pro-

visions noted by the Committee of Experts, section 335 of the Criminal Code which made "unpleasant behaviour" a crime should also be modified as it was used to restrict freedom of expression and the right to strike. Moreover, the Government should take steps to provide compensation to those persons who had already suffered prejudice due to the application of legal clauses which were contrary to ILO principles. The Government should accept the assistance of the Office and communicate all information necessary so that the Committee of Experts could verify whether the legislation was in conformity with the Convention.

Conclusions

The Committee took note of the oral information supplied by the Government representative and of the discussion which followed. The Committee noted the information by the Government concerning the labour situation in Indonesia and the various steps undertaken to implement all the international human rights instruments, including the ILO Conventions. The Government expressed its full commitment to respect human rights including all the rights and freedom of citizens in relation to decent work, in conformity with the principles of Pancasila – the national philosophy. The Committee noted the Government's information concerning various measures taken in order to bring legislation into conformity with the Convention and, in particular, regarding the adoption of Law No. 26 of 1999 which repealed Law No. 11 of 1963 on the Abolition of Subversive Activities, as well as the adoption of the new legislative Acts concerning manpower, trade unions and labour dispute settlement. The Government also indicated that a draft revision of the Criminal Code was ongoing and promised to communicate to the ILO all the texts requested by the Committee of Experts. As regards the amendment of the Manpower Act (No. 13 of 2003) which contained provisions concerning the disproportionate sanctions involving compulsory labour for having participated in strikes, the Government informed the Committee of the steps which had been taken to review the Act, including the establishment of an independent team to review various regulations relating to manpower and stated that a revision could be done through a comprehensive approach after the debate in the tripartite body.

The Committee noted that the Government stated that the issue raised during the discussion in the Committee concerning sanctions of imprisonment imposed on trade unionists for having participated in strikes was being discussed by the Committee on Freedom of Association (Case No. 2585). The Government expressed the view that the discussion of this issue by this Committee might prejudice the conclusions of the Committee on Freedom of Association.

The Committee regretted to note that very little information had been supplied by the Government in its reports to the ILO on the issues raised by the Committee of Experts. These issues related, in particular, to the action taken by the Government to eliminate the discrepancies between national legislation and the Convention in the areas singled out by the Committee of Experts, namely, the legal restrictions on the right to strike, as well as on the expression of certain political and ideological views through any media or during public assemblies and demonstrations. The Committee noted the finding of the Committee of Experts that such restrictions fall under the scope of the Convention since they are enforceable with sanctions of imprisonment involving compulsory prison labour. The Committee noted with regret the information provided by Worker representatives that these restrictions recently led to several convictions to sentences of imprisonment, involving compulsory labour, for the peaceful expression of political opinions and for participating in strikes, which had been made, in particular, under section 335 of the Criminal Code ("unpleasant behaviour"), and urged the Government to respond and to report on these issues. The Committee observed that the issues concerning

punishment for participating in strikes were closely related to the application in Indonesia of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

The Committee regretted to note the Government's statement that Act No. 27/1999 on Revision of the Criminal Code and Act No. 9/1998 on Freedom of Expression in Public, which provided for penal sanctions falling within the scope of the Convention, were adopted through a national consensus and agreement which should be respected by all citizens and therefore should be considered still relevant and valid within the recent context. The Committee noted that compliance with ratified Conventions requires steps beyond reliance on national consensus.

The Committee noted with interest that the Constitutional Court, in two of its recent decisions, found certain provisions of the Criminal Code to be contrary to the Constitution, inasmuch as they diminish freedom of expression and freedom of information, subject to penalties of imprisonment involving compulsory labour. The Constitutional Court accordingly struck down certain provisions of the Criminal Code. Thus, the Committee recommended that the new draft text of the Criminal Code must exclude provisions of this kind.

The Committee urged the Government to take, without delay, all the necessary measures to bring the law and practice into conformity with the Convention, so that no sanctions involving compulsory labour could be imposed for the expression of political or ideological views or for the participation in peaceful strikes. It further requested the Government to take urgent measures to amend all the criminal provisions identified by the Committee of Experts as being contrary to the provisions of the Convention, including also section 335 of the Criminal Code, and to eliminate criminal sanctions for participation in strikes that were disproportionate and not in conformity with the principles of freedom of association. The Committee urged the Government to accelerate the elaboration of the new Criminal Code and called upon the Government to supply detailed information on the progress made in bringing the legislation into conformity with the requirements of the Convention. It also invited the Government to consider the possibility of availing itself of ILO technical assistance.

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

CZECH REPUBLIC (ratification: 1993)

A Government representative stated that she welcomed the opportunity to present her Government's views on the application of Convention No. 111. The Committee of Experts had focused in its observation on three aspects related to the Convention, namely the draft Anti-Discrimination Act, the statistics on the Roma population and the Screening Act.

Regarding the draft Anti-Discrimination Act, the Bill had been submitted to Parliament with a view to bringing national law into conformity with European Union (EU) legislation and was currently in the last stage of the legislation process. The Bill prohibited discrimination on grounds of race, ethnicity and ethnic origin, sex, sexual orientation, age, disability, religion, belief or "world view". While the terminology reflected relevant EU law, it did not exactly correspond to the wording of Article 1 of the Convention. Nevertheless, the Bill was in conformity with the Convention. The Convention's grounds, which had not explicitly been listed in the Bill, were implicitly included. Discrimination based on colour was prohibited under race and ethnic origin, and political opinion fell under a broader concept of "world view". The Bill also contained provisions on the judicial protection of discriminated persons and, as a means of strengthening

the position, entrusted the task of control to the Ombuds-person who currently had no powers over the relations of private persons. The Government therefore believed that a high level of protection against discrimination in employment and occupation on all the grounds listed in the Convention was ensured, and would even be strengthened by the introduction of the new supervisory mechanism.

With respect to the statistical information requested by the Committee of Experts on Roma jobseekers and employees, the laws of the Czech Republic were strictly built upon a civic basis, without any differentiation based on race or ethnic origin. Constitutional provisions stipulated that ethnic origin was not to be objectively determined by public authorities. Strict laws on privacy and personal data protection further prevented public bodies from collecting personal information that was not necessary for carrying out their tasks. As race or ethnic origin did not play any role in Czech labour legislation, there was no legal entitlement for the Government to collect such data. This did not mean, however, that the Government was not addressing the pressing needs of the Roma community. The activities of the Government targeted the most vulnerable groups of workers regardless of their race. Given that several aggravating factors causing long-term unemployment and social exclusion often appeared within the Roma minority, e.g. absence of skills, unfinished education, bad health, very limited work experience etc., they were among the target groups significantly benefiting from assistance.

In 2006, the Ministry of Labour and Social Affairs had commissioned a study on socially excluded Roma localities in the Czech Republic, which was aimed at an area survey and the identification of absorption capacities of key actors in the region. The results of the study were utilized for further allocation and targeting of labour market assistance and within affected municipalities. Furthermore, a joint study with the World Bank for the purpose of establishing an employment strategy analysed obstacles for employing Roma in the Czech Republic. The outcome would be a series of recommendations on employment, social and educational policies to be implemented through projects to be carried out by a newly established government agency for social inclusion of Roma communities. The agency had commenced its work in February with the task of eradicating social exclusion in endangered Roma localities through efficient local strategies and assistance. Its goal was to achieve sustainable changes towards improving conditions in Roma communities, with full and productive employment being one of the key tools. The activities of the agency would be continuously evaluated with a view to creating common guidelines for tackling the problem.

Government activities also included advocacy and awareness-raising on discrimination and equal treatment of workers from ethnic minorities. The "ethnic friendly employer" label was awarded to employers that successfully passed the review of personnel policy, internal guidelines and measures and confidential interviews of selected employees. Its purpose was to support such employers and to draw attention to discrimination on the labour market. The studies and projects mentioned were just a few examples of various measures adopted by the Government and aimed at finding solutions for the multi-dimensional problem of Roma unemployment in the Czech Republic. More detailed information on the programmes implemented to raise the levels of education, qualification, employment and general awareness would be submitted to the Committee of Experts in the report due this year.

As to the Screening Act adopted in 1991, the Act stipulated specific conditions for the access to certain positions in public administration in charge of implementing government policy, including the police and armed forces. The Government did not share the view that the Act

amounted to discrimination based on political opinion contrary to Convention No. 111. The conditions for access were not based on the political opinion of individuals, but required their non-participation in certain specific power-holding groups within the Communist regime during the period of 1948–89. The Screening Act sought to protect democracy against those who had been actively involved in the oppressive anti-democratic apparatus and voluntarily participated in maintaining the Communist regime, harassing political opponents and fighting against freedom of thought and conscience. The establishment and consolidation of democratic institutions required a civil service that was neutral, complied with the rule of law and was loyal to the ideal of democracy. It was unlikely that democratic principles would be upheld by people who had actively participated in their massive violation.

The fact that the Screening Act focused solely on this particular group was confirmed by the Act's silence on ordinary members of the Communist Party as well as its time limit for the specific conditions, which was set on 17 November 1989, the date of the Velvet Revolution and start of democratization. Another important aspect was the non-application of the Act to the positions within the current political system. The Government believed that every democratic state could and should legitimately adopt measures protecting and promoting ideals of democracy, within the limits of its constitutional and international obligations. The conditions reflected universally recognized and inherent requirements for senior posts in public administration. In this regard, the Screening Act was not in breach of the Convention.

The Employer members reaffirmed the importance of Convention No. 111, and recalled that the present case had been examined by the Committee on numerous occasions, including in 1990, 1992, 1996, 1998, 2000, 2002 and 2005. The issues raised included discrimination on the basis of political opinion, discrimination against the Roma people, discrimination against women and other forms of discrimination. When recalling the previous discussions within the Committee, it could be seen that good intentions had been expressed on many occasions, but that there was very little proof of any tangible progress.

The Employer members noted that, although there had been various legislative amendments, there was still the feeling that at certain levels there was no appetite to achieve equality. They welcomed the adoption of the new Labour Code (Act No. 262/2006), which established the requirement for equal treatment for employees in respect of working conditions. They noted that when dealing with discrimination, the Labour Code referred to the definitions of the various forms of discrimination contained in the future Anti-Discrimination Act. However, the Committee of Experts had pointed out that the new Labour Code, when read in conjunction with the future Anti-Discrimination Act, appeared to restrict the protection from discrimination in employment and occupation available in the former Labour Code. The Employer members therefore called on the Government to ensure that the applicable legislation provided adequate protection against discrimination in accordance with the requirements of the Convention. When reviewing the new Anti-Discrimination Act, they noted that there appeared to be a lack of state involvement in providing protection. The Employer members emphasized that an important factor in combating discrimination was to ensure the adequacy of appeal and review mechanisms. This issue had not been appropriately addressed up to now.

The Employer members observed that the lack of information on the progress made rendered the case difficult to assess. Some of the statistics that had been made available were not encouraging, particularly in relation to equality for women and the integration of the Roma into the mainstream economy. They therefore fully endorsed

the request by the Committee of Experts for more information to be provided on the measures taken to assist victims and the number of discrimination cases that had been dealt with.

With reference to the Screening Act (Act No. 451 of 1991), which established discriminatory measures based on political opinion, they believed that the maintenance of the Act illustrated a lack of commitment to eradicate all forms of discrimination. The Government had previously indicated its willingness to take measures to repeal or amend the Act, and had even reported that its validity would end in 2000. The matter had eventually been submitted to Parliament in 2003, when the proposed repeal of the Act had been rejected. This did not change the essential fact that it was necessary to repeal or amend the Act to bring the situation into conformity with the Convention.

With regard to the Roma, the Employer members noted that recent analysis confirmed the social exclusion of the Roma throughout the country. The Government had indicated that it was planning to create a new agency to combat social exclusion and to prepare a comprehensive programme for the integration of the Roma. The question, however, arose as to why such measures were only being envisaged now, when this matter had first been raised nearly two decades earlier. The Employer members reaffirmed the need to collect data on this issue and considered it strange that under the legislation on data collection the compilation of information on ethnic or racial origin was considered to be a sensitive matter. The respective legislation needed to be amended so that data could be collected more effectively. The Employer members added that education and the building of trust between the Roma and the rest of society was crucial. The projects and initiatives taken did not appear to be making a difference. Much more information was needed to demonstrate the success of such measures, particularly since certain examples quoted were not encouraging.

In conclusion, the Employer members emphasized that there needed to be both an intellectual willingness to take the appropriate measures and the necessary commitment to give effect to them in practice. At present it was difficult to determine what practical effect the measures adopted were having.

The Worker members recalled that this case concerned aspects relating to discrimination, namely, equality of opportunity for men and women in employment and the question of discrimination based on race and national extraction, which directly concerned the issue of the integration of the Roma community.

It was necessary to note first that revision of the legislation on equality of treatment was under way in the Czech Republic, but that up to now no text had been agreed by the Government. Noting that the Committee of Experts seemed to consider that the Government's draft legislation was more restrictive than the current text of the Labour Code, the Worker members encouraged the Government to reconsider legislation guaranteeing the broadest possible protection to workers. The types of discrimination prohibited in the current draft needed to be analysed and amended, taking into account the relevant European Directives which had been applicable in the Czech Republic since its accession to the European Union. European legislation on the subject of equality and protection against discrimination was based on the same principles as those set out in ILO Convention No. 111. These Directives aimed at the more effective application of the principle of the prohibition of discrimination and the enforcement of the protection of the victims of discrimination, even after the termination of employment. They also provided for protective measures against all unfavourable treatment, as well as compensation, rules to facilitate the burden of proof, the designation by member States of bodies with the roles of promoting, analysing

and monitoring the principle of equality of treatment, enforcing the legislation and assisting the victims of discrimination. The Worker members emphasized that this work should be carried out in collaboration with the social partners, who should also collaborate in the procedure to monitor the principle of equality of treatment.

The second point concerned the situation of the Roma in employment and occupation. The results of a study carried out in 2006 by the Government showed the existence of social exclusion of the Roma in the Czech Republic. The priority question was therefore that of the measures to be taken to facilitate the access of the Roma to education and vocational training. The unemployment rate was relatively low in the Czech Republic and the question of the access of the Roma to employment, in this context, was of particular significance. It was important for data to be collected on the situation of the Roma in relation to access to vocational training, employment, the various occupations and on the conditions of employment of those in work. It would be useful to receive disaggregated figures for unemployment rates, including for the Roma, and to know the sectors in which they were concentrated, as well as the type of contracts that they had. The Worker members did not agree with the Government's argument regarding the protection of privacy which was put forward to avoid fulfilling the request for the collection of data. The majority of countries that were concerned with the scientific management of data and social security spending, had the capacity to manage sensitive data through information technology tools that guaranteed the respect for privacy. In addition, the indicators used in the European Employment Strategy or in the context of the open coordination method on social protection policies and to combat poverty required the implementation of statistical methods to measure the efforts of member States. The Government's objections were not therefore acceptable in this regard. Finally, the Worker members observed that, according to the Committee of Experts, no solution had been found to the problem of the Screening Act concerning discrimination based on political opinion. A new Civil Service Act was under consideration and the Worker members hoped that the provisions of this new law would be in conformity with Convention No. 111.

The Worker member of the Czech Republic shared the opinion of the Committee of Experts that the new Labour Code, in conjunction with the future Anti-Discrimination Act, would considerably restrict the protection against discrimination in employment and occupation available under the previous Labour Code. Under the new Act, direct and indirect discrimination based on marital or family status, family responsibilities, political or other conviction, membership of, or activity in, political parties or movements, trade unions or employers' organizations, would no longer be explicitly protected by the law. Nor would the new Act provide for the strong involvement by the State in the protection of victims of discrimination through the Office of the Ombudsperson, which was the only available institution to defend such rights. The State would only provide advice, but no real help to individual victims of discrimination to bring complaints and obtain redress. The only effective means of obtaining justice would be through the courts, without any active involvement of state authorities. This was unsatisfactory and the relevant state authorities needed to be able to exercise more power, including the imposition of sanctions.

He recalled that discrimination on the basis of political opinion had been present in the Czech Republic since 1991 in the form of the Screening Act, which established certain political requirements for holding a range of jobs and occupations, mainly in the public service. Despite the repeated calls to repeal or amend the Act, which had originally been adopted as a temporary measure, nothing had happened and, following the rejection by Parliament

of a proposal to repeal the Act in 2003, legislation that was in violation of the Convention remained in force. Nearly 20 years after the revolution which restored democracy to the country, it was high time to be rid of the Act, and not only to modify or repeal certain of its provisions.

The Worker member of the United Kingdom recalled that a key aim of the current Pan-European restructuring of the Global March against Child Labour was to promote inclusive quality education. The persistent discrimination against the 8 million Roma citizens and their children in Europe was therefore a major cause for concern and was in clear violation of the principles set out in the ILO's fundamental Conventions. He said that the Council of Europe had noted that, despite certain government programmes designed to promote integration, Roma people in the Czech Republic and other countries in the region remained at risk of social exclusion. At the beginning of 2007, the Czech Government had proclaimed its commitment to respect liberties and human and minority rights. But that commitment faced two key tests in the face of two long-term violations: the coercive sterilization of Roma women, and the segregation of Roma children into special schools. Although the Czech authorities had recognized, if not yet adequately addressed, the horror of coercive sterilization, the issue of the schooling of Roma children remained. In November 2007, the European Court of Human Rights had ruled that the Czech Republic had discriminated against children of Roma origin by routinely placing them, on the basis of discriminatory tests, in special schools for children with learning difficulties, thereby preventing them from following the mainstream school curriculum in integrated schools. Roma children accounted for the majority of pupils in special schools.

He emphasized that equality of opportunity in education lay at the heart of equality in employment and occupation. There was an indivisible link between discrimination between children on the grounds of their ethnicity and their chances of obtaining decent work. Despite the new legislation on education adopted in 2005, the successful desegregation of the Czech education system was still awaited. He hoped that effect would be given rapidly to the binding judgement of the European Court. For this purpose, mutual trust needed to be established between Roma parents, children, communities and the school authorities, in cooperation with the teachers' unions. Equality in employment and occupation would not be achieved unless Roma children were granted access, without discrimination, to education in the same classes as children of the ethnic Czech majority. The Roma now constituted one of the largest and poorest minorities in Europe. The fact that the Roma were among those who had survived the attempted genocide between 1939 and 1945 reinforced the moral obligation to ensure that Roma citizens and their children enjoyed full equality in law and practice in education, employment and occupation. With regard to the Screening Act, he noted that among those who had held senior positions in the former regime had been Communist Party members and others who had fallen victim to the Slansky purges of the 1950s and to the crushing of the Prague Spring in 1968. He wished to know if such people would also fall victim to the Screening Act.

The Government member of Slovakia noted the useful information provided by the Government representative concerning the application of Convention No. 111 in practice. With regard to anti-discrimination legislation, the Bill on anti-discrimination had been submitted to Parliament and together with the Labour Code met the requirements of Convention No. 111. Moreover, detailed information had been provided on the specific measures taken and the results achieved in promoting the equal access of Roma men and women to employment, including self-employment and employment in the public sector.

With regard to data on the situation of Roma men and women in employment and occupation, he observed that such data were not collected as they could be deemed to be discriminatory. Such persons were considered to be disadvantaged in relation to access to the labour market in Slovakia and specific measures were contained in the Act on employment services. The Government representative of the Czech Republic had described various programmes and projects to assist Roma persons to improve their access to the labour market, which were compatible with the provisions of Convention No. 111.

With regard to the Screening Act, he understood the reasons indicated by the Government representative of the Czech Republic in this respect, but noted that the corresponding Act had been repealed in Slovakia.

The Government representative of the Czech Republic thanked the Employer and Worker members for their comments, which would be noted with due attention. She said that her Government would provide the necessary information in its report due in August, as well as making a few comments now on the issues raised. The Anti-Discrimination Act and the Labour Code in conjunction would cover all grounds of discrimination set out in Convention No. 111. The Government would ensure that the legal system provided a sufficient level of protection against discrimination in employment and occupation, including with regard to the role of the Office of the Ombudsperson. She added that the issue of the Roma was a complex one. Although attention had been focused on the issue for a long time, it had only been recently that sufficient progress had been made for the establishment of an agency. However, she emphasized that the measures adopted recently were the result of previous developments. An action plan had been introduced in the late 1990s. She admitted that the measures adopted in previous years had not given the results that had been expected. A study undertaken in 2006 had focused on various areas and had shown the real nature of the problem. She added in this respect that the Government had not sought to hide the findings of the study. It was necessary and possible to find a solution to this complex problem, starting with education, where it was necessary to start by telling teachers how best to deal with Roma children. Ingrained attitudes could not be changed overnight. Finally, with regard to the Screening Act, she noted the comments made and would report any further developments.

The Employer members expressed encouragement at the response of the Government representative. They emphasized the need to adopt the Anti-Discrimination Act and to ensure that it was in accordance with the Convention. The measures adopted to address the situation of the Roma also appeared to be encouraging. However, it was necessary to improve data collection on this subject.

The Employer members, however, expressed disappointment at the information provided in relation to the Screening Act, and noted that all those who had spoken had recognized that it was not in accordance with the requirements of the Convention, and that the corresponding Act had been repealed in Slovakia. Too much time had passed and they therefore called on the Government to review the situation and to take the necessary measures to bring its law and practice into conformity with the Convention in this respect.

The Worker members thanked the Government representative for the information provided. With regard to the issue of equality of opportunity between men and women in employment, the Government should be urged to revise the recent Anti-Discrimination Bill which prohibited discrimination so as to include the provisions of section 1(4) of the previous Labour Code, which provided greater protection. The Government should also be encouraged to apply in full the European Directives respecting discrimination, as required by its membership of the European Union.

Although a study on the situation of the Roma in the country was currently under way, the Government should take all the necessary measures to gather information and statistics which reflected precisely the situation of the Roma in employment, especially in relation to their access to basic and vocational training, employment, their unemployment rate and the social policies established to combat social exclusion and poverty. The Government should also provide a report on these matters to the Committee of Experts.

Conclusions

The Committee noted the information provided by the Government representative and the discussion that followed. The Committee noted the Government's indication that a draft Anti-Discrimination Act was currently pending before Parliament. The Government also provided information on a range of programmes and institutions addressing the situation of socially vulnerable and excluded groups, including the Roma. In this context, the Government indicated that there was currently no legal basis for the collection of data regarding ethnic origin. With regard to Act No. 451 of 1991 (the "Screening Act"), the Government stated that this Act pursued the legitimate aim of protecting the democratic State by excluding certain persons from senior posts in the public administration on the basis of their participation in power-holding groups within the Communist regime between 1948 and 1989.

The Committee observed that the Committee of Experts expressed concern that the new Labour Code (Act No. 262/2006), while generally prohibiting all forms of discrimination in labour relations, no longer provided a definition of what constitutes discrimination in accordance with the Convention, and would considerably restrict the protection from discrimination which had been available under the previous legislation. The Committee took note of the efforts to adopt a new Anti-Discrimination Act which would provide protection from discrimination in employment. It urged the Government to ensure that the legislation addresses all grounds listed in Article 1(1)(a) of the Convention, namely race, sex, colour, religion, political opinion, national extraction and social origin, and that effective enforcement and monitoring mechanisms be established. The Committee expressed concern that the Labour Code of 2006 had withdrawn the previously available protection from discrimination based on a number of additional grounds, including family responsibilities, marital or family status or membership of or activity in political parties, trade unions or employers' organizations. It urged the Government to hold consultations with the representative employers' and workers' organizations and other appropriate bodies concerning these additional grounds, as required under Article 1(1)(b) of the Convention, with a view to maintaining the previous level of protection. The Committee called on the Government to adopt the new legislation without further delay and to ensure that it was in full compliance with the Convention.

The Committee took note of the information provided by the Government on the measures taken to promote social and economic inclusion of the Roma, in particular, the recent establishment of the Agency for social inclusion in Roma communities. While appreciating all the efforts made by the Government, the Committee stressed that it was essential that the measures taken would lead to objectively verifiable improvements as regards the situation of the Roma in practice. In this regard, the Committee urged the Government to take measures to develop improved means to assess and monitor the situation of the Roma in employment and occupation and unemployment, including through the collection and analysis of appropriate data. The Committee requested the Government to take further measures to promote and ensure equal access of the Roma to education, training, employment and occupation.

With regard to the Screening Act, the Committee observed that the Governing Body – in two reports adopted in 1992 and 1995 in relation to representations under article 24 of the ILO Constitution concerning the application of the Convention by the Czech and Slovak Republic and the Czech Republic, respectively – and the Committee of Experts, over many years, had called on the Government to amend or repeal certain provisions of the Screening Act which constitute discrimination on the basis of political opinion, contrary to the Convention. The Committee noted the Government's explanations as to the original purpose of the Act in the context of the establishment of a democratic State. However, it regretted that previously announced plans to repeal the Act had not been followed through and that the Government asserted before the Committee that the Act is not in contravention with the Convention. The Committee strongly urged the Government to bring its legislation into line with the Convention without further delay, in accordance with its obligations, taking into account the relevant conclusions and recommendations of the Governing Body and the Committee of Experts' comments.

The Committee requested the Government to provide in its report due this year, under article 22 of the ILO Constitution, information on the measures taken to amend or repeal the Screening Act, as well as information on its practical application, almost 20 years after the Velvet revolution of 1989. It further asked the Government to provide in its report information on the issues raised by this Committee and the Committee of Experts in relation to the anti-discrimination legislation and the measures taken to address the exclusion of, and discrimination against, the Roma, including the results secured by such action and the data collected.

DOMINICAN REPUBLIC (ratification: 1964)

A Government representative welcomed the opportunity to explore and clarify certain points regarding the application of Convention No. 111 by his country. He said that it would represent a milestone along the path being taken by the Dominican Republic to try and leave mistakes and legislative weaknesses behind and open up to an institutional future based on international best practice in this area.

The Dominican Republic had made every effort to comply in a scrupulous and transparent manner with the obligations arising out of the Convention and fully intended to identify any inadvertent or unintentional violations of the commitments made to the ILO, as evidenced by the fact that the critical observations in the report of the Committee of Experts had neither occurred in nor been perpetuated by the national trade union movement.

With regard to the allegations made by the International Trade Union Confederation (ITUC) of detentions and deportations by the Dominican police and/or army on grounds of colour, he said that, under the legislation on migration (Act No. 285 of 15 August 2004), the police and army had no powers to repatriate citizens of other nationalities. This was the preserve of the Directorate General for Migration and its inspectors. If the police or army took such action, it would be illegal and punishable. He said that the allegations also mentioned the repatriation of 2,000 Haitian nationals, including some Dominicans mistaken for Haitians on the grounds of their skin colour. He explained that 80 per cent of the people in his country were black or of mixed race, a proportion that was reflected throughout the state apparatus and at all levels of society, and it would therefore be impossible for someone to be repatriated, even in error, based simply on their colour. He explained that every Dominican citizen over the age of 16 received an identity document and that if someone happened to be detained because of their skin colour, they would only have to present this document in order to be identified. Consequently, he considered that

the complaint was untrue, and was unfounded in both law and practice.

He explained that, as a free and sovereign country, sections 6 and 12 of the Migration Act stipulated that illegal aliens would be removed from the territory of the country and that their situation would be considered illegal if they could not prove their status as migrants. He also stated that the 1992 Labour Code, drawn up with ILO assistance, prohibited discrimination on various grounds, including all those set out in the Convention.

In terms of practical application, he reported that over the last five years the Secretariat of State for Labour had carried out training activities on discrimination for the national inspection services. In 2007, 13 workshops had been held, and six had already taken place in 2008 with the participation of employers and workers. This was intended not only to promote the provisions of the Convention, but also to raise awareness among the population in all social categories. In particular, he highlighted campaigns carried out by labour inspectors to promote labour standards in agricultural areas, providing information on and encouraging compliance with those standards. The Secretariat of State for Labour had invested large sums in the programme.

In addition, he said that the Secretariat of State for Labour, in cooperation with the Directorate General for Migration and the Secretariat of State for Foreign Affairs, had instituted the following measures within the framework of Convention No. 111 and in line with the comments made by the Committee of Experts: (1) investigation of migrants being considered for repatriation to establish their identity and migration status; (2) the strict prohibition of the return of undocumented Haitian nationals at weekends, on public holidays and during the night; (3) the improvement of buses for the return of undocumented Haitian nationals; (4) the non-return of undocumented Haitian nationals to their country of origin if they had outstanding wages or work; (5) the non-return of minors unless accompanied by their parents and in possession of their belongings; (6) guaranteed meals during the investigation process and provision of Haitian currency for the journey; (7) the guarantee that, during the return journey, illegal migrants benefit from medical and paramedical assistance; (8) the finalization of regulations to give effect to the new General Migration Act and then the establishment of a national plan to regularize the situation of foreign nationals; and (9) the abolition, in accordance with a Supreme Court ruling, of the employment deposit which every foreign national was formerly required to pay to the courts.

With regard to promoting and guaranteeing the application of the Convention without discrimination on grounds of sex, he said that the Secretariat of State for Labour had created an office responsible for monitoring gender policies in the field of employment. To that end, funds from the *Cumple y gana* ("profit through compliance") scheme had been used to hold seminars and courses on national and international standards on gender and labour. An information and promotion campaign on the subject had been planned, and the Gender Office, under the direction of the Subsecretariat of State for Labour had submitted a draft amendment to the Labour Code to the Advisory Labour Council with a view to improving labour legislation in the area of medical examinations prior to and during employment.

Any complaints or situations which could be considered discriminatory on gender grounds were channelled through the National Department of Labour Inspection. Four local labour representatives with the rank of labour inspector had received higher diplomas in gender and discrimination. With regard to sexual harassment, he said that very few cases of sexual harassment had been brought, but that the Labour Code was being amended to make sexual harassment a criminal offence carrying a

severe penalty. Regarding equality between men and women, the Secretariat had held 15 workshops on Conventions Nos 100 and 111 in 2007.

Concerning workers living with HIV, he said that the practice of HIV testing in his country was voluntary and that Dominican legislation prohibited the use of HIV testing as a condition for obtaining or retaining employment. This prohibition applied not only in export processing zones and the tourism industry, but in all enterprises registered with the Secretariat of State for Labour. The Secretariat of State had 38 local labour offices and 199 inspectors throughout the country. Labour inspectors had carried out 79,484 inspections in 2007 and 34,852 so far in 2008, and no complaints of discrimination on grounds of HIV status had been reported. A Technical Labour Unit on HIV/AIDS had been established at the Secretariat's main office to receive complaints in that regard, but none had been received. The Unit worked in conjunction with the Health and Safety Department of the Secretariat of State for Labour, which was responsible for the constant monitoring of registered enterprises through health and safety committees. In 2007, 1,364 such committees had been established at enterprises on a tripartite basis. During 2007 and the first half of 2008, the Health and Safety Department had organized 32 workshops in areas with the highest concentration of export processing zones, in which the ILO Subregional Office had participated. Seminars had been held on HIV/AIDS and labour relations, intended to raise awareness among and train the high- and medium-level staff of the Secretariat on sexual and reproductive rights, stigmatization and discrimination, and HIV/AIDS, in accordance with sections 55–93 of the AIDS Act. Section 12 of the Act provided that the Secretariat of State for Labour, in coordination with the trade union federations, would undertake information activities on prevention and transmission for employers and workers in all public and private enterprises.

He concluded by stating that the Dominican Republic was taking tangible steps to bring its legislation into line with ILO standards on a basis of social dialogue and tripartism, the cornerstone of the strengthening of democracy and respect for human values.

The Employer members thanked the Government representative for the information provided. They recalled that Convention No. 111 was a promotional Convention which required the ratifying country to adopt and fully implement policies addressing various forms of discrimination with a view to their elimination. According to the comment by the Committee of Experts, in most respects the case was in the same situation as when it had last been discussed in 2004.

The first issue raised by the Committee of Experts concerned discrimination on grounds of colour, race and national extraction, and particularly the detention and deportation of nationals of Haiti by the police, army or migration officials. When the case had last been discussed, the Government had been requested to investigate complaints in this regard. However, the Government had not yet provided information on this point, although the Government representative had referred to awareness campaigns and action by the labour inspectorate.

The observation by the Committee of Experts referred to the report of the United Nations Independent Expert on the situation of human rights in Haiti, according to which the deportations were in violation of the Government's immigration legislation (Act No. 95 and Regulation No. 275) and of an agreement concluded between the Governments of the Dominican Republic and Haiti in 1999. The Employer members noted that the Government had provided a certain amount of information in response to the request by the Committee of Experts for data on the prevention and elimination of discrimination in this respect.

The second matter raised by the Committee of Experts concerned discrimination on grounds of sex, particularly in the form of compulsory pregnancy testing and sexual harassment. The Committee of Experts had requested the Government to take proactive measures to penalize acts of sexual harassment and to prohibit pregnancy testing as a condition for employment. The Government representative had indicated that acts of sexual harassment would be criminalized, but had not appeared to refer to compulsory pregnancy testing.

The third matter raised by the Committee of Experts concerned HIV testing as a condition for employment. The Government representative had referred to a series of measures in this respect, including labour inspection.

The Employer members said that the case was unusual in that it involved migration policy between two neighbouring countries, one of which was among the poorest in the world. This meant that there was the potential to take undue advantage of the citizens of another country. The Government was being called upon to ensure the effective implementation of the Convention through the elimination of discrimination in all its forms. The case was therefore inherently related to migration, both legal and illegal, between two countries on the same island, and the prevention of discrimination would have the consequence of protecting the rights of the individuals concerned. Although there had been certain improvements, the Government would need to remain vigilant in view of the inherent difficulties involved in the situation.

The Worker members recalled that the case concerned discrimination on grounds of colour, race and national extraction and directly concerned the issue of Haitian nationals. It also concerned gender-related discrimination and the issue of HIV/AIDS and pregnancy testing.

The Worker members emphasized that, in addition to the question of bringing the national legislation into line with the principles of Convention No. 111, the Governments should be invited to carry out awareness-raising and information activities on the content of the Convention, which would otherwise be confined to paper only.

According to a periodic report submitted to the United Nations Committee on the Elimination of Racial Discrimination, the Dominican Republic had a population of 8.2 million inhabitants, of which 80 per cent were black and 20 per cent were of mixed race. Approximately 1 million Haitians lived in the country, without necessarily having any legal status and their children were born there without being registered, which exacerbated the adverse consequences of their irregular status. Haitians were engaged in various occupations, including construction, agriculture, domestic service and in the informal economy. In theory, all workers, whether Dominican nationals or foreigners enjoyed the same rights in terms of access to health care, education, maternity services and integration into the labour market. It appeared that the Government was making an effort to honour its commitments. An office for gender equality had been established to receive complaints relating to gender-based discrimination and the protection of women's rights in the workplace. With regard to the protection of maternity, a campaign had been conducted to raise public awareness of the prohibition of pregnancy testing as a condition for access to employment. Information had been made available, in the form of an official communiqué, on the prohibition of testing workers for HIV/AIDS before they were hired and a system of legal aid gave free assistance to workers who considered that they were victims of discrimination in the workplace as a result of being HIV positive. It was not enough, however, simply to introduce legislation because, as the Committee of Experts had rightly pointed out, the law in such cases applied to the citizens of the Dominican Republic, and Haitian workers were often not considered to be citizens, but illegal migrants.

The real difficulties were more practical and related to informing workers who were victims of discriminatory treatment that they could lodge complaints, speak out and have full access to legal process. The extent to which the law was applied appeared to be very different depending on the size of the enterprise, sector of activity and the union presence in the enterprise. In order to remedy the violations of Convention No. 111, the Worker members propose that the following measures be taken: inform not only workers, but society as a whole, of the anti-discrimination legislation that was in place and of the socially unacceptable nature of such violations; provide this information as early as possible to children and teenagers and make it readily accessible; secure the involvement not only of workers and employers, but also of teachers, public officials, labour inspectors and judges; establish information offices that were easily accessible to workers, where they could seek advice in total confidence and confidentiality; help workers who were victims of discrimination to submit complaints through these offices; and adopt legislative measures to lighten the burden of proof on workers in cases involving discriminatory treatment against them and to protect them against retaliatory dismissal. These measures should be implemented with ILO technical assistance.

The Worker member of the Dominican Republic considered it very important for the social partners and the Government to undertake a major campaign at the national level on the content of Convention No. 111. He deplored the fact that violations had occurred of this important Convention.

With regard to violations of the law in relation to HIV/AIDS, sexual harassment and maternity tests, he said that they occurred in enterprises where there were no trade unions. The workers did not complain through fear and ignorance of their rights. He said that this was a constant concern of the Labour Advisory Council was the full application of the Convention, as well as Convention No. 87 and the other ILO Conventions and Recommendations.

With regard to awareness-raising activities on the content of the Convention, he indicated that in February 2008 an important programme had been agreed upon with the Presidential Council on AIDS and the World Bank addressing the subjects of HIV/AIDS, sexual harassment and pregnancy tests.

With reference to the situation of Haitian workers, he said that the Workers' Autonomous Trade Union Confederation (CASC) had been working for the past three decades with the organization of Haitian workers in the Dominican Republic in collaboration with the Confederation of Haitian Workers (CTH) in Haiti. The Socio-cultural Movement of Haitian Workers (Moschta) and the organization *El Buen Pastor* were affiliates of the CASC, which offered manifest proof of the commitment of his union to organize and defend the rights of Haitian immigrant workers in the Dominican Republic.

He said that his union was aware of the problem of Haitian migrant workers and that there were ever increasing numbers of Haitian workers in an illegal situation, who were seeking work, healthcare, education, etc. Thousands worked in the construction sector, the informal economy, in agriculture and other sectors, but were often paid inadequate wages and did not benefit from the protection of the law because they were illegal. He said that his country needed to find solutions for the major problem of illegal immigration and to continue making the necessary efforts to give effect to the law and prevent all forms of discrimination and injustice. He added that major efforts were being made by his union to provide training, principally through its Haitian and Dominican affiliates, and in the population in general, with a view to achieving greater awareness and social integration.

He called upon the ILO, member States and workers' and employers' organizations, and in particular the

ITUC-TUCA (Trade Union Confederation of the Americas), to engage in cooperation on an urgent basis with a view to achieving a solution in the short, medium and long term to the situation of the people of Haiti, the poorest country in the American region. He emphasized that the Dominican Republic should not be left to face this major challenge on its own, particularly as it was a country in which over 50 per cent of the population was on the poverty threshold.

The Government member of Cuba said that she had carefully examined the observation of the Committee of Experts, and thanked the Government representative for the information provided. She said that the observation was based on comments made by the ITUC which had not been verified and on which there had been no response from the Government to the Committee of Experts. She thanked the Government for the information on its efforts to give effect to the Convention in practice. Under the circumstances, it appeared more appropriate, in order to allow assessment on the basis of reliable data, for the Government to send the necessary reports on Convention No. 111 so that they could be examined by the Committee of Experts.

With regard to the situation of Haitian workers allegedly deported and returned to their own country, she recalled that Haiti was one of the world's poorest countries and one of those most in need of international aid; getting aid to the country was a matter of urgency. At the same time, it had to be acknowledged that the Dominican Republic was a developing country which was not immune to the economic and social problems that were exacerbated by the most negative effects of globalization. She emphasized that the case was an extremely complex one, and that the Committee did not have all the elements it needed to make a balanced assessment. It was therefore necessary to request more information from the Government so that the situation could be examined by the Committee of Experts.

The Government representative of the Dominican Republic said, with regard to the deportations, that it was important to be clear that Convention No. 111 did not refer to questions of migration. There was no state policy of discrimination against migrant workers. The competent authorities took steps to apply the sanctions provided for in law in cases of complaints regarding violations of the Convention. The Dominican Republic faced strong migration pressures, especially from Haitian workers, and in that context measures had been taken that was in compliance with human rights and reciprocal regulations concerning repatriation. He said that the repatriations that had occurred concerned migrant workers in irregular situations in the country and were not motivated by racial or national discrimination.

With regard to the issue of sexual harassment, very few cases had been reported to the judicial authorities. That might be a consequence of fear on the part of the individuals concerned of possible reprisals or pressure. The Government was making systematic efforts to correct that perception. Whenever an instance of such abuse was reported, the authorities endeavoured to investigate the case and come up with a definitive and transparent solution. It was, however, undoubtedly true that in a population of more than 9 million people, there were those who perpetrated sexual harassment, and there were unscrupulous people who would exploit the vulnerability of immigrants. He emphasized the importance of making it clear that the State did not permit impunity in such cases.

With regard to the matter of HIV testing, he said that moves would be made immediately, not to revise the laws and regulations in force in the country, which had been established in accordance with the best practices of UNAIDS, the institution which provided advice in this area, but instead to ensure, with the aid of the governmental body, the Presidential Council on AIDS

(COPRESIDA), and an entire network of NGOs specializing in health and AIDS in particular, to promote compliance with these laws and regulations in all cases. He therefore appreciated the comments made, and gave assurances that UNAIDS and the governmental and labour institutions involved would continue to ensure full compliance with the right of all men and women to health and confidentiality.

With regard to the comments and statements made concerning the report of the United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the best proof of the goodwill and willingness of Dominican society and its Government to overcome difficulties, make progress and achieve improvements in the human rights field was the fact that it was the Government that had invited the Special Rapporteur and the Independent Expert on minority issues to visit the country. Neither then nor now was there anything to hide. The report had been released and discussed in Geneva in the last week of March. It was however important to bear in mind that only a few weeks later presidential elections had been held in the country in mid-May, which was why the Government, in consultation with the country's various social actors and employers, was analysing the details of the report to decide on the strategies and programmes to be adopted in the light of the recommendations and advice contained in the report. He said that for that reason, it would not now be possible to outline the options under consideration. Lastly, he said that the report of the Special Rapporteur did not contain any point, observation or complaint that specifically concerned any aspect of labour law or labour issues.

The Employer members thanked the Government representative for the additional information provided. They observed that the issue of discrimination was among the most difficult in any society. A variety of strategies were required, including awareness raising, a complaints system and an effective labour inspectorate. They recalled that Convention No. 111 was a promotional instrument which created an ongoing obligation to take action for the elimination of discrimination. In the present case, the task was complicated because of the involvement of migration. In view of the intersection between migration and discrimination in the present case, ILO technical assistance would be of value.

The Worker members indicated that measures had been taken for the elimination of discrimination in employment, in accordance with Convention No. 111. However, it was unacceptable that they were not applied effectively. The observations made by the ITUC and the AFL-CIO were based on objective elements, which had been recognized by the Committee of Experts. In their introductory presentation on the case, the Worker members had made tangible and straightforward proposals which could inspire not only the Government, but also employers and workers, so that they could work together to change mentalities. Moreover, the fact that so few complaints had been filed was not significant in itself, as workers had to have the courage to file a complaint. The Worker members finally indicated that ILO technical assistance would be of great benefit in developing the capacities of all the partners in the field.

Conclusions

The Committee noted the information provided by the Government representative and the discussion that followed. The Committee observed that this case concerned discrimination, in practice, based on race, colour and national extraction against Haitian migrant workers and dark-skinned workers of the Dominican Republic; the protection of women from discrimination and sexual harassment; and allegations concerning involuntary HIV/AIDS testing.

The Committee noted the information provided by the Government concerning activities, including training semi-

nars, undertaken to raise awareness of the legislation among workers, employers and labour inspectors. It also noted the information on a legislative initiative to penalize sexual harassment and the establishment of institutions to address discrimination issues, such as the Office for Gender Equality and the HIV/AIDS technical unit within the labour inspectorate. The Government indicated that involuntary HIV/AIDS testing was prohibited in all enterprises. It stated that regular labour inspections were being carried out, but no cases concerning discrimination had been reported. With regard to the deportation of Haitian migrant workers referred to in the Committee of Experts' observation, the Government indicated that these had been carried out in accordance with the existing migration policy of the State and were not based on the race, colour or national extraction of the workers concerned.

The Committee welcomed the training and awareness-raising activities carried out by the Government. However, the Committee expressed concern that the labour inspections carried out did not appear to have identified any cases of discrimination in employment and occupation. It observed that this situation raised issues as to the adequacy of the existing legislation and complaints mechanisms to address such discrimination. The Committee therefore requested the Government, in close consultation and cooperation with the workers' and employers' organizations, to take additional steps to strengthen protection from discrimination in employment and occupation, in law and in practice. The Committee considered it particularly important to ensure that complaints' mechanisms were effective and accessible for all workers in practice, in particular for men and women working in enterprises where no unions existed. It urged the Government to ensure that workers were protected against retaliation for filing a complaint and were given free access to justice.

The Committee called on the Government to address the intersection between migration and discrimination. In this regard, it requested the Government to ensure that migration laws and policies and their implementation did not result in discrimination based on race, colour and national extraction, contrary to the Convention. The Committee observed that all migrant workers, including those in an irregular situation, must be protected from discrimination in employment and occupation. In this context, the Committee noted the announcement by the Government of the establishment of a tripartite committee to follow-up on the recommendations made by the United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Independent Expert on minority issues following their visit to the country in October 2007. It expressed the hope that the Government would soon be in a position to report on the concrete measures taken to follow-up on those recommendations.

The Committee regretted that the Government's most recent report under article 22 of the ILO Constitution did not contain complete information in reply to the Committee of Experts' comments, including information on the measures taken to investigate alleged cases of discrimination. It therefore urged the Government to provide complete replies to the Committee of Experts' comments in its report due this year, as well as information on all the issues raised by this Committee. The Committee encouraged the Government to seek technical assistance from the ILO with a view to strengthening the application of the Convention, in law and in practice.

ISLAMIC REPUBLIC OF IRAN (ratification: 1964)

A Government representative indicated that existing laws and regulations, such as Article 101 of the Fourth five-year Economic, Social and Cultural Development Plan, seemed to have provided the bedrock for the fulfilment of the aspirations of the Convention. The Govern-

ment was firmly committed to providing a mid-term assessment of the steps taken to bring the long-contested legislation and practice into line with ILO Conventions. A more detailed periodic report containing facts and figures, segregated by gender, ethnic and religious minorities, where relevant, would be provided to the Committee of Experts. The Government was vigilantly monitoring any developments to ensure the due fulfilment of its undertakings towards this end by the year 2010.

The Charter of Citizenry Rights stipulated in the Fourth Development Plan had been approved by Parliament in 2007 and the Government had been required to implement its provisions fully. In a very recent measure by the Head of the judiciary, many judges had been disqualified and dismissed on the grounds that they had discarded and violated citizenry rights, especially the rights of women and minorities.

With respect to the implementation of article 101 of the Fourth Development Plan developed by the social partners under the Islamic Republic of Iran's Decent Work Country Programme in May 2005, the Government, the social partners and other stakeholders held regular meetings to jointly survey and monitor its due implementation aimed at ensuring access to decent work and decent life for all Iranian subjects, without discrimination. Under the Decent Work Country Programme, 54 operational decent work indicators had been identified in 2007, divided into four main categories. Article 101(a) of the Development Plan focused on the fundamental principles and rights at work including freedom of association, protection of labour rights, sound industrial relations, the right to organize and bargain collectively, equal pay for men and women for work of the same value, elimination of the worst forms of child labour, minimum wage for decent life and, last but not least, non-discrimination in employment and occupation.

Section 38 of the Labour Law provided that for equal work carried out in equal working conditions, workers, irrespective of their gender, had to receive equal pay. It further provided that any discrimination in setting wages based on age, race, ethnic background, religious and social beliefs was forbidden. A total of 141,968 periodic inspections and 234,225 unannounced inspections had been carried out to ensure due adherence to the law for the period March 2006–March 2007. No wage discrimination had been reported.

The Deputy Minister for Industrial Relations was responsible for the supervision of a Presidential circular calling for the guarantee of equal access to women and religious minorities to employment opportunities. One of the most important goals of article 101 in ensuring equal and indiscriminate extension of social protection to all was ensuring equal access to employment opportunities for women through women empowerment programmes. Two state funds had been created to provide subsidized financial grants to women entrepreneurs and women heads of household.

The Government had held five different workshops at provincial level within the last two years to improve awareness of, access to and enforcement of equality and non-discrimination rights and policies aimed at balancing work and family responsibilities for women. It was determined to hold similar workshops throughout the country. Women were now gradually breaking into new non-traditional spheres and additional ILO technical cooperation on women empowerment programmes would further catalyse the process of women's integration into a more diversified labour market. Most regrettably, such technical services had recently been suspended by the ILO over allegations from the social partners.

The Government representative stated that following the official submission of a Bill to repeal section 1117 of the Civil Code, both Parliament and the judiciary acknowledged that, given the existence of section 18 of the

Family Protection Law, which superseded section 1117, section 1117 was automatically repealed under national law and the courts were not authorized, under any condition, to receive any such complaints.

Being mindful of the need for a comprehensive law on the prohibition of any form of discrimination in employment and education, as also stipulated in different sections of the Constitution of the Islamic Republic of Iran, the Government positively responded to the observation of the Committee of Experts and had presented a Bill concerning access of all Iranian nationals irrespective of gender, colour, creed, race, language, religion, or ethnic and social background, to education, vocational training and employment. The Bill prohibited all forms of discrimination with respect to access to free and formal education at different levels; access to technical and vocational training; and access to job and employment opportunities, as well as working conditions. The Bill defined discrimination as any unjustified distinction, exclusion, limitation, preference or privilege that might adversely affect or nullify equality of opportunity or treatment in occupation, employment, training or education for all Iranian subjects. Unlike the provisions of the Constitution or those of the Labour Law, the infringement and violation of which did not result in penalties or sanctions, liability for violators under the proposed Bill according to its section 2 would consist of heavy sanctions and penalties. While the Bill was currently awaiting final approval by the Cabinet of Ministers, the Government would appreciate receiving any comments from the Committee of Experts and the International Labour Standards Department.

The Government, in collaboration with the social partners, had launched a global plan for social security, which, among other things, addressed the issue of social security regulations favouring husbands over wives in terms of pension and child benefits. It denied the existence of any administrative rule or practice restricting the employment of wives of government employees. The Government, furthermore, denied the unfounded information brought to the attention of the 2007 ILO technical assistance mission concerning the existence of legal barriers to women being hired after the age of 30. Section 14(a) of the State Employment Law limited the age of employment to a minimum of 18 and a maximum of 40 years of age. The Government also pointed out that the maximum age of employment was exceptionally extended by five years in cases in which the Government recruited staff for the second time. Detailed statistics on the number of women and men in public and private sector employment, disaggregated by gender, category and rank of employment, would be provided by the Government, as promised, in its next report.

With regard to Decree No. 55080 of 1979 changing the status of female judges from judicial to administrative, the Government representative indicated that a Bill had been presented to Parliament in 2007 concerning the required qualifications for judges, irrespective of their gender. This was indicative of women breaking away from stereotypical roles and the availability of new opportunities for them in the judicial system. Once this Bill was adopted, Decree No. 55080 would be automatically repealed. A total of 459 female judges had thus far been assigned to different judicial positions, including assistant prosecutor, remand judge, adviser to the court of appeal, ruling judge in the family court and judge of guardianship and minors, administrative tribunal judge and judge of the special judiciary supervision department. Women were occupying judicial positions both as investigation and prosecution judges. A few had been appointed as directors of the judicial administration in the provinces. Others had been assigned to supervisory and administrative functions. Two female judges were assigned to the court of appeal. They now ruled over very contentious and critical cases together with their male colleagues. In the Province of Te-

Iran there were 112 female remand judges. Female applicants were admitted to the faculties of law every year, and, upon completion of their judicial training courses, were recruited to different judicial posts. Eighty-eight women were attending judges' training courses.

Regarding the situation of ethnic minorities, the Government wished to emphasize that Iranian culture was the result of the integration and interaction of common interests and beliefs, customs and traditions and, last but not least, of a common historical background of different ethnic minorities in the Islamic Republic of Iran having been resident for a long time. The latest national statistics regarding the provinces, where ethnic minorities traditionally dwelled, revealed that in the Turk-Kurd Province of Western Azerbaijan, 83.7 per cent of the managers were from either of the Turk or Kurd minorities. In Kermanshah, where a mix of Kurd minorities existed, 86.7 per cent of the managers were national Kurds. In Kurdistan, 78.8 per cent of managers were from different Kurd minorities. In Sistan and Baluchistan, where two ethnic minorities, the Baluchi and Sistani, with two different religions had peacefully coexisted for thousands of years, 65.6 per cent of the managerial positions were distributed among the natives. In the Province of Ilam, 84.3 per cent of the managers were among the natives of the region. The Government considered that it had done its best to promote access for ethnic minorities to high- and medium-level managerial positions without any discrimination. Further, many of the high-ranking government officials at the national and international level were also from ethnic minorities.

Regarding the Baha'i and the concerns expressed with respect to their access to education and vocational training, the Government stated that a new circular had recently been issued by the President of the Technical and Vocational Training Organization emphasizing the free access of all Iranian nationals to vocational training. This new circular had been issued in accordance with the Government's policy for the protection of all Iranian nationals' rights, irrespective of their beliefs, colour and creed, religion and gender. The Government was committed to providing equal access to employment and education for all Iranian nationals. This was illustrated by the reports of the United Nations Special Rapporteur on religious intolerance who, after a mission to the Islamic Republic of Iran in 1995, highlighted that the non-recognition of a religious minority in the country did not imply the non-recognition of its respective rights or the existence of discrimination against it. The Special Rapporteur further stated that the Baha'i enjoyed all citizens' rights, including, among other cultural activities, the freedom to practice their rituals, to promote their belief in their sects, and to provide higher education to their youth. The report stated that the Baha'i's right to higher education was not breached to the extent that it could be interpreted as a violation of a fundamental human right. It also concluded that the Baha'i were able to participate actively in the cultural life of Iranian society. A more detailed account of the status of the Baha'i would be submitted to the Committee of Experts in the Government's next report.

Reiterating its determination to cooperate with the Committee and the ILO in addressing the Committee of Experts' concerns regarding employment and discrimination, the Government was looking forward to more extensive cooperation to bring national laws and practice into line with the Constitution of the ILO and international labour standards by the year 2010.

The Employer members thanked the Government representative for his submissions. With regard to the issue of equality of men and women, the low level of women's participation in the labour market and the high unemployment among women was disappointing. Women's low participation in high-level positions was unacceptable, as was the Government's argument that women's

low labour market participation was a result of cultural, religious, economic and historical factors. In fact, the high rate of women among university students suggested a desire of women to have a role in the labour market and to participate fully in social life. It was also disappointing that relevant statistical information that, as pointed out by an ILO technical assistance mission, existed in the country had not been provided to the Committee of Experts.

The Employer members noted that the obligatory dress code for women and the imposition of sanctions in accordance with the Act on administrative infringements, in practice, had a negative impact on women's employment in the public sector. Opposition was also expressed to Decree No. 55080 of 1979 regarding female judges. The Government had described a new Bill to elevate women's status in the judiciary and, in the discussion, had referred to a number of judicial positions that women were holding currently, but it was unclear whether the women in these positions enjoyed the same authority as male judges. While noting the Government representative's statement concerning section 1117 of the Civil Code, the explanations provided had been inconclusive. The Government was urged to provide full information on the barriers, in law and in practice, for women over 30 to be hired and on how discrimination based on age was prohibited.

Concerning discrimination on the basis of religion, the Employer members noted that the situation of the Baha'i had not improved and requested the Government to take measures to promote respect and tolerance for the Baha'i. The Government was also urged to provide full information on the employment situation of ethnic minorities, in particular in the public sector.

The Employer members noted the strong commitment expressed by the Government to constructive dialogue with the social partners. They nevertheless expressed concern over the present freedom of association crisis in the country. Without ensuring freedom of association, meaningful social dialogue was impossible.

In conclusion, the Employer members expressed deep concern regarding the issues of discrimination which continued to persist in the Islamic Republic of Iran. They urged the Government to repeal laws and practices that were not in conformity with the Convention without further delay.

The Worker members recalled that this year was the 50th anniversary of Convention No. 111 which originated from the Declaration of Philadelphia. According to the Declaration, all human beings, irrespective of race, creed or sex, had the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity. Convention No. 111 was dealing with discrimination in employment and occupation, the non-compliance with which also constituted a violation of the Universal Declaration of Human Rights. The fight against discrimination was a concern of all modern and democratic societies. The abovementioned fundamental texts played a key role in the progress so far achieved.

The Worker members recalled that Convention No. 111 prohibited any distinction made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which had the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation, including the access to vocational training, access to employment and to particular occupations, and terms and conditions of employment. Each Member ratifying the Convention undertook to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation. Convention No. 111, widely ratified by 166 member States, was about respecting each other and accepting each other's characteristics and differences.

The Worker members recalled that the question of the application of Convention No. 111 by the Islamic Republic of Iran had been analysed by the Committee of Experts 14 times between 1990 and 2008. Moreover, the Conference Committee had already examined this individual case in 1999, 2000, 2001, 2003 and 2006. Yet, the Islamic Republic of Iran regularly benefited from ILO assistance. Since 2004, the Government undertook to adopt a national strategy for promoting women's employment, their independence and their equality of treatment through the Economic, Social and Cultural Development Plan for 2005–10. The Government already undertook in 2006 to submit a mid-term assessment report on the implementation of this Plan and on the measures taken to bring legislation and practice into conformity with the Convention by no later than 2010. The Worker members observed that, whilst in 2006 the Government could still hope for the Committee's indulgence with regard to the implementation of the Plan, today it was clear that no progress had been achieved.

The Worker members stressed various points raised by the Committee of Experts: (a) the Economic, Social and Cultural Development Plan – some provisions of which underlined the importance of human rights (Articles 100 and 101) – and the role of the judiciary in combating discrimination (Article 130) did not appear to have been adequately disseminated; (b) the Government mentioned a Charter of Women's Rights but did not provide a copy of it nor specified its link with the Economic, Social and Cultural Development Plan; (c) the information provided on measures taken dated back to 2006 and had already been taken into account by the Committee of Experts.

The Worker members expressed their concern about the lack of updated information on the rates of men and women undertaking technical and vocational training in private institutions where women were in the majority. They indicated that, according to recent sources, the access of young women to universities and to technical and vocational training was limited through devious means in order to hamper women's participation in society. The illiteracy rate of women stood at double that of men. Women's participation in the labour market remained low, and even women with entrepreneurial skills had very little chance to have access to the labour market. Finally, the Government did not provide statistical information, if any, on the number of women holding managerial positions and in occupations traditionally reserved for men.

The Worker members stated that they were aware of a petition against discrimination that had been signed by one million women expressing their concern at the justification given by the Government regarding women's low level of participation in the labour market. The attitude to link the issue of women's work solely to that of family responsibilities would reinforce the assumption rooted in the Iranian society, that women were solely responsible for the family. The Worker members stressed that when a woman decided to take a break in her professional career for family reasons, she would lose her post. They deplored that no measures had been taken by the Government to prevent or prohibit discrimination in job advertisements and sexual harassment. Moreover, the imposition of a compulsory dress code for women had a direct effect on the employment of non-Muslim women and affected their public freedom. Nonetheless, the Government was aware of the discriminatory legal provisions which needed to be amended or repealed, like the provisions of the Civil Code allowing the husband to prevent his wife from taking up a job. Finally, regarding women's conditions, the Worker members referred to a recent resolution adopted by the UN General Assembly in March 2008, which once again highlighted the dramatic situation of women being continuously discriminated against in law and practice.

The Worker members were deeply concerned that the observation of the Committee of Experts once again referred to discrimination against religious and ethnic minorities excluded from particular occupations for alleged national security reasons. In this regard, the Worker members stated there was written information available for 2007–08 undoubtedly proving discrimination against the Baha'i with regard to their access to universities and to particular occupations, as well as to their right to a pension, and that they were subject to moral harassment in the public sector. Such information was being revealed while progress should have already been registered following the Government's commitment at the 2006 session of the Conference Committee.

The Worker members, observing that the recommendations of the Committee of Experts did not receive any serious response by the Government, deplored that the Government did not provide in due time the relevant information on the measures taken. Since the conformity of these measures with ILO international labour standards needed to be verified, the Worker members reserved the right to request that the individual case appeared in a special paragraph of the Committee's report.

The Worker member of the Netherlands referred to three specific areas of legislative discrimination against women highlighted in the 2006 conclusions of this Committee. The Government had undertaken to revise section 1117 of the Civil Code, pursuant to which a husband could bring a court action against his wife for taking up employment. Unfortunately, the provision had not been amended, and, even if not used in practice, its very existence had an intimidating effect on women. Secondly, Decree No. 55080 limited the position of female judges to administrative or advisory status denying them the authority to issue judgements. This represented a severe insult to the intellectual and decision-making capacities of women. It was most regrettable that the Government was unable to present evidence of steps taken to remove the restriction. Thirdly, the legal and practical restrictions on access to jobs for women above the age of 30, or even the envisaged age of 35, severely restricted the participation of women in the labour market for more than half of their working life. It could only be deplored that the Government only expressed intentions but was not able to present evidence of steps taken to remedy this.

As argued by the Government representative, discrimination against women in the labour market was just a result of historical and cultural factors. This reason, however, did not remove the responsibilities of the Government to amend the relevant laws and implement and enforce them actively. Iranian women trying to assert the rights of women in their personal, working and community lives faced growing repression. More than 100 women had been arrested, interrogated and sentenced in the last two years. Newspapers, magazines and broadcasters promoting women's rights had been closed down, including the prominent magazine *Zanan*. Women collecting 1 million signatures in the Campaign for Equality had faced harassment and arrest.

The restrictions of civil liberties and the repression of independent trade unions made it difficult to obtain reliable information on the position of women in education and the labour market. As no freedom of association existed, the working women of the Islamic Republic of Iran could not organize freely, be represented or defend their interests independently. While the efforts of the Government to provide women greater access to education were appreciated, no accurate data had been collated as to how many women entered employment after their education, in what sectors, at what levels, how long they retained employment, and how many re-entered employment after having or raising children. It was crucial that the Government collate and make available this essential, disaggregated data. Job opportunities for women still lagged

far behind that of men, and, according to the Committee of Experts' observation, the participation of women was 12.2 per cent in 2003 and had only increased to 13.8 per cent in 2006. The Government needed to acknowledge this extremely low rate and take remedial action. Women were also the first to be laid off when companies restructured and, in case of non-payment of wages, had little means to pursue the arrears.

Health and childcare services and other social services had been promised to facilitate women's participation in the workforce, but most working women had not been able to get access to these services. The nature of employment in the Islamic Republic of Iran had shifted towards informalization. More and more women were working in temporary jobs and contracted labour, where they could not benefit from legal entitlements including maternity protection. Since Iranian labour law did not require companies employing less than 20 people to abide by regulatory protections, and the majority of workers in such companies were women, women faced huge obstacles of discrimination in the labour market. It was vital that the Government develop instruments to make the promised facilities available to women employed in the informal sectors, and provide detailed information on these matters to the Committee of Experts. The huge gap in the pay rates afforded to women performing the same work as men (sometimes half the pay) also needed to be addressed. The Government should provide comprehensive data on matters relating to pay equity and the measures envisaged in this regard.

In conclusion, after the Government had been urged in 2006 by this Committee to take measures to eliminate discrimination against women in the labour market, no visible progress had been made, neither with respect to the amendment of specific regulations that had been the subject of discussion for years, nor concerning the more general social and economic barriers that hindered women's participation in the labour market. The Government was urged again to address the serious violations of the Convention.

The Worker member of Indonesia recalled that one of the most atrocious aspects of this case, when it first came to the attention of the Committee of Experts, was the execution of 200 Baha'i citizens in the framework of significant intolerance towards religious minorities. The UN General Assembly also expressed its concerns in its resolution of 20 March 2008 on the situation of human rights in the Islamic Republic of Iran. This resolution included specific reference to attacks on the Baha'i in state-sponsored media, as well as increasing evidence of efforts by the State to identify and monitor the Baha'i. Information and evidence from various government departments on the violations against the Baha'i was available. An official communication from the Public Intelligence and Security Force dated 9 April 2007 aimed at repressing Baha'i businesses through the denial of licences. Another communication from the Ministry of Welfare and Social Security (bearing the emblem of the State Pension Bureau) dated 8 August 2007 stated categorically that there was no law in force allowing the Baha'i to receive pensions. The third communication from the Ministry of Science, Research and Technology listed 81 universities within the Islamic Republic of Iran from which the Baha'i were to be expelled and denied further access. Discriminatory action against both the Baha'i community as a whole and against individual members, was current and pervasive, perpetuated and promoted at the very highest levels of the State. Plans, projects or draft legislation were not sufficient, since there was a need for urgent and effective action for the promises made by the Government in 2006 to be realized before 2010.

The Government representative of the Islamic Republic of Iran thanked the Committee members for their contributions and reiterated that detailed statistical information on

the situation of women in the labour market would indeed be provided. The high level of women's university attendance and the large number of women among university professors illustrated that the Government was committed to improving the situation of women, although many challenges remained. There was some legal miscomprehension as to the status of section 1117 of the Civil Code. Under the Iranian legal system, the provision was considered as repealed. Regarding the access of ethnic minorities to employment, the Government representative reiterated that it was the qualifications that mattered, not ethnic origin. The ILO technical assistance mission in 2007 had had an opportunity to meet a member of the Baha'i community who was a successful businessperson in the high-tech sector. Many of the circulars regarding the Baha'i that had been mentioned were fabrications; others had been repealed.

The Government was striving to promote women's entrepreneurship and to promote women's social rights. In addition, numerous non-governmental organizations were active in this area. The Government denied that there was any legal barrier that would prevent women over the age of 30 from being employed, however, it would look into the matter. Improving literacy and providing free access to education for all, men and women, was a priority. The current social security legislation, which considered the man as the breadwinner, was in line with the country's culture. There was no sexual harassment, and labour inspections had not revealed any wage discrimination based on sex.

The Government representative noted that a number of ILO missions had taken place in recent years, but the country had not received the amount of assistance it needed. It was unacceptable that technical assistance on important matters, such as occupational safety and health was being denied. A number of legislative initiatives were under way, but time was needed to complete them. The Government was also committed to pursuing social dialogue. More detailed information would be provided to the Committee of Experts.

The Employer members observed that the efforts to promote equality and non-discrimination in employment and occupation had been very slow. The Government had not provided information on the practical effects of the measures it had taken. However, it was a fact that women's labour force participation remained very weak, while their unemployment was twice as high as men's. Women's absence from high-level jobs was unacceptable and the obligatory dress code constituted a barrier to women's employment in the public sector. The Government must demonstrate that progress concerning women's equality in employment was being made in practice. To this end, it must provide detailed statistical information on the situation of men and women in the private and public sectors, disaggregated by level of employment, to allow for an assessment of the scope of the problem and the progress made. The Government was also urged to provide information indicating the extent to which vocational training translated into employment opportunities for women. The Employer members also called on the Government to demonstrate progress regarding the application of the Convention in law, including the repeal of discriminatory social security regulations and provisions restricting access to employment on the basis of age. The Government must also ensure that there are no legal obstacles with regard to women's equal status with men in all functions in the judiciary. Finally, the Employer members expressed their deep concern about the repression of freedom of association and meaningful social dialogue on the issues covered by the Convention.

The Worker members recalled that the elimination of all forms of discrimination in respect of employment and occupation was a question arising in all modern democratic societies. The number of observations formulated by

the Committee of Experts on the application of the Convention in the Islamic Republic of Iran constituted a matter of concern. In 2006, the Committee had requested the Government to communicate to the Committee of Experts a written report on the points that had not been covered by the Government representative during the discussion as well as on the progress achieved in bringing the legislation into conformity with the Convention. In this regard, the Committee had urged the Government to take measures to ensure the amendment of the texts restricting the employment of women, in particular those relating to the role of female judges, the obligatory dress code, the possibility of the husband to refuse his wife's access to employment and the inclusion of women in the social security system. The Committee had also expressed concerns about the acts of discrimination against the members of religious and ethnic minorities, and notably of the Baha'i community. The Worker members recalled that the Government had undertaken to bring national legislation into conformity with Convention No. 111 by 2010 and to submit a report on the implementation of a national strategy for the promotion of women's employment and empowerment and equality through the Economic, Social and Cultural Development Plan for 2005–10. The Worker members regretted that the Government contented itself with making declarations on basic principles and expressed their disappointment with the lack of up to date information on the effectiveness of the measures allegedly taken. None of the recommendations of the Committee of Experts, in particular concerning necessary legislative amendments, had been the subject of a serious response from the Government. In 2006, the Worker members had trusted in the Government's commitment. However, the lack of progress and the impossibility to verify the information supplied by the Government representative during the discussion prompted the Worker members to request that the case be mentioned in a special paragraph in the Committee's report.

Conclusions

The Committee noted the statement of the Government representative and the discussion that followed. It took note of the Government's statement that there was a strong legislative and policy framework supporting non-discrimination, and that recently, bills had been drafted and circulars issued on specific aspects of non-discrimination. It also noted that no cases of wage discrimination against women had been found during the 375,000 inspections that took place last year. It also noted the Government's statement that it would provide with its next report to the Committee of Experts a wide range of detailed statistics, as well as a more detailed account of the status of the Baha'i.

The Committee noted that it had examined this case on a number of occasions, most recently in June 2006, at which time it requested the Government to provide a mid-term assessment in its subsequent report to the Committee of Experts on the steps taken to bring the relevant legislation and practice into line with the Convention by no later than 2010. The Committee also noted that the Committee of Experts, having examined this mid-term assessment, as well as the findings of an ILO technical assistance mission which took place in October 2007, continued to raise a wide range of concerns, in particular regarding discriminatory laws, regulations and practices, lack of access to complaints mechanisms regarding discrimination and the absence of meaningful social dialogue on these issues. The Committee expressed its disappointment with the absence of progress since it discussed these issues in 2006.

With respect to discrimination against women, the Committee expressed concern regarding women's low labour market participation, and particularly their limited access to senior positions, and the high unemployment rate of women. The Committee noted the continued efforts of the Govern-

ment to promote women's access to university education, and noted the Government's acknowledgment that there remained a long way to go in practice to remove the barriers to women's employment. The Committee took note of the Government's indication that a bill regarding anti-discrimination in education, vocational training and employment had been submitted to the Cabinet of Ministers, and that a bill was before Parliament regarding the status of female judges. However, it remained concerned that over the years a number of bills, plans and proposals had been referred to which had not come to fruition. The Committee also took cognizance of the Government's indication that judges had been instructed not to apply section 1117 of the Civil Code. It was concerned that in the absence of the express repeal of this provision, it would continue to have a negative impact on women's employment opportunities.

The Committee deeply regretted that despite statements of the Government to this Committee expressing a clear commitment to repeal laws and regulations that violated the Convention, progress in this regard was slow and insufficient. It, therefore, strongly urged the Government to repeal or amend, without any further delay, all laws and regulations restricting women's employment, including regarding the role of female judges, the obligatory dress code, the right of a husband to object to his wife taking up a profession or job, and the discriminatory application of the social security legislation. The Committee also urged the Government to take action to address any barriers, in law or in practice, to women being hired after a certain age, whether it was 30 or 40, and to address effectively other discriminatory practices against women, including by prohibiting job advertisements containing discriminatory elements.

With respect to the existing laws and policies on non-discrimination, the Committee called on the Government to ensure these were widely publicized and enforced. Given the increase in temporary and contract employment of women, the Committee urged the Government to ensure that all entitlements and facilities were also made available in practice to these women workers. It also urged the Government to provide the Committee of Experts with the detailed statistics it had been repeatedly calling for, in order to allow it to make an accurate assessment of the situation of women in vocational training and employment.

With respect to discrimination against religious and ethnic minorities, the Committee regretted that the situation had not improved since 2006, and requested that concrete steps be taken in this regard. Noting the particularly serious situation of the Baha'i, the Committee strongly urged the Government to take decisive action to combat discrimination and stereotypical attitudes, through actively promoting respect and tolerance for the Baha'i. It also urged the Government to ensure that all circulars or other government communications discriminating against religious minorities be withdrawn without delay, and that measures be taken to make it clear to the authorities at all levels and the public at large that discrimination against religious minorities, in particular the Baha'i, would not be tolerated.

The Committee expressed its deep concern that, due to the present context of repression of freedom of association in the country, meaningful social dialogue on these issues at the national level had not been possible.

The Committee urged the Government to take urgent action on all the outstanding issues, with a view to fulfilling its promises of 2006 that it would bring all its relevant legislation and practice into line with the Convention by 2010. The Committee requested the Government to provide complete and detailed information to the Committee of Experts at its 2008 session in reply to all the pending issues raised by this Committee and the Committee of Experts.

The Worker members did not find in the information provided by the Government of the Islamic Republic of Iran proof of any real progress in the elimination of dis-

crimination against women or religious minorities. This lack of progress was serious and ought to justify a special paragraph. However, given the fact that the discussion was based on a mid-term report, the Worker members were willing to give the Government the opportunity to increase its efforts to meet the 2010 deadline for fully removing all discriminatory elements from its legislation and seriously address all discriminatory practices hindering the equal participation of women and religious minorities in education and the labour market.

The Employer members observed that the discussion of the case had provided the Government with an opportunity to provide a mid-term assessment of the progress made in bringing its law and practice into line with the Convention no later than 2010. The Employer members therefore deeply regretted the lack of progress since the discussion of the case in 2006. They expressed deep concern that, due to the present context of the repression of freedom of association in the country, meaningful social dialogue on these issues had not been possible at the national level. They therefore urged the Government to take action on all the outstanding issues with a view to fulfilling its promises made in 2006 that it would bring the relevant law and practice into line with the Convention by 2010. They called on the Government to provide complete and detailed information to the Committee of Experts at its session in 2008 in reply to all the pending issues raised by the Conference Committee and the Committee of Experts. If such progress were not achieved, the Employer members would support the inclusion of a reference to this case in a special paragraph of the Committee's report when the case was next discussed.

Convention No. 138: Minimum Age, 1973

ZAMBIA (ratification: 1976)

A Government representative reported that there had been a remarkable decline in the number of out-of-school children. In 2006, the country recorded an average of only 11.2 per cent of out-of-school children between the ages of 7 and 18 according to the 2006 Education Statistical Bulletins. In 2007, Bulletins revealed that the number of schools offering grades 1 to 7 increased from 4,021 in 2006 to 4,269 in 2007, whilst the ones offering grades 1 to 9 increased from 2,221 to 2,498 during the same period. Similarly the gross enrolment ratio for grades 1 to 9 had increased steadily from 2003 to 2007. These improvements were attributed to the sustained government policy of encouraging private providers of education registered with the Ministry of Education since 2007 and the increase in the various forms of educational institutions that had been set up from kindergarten to private skills training colleges and universities. The Government had also taken other positive measures such as the introduction of free education and allowing the readmission of pregnant teenage girls into schools after giving birth. In addition, the Government had adopted a policy to upgrade primary schools into basic schools in order to ensure that children had access to basic education up to grade 9.

The Government reaffirmed its commitment to combating child labour despite many difficulties such as the rampant nature of the problem in the informal sector. Zambia, like many other developing countries, was confronted with the challenges of growth and development coupled with rapid expansion of the informal economy as an alternative source of livelihood for the majority of the poor. Despite these challenges, the Government had taken a number of measures in collaboration with IPEC and progress was being made in reducing the high incidence of child labour in the most predominant informal economic activities such as agriculture and quarrying.

In 2001, the Government ratified the Worst Forms of Child Labour Convention, 1999 (No. 182) in order to bol-

ster compliance with Convention No. 138. A multidimensional approach to combat child labour had been adopted, giving specific attention to the informal economy. In this regard, concerted efforts were being made by the Ministries of Labour and Social Security, Community Development and Social Services, Education, Youth Sport and Child Development, and Home Affairs under the ILO supported Time-bound Programme. Under the auspices of the Ministry of Labour and Social Security, a National Steering Committee had been formed and District Child Labour Committees were being used to facilitate the creation of Community Child Labour Committees to set a stage for grass-roots intervention. The composition of these committees was based on the nature, magnitude and complexity of the child labour scourge in a particular locality.

The Government also worked with IPEC to prevent children orphaned as a result of HIV/AIDS being induced into child labour. This project, together with the Time-bound Programme, had led to significant increases in the number of children withdrawn, and prevented from child labour through the provision of educational services or training opportunities. Between September 2007 and March 2008, a total of 1,407 children were prevented from engaging in child labour whilst 1,091 were withdrawn and rehabilitated.

The Government had put into place an Inter-Ministerial Committee on Human Trafficking in order to provide specialized intervention on human trafficking through its relevant law enforcement agencies. Active investigation of criminal elements involved in child trafficking was strengthened. Cabinet passed an Anti-Trafficking Bill which was now before Parliament and the National Policy on Human Trafficking was in its final drafting stage.

Finally, the Government recognized that the problem of child labour required more attention given to the level of development of the country. The Government recognized the benefits of the support provided by the ILO. The Capacity Building Project had improved the capacity of the Government, employers, workers, local non-governmental organizations (NGOs) and the affected communities to tackle child labour issues. The Commercial Agriculture Sector in Africa Project had also helped to reduce child labour. The Government would welcome further ILO assistance in combating child labour.

The Worker members welcomed the information provided by the Government representative. Noting the "triangular paradigm" of the Global March against Child Labour (education, child labour elimination and decent work), they recalled that the report of the Committee of Experts considered four key elements: the need for free and compulsory basic education up to the minimum age for entry into employment; the fight against the prevalence of child labour in agriculture and the informal economy; the need for accurate statistics; and the effectiveness of programmes supported by IPEC. The Government of Zambia's appearance before the Committee had in no way detracted from the efforts it was making, in collaboration with IPEC, to meet its obligations. But the report demonstrated the need for greater efforts to bring law and practice into conformity with the Convention. Zambia did not yet have a system of free, compulsory, formal, public education and, thus, would not be able to succeed in eliminating child labour. Primary education had been declared free, but despite some bursaries for vulnerable children, hidden costs such as school uniforms and school books acted as barriers to the attendance of children from poor families who were most likely to become child labourers. Although the state education budget had increased, leading to recruitment of much needed new teachers, it still trailed behind regional benchmarks. Despite substantial donor funding, there was an acute need for more class rooms and equipment.

In its 2006 education policy paper, the Zambia Union of Teachers (ZNTU) drew attention to gender disparities in enrolment levels as well as completion rates which needed to be addressed. In spite of government policies aimed at increasing enrolment levels for the girl child, completion rates showed that girls were more severely affected than boys. ZNTU had acknowledged the central role that the Government played in the establishment of comprehensive and relevant education and wished to work together with the Government on the betterment of the educational system. The Worker members hoped the Government would accept this offer.

In March 2007, the Cabinet Office had requested the Ministry of Labour and Social Security to adjust the National Child Labour Policy to include better coordination with the Ministry of Youth Sport and Child Development, responsible for the overall national child policy. Subsequently, a draft Child Labour Policy had been resubmitted to the Cabinet Office. In the struggle against child labour, understaffing and lack of provision in schools as well as in enforcement agencies also played a pivotal role. Zambia's education system was described by the World Bank as a "low-cost, low-quality system". The system comprised nine years of basic education followed by three years of secondary education. At the end of primary education, only about one third of the pupils were able to be absorbed by the secondary public school system. Those who could neither enter the public school system nor afford the private one were not catered for.

The annual output of Zambia's teacher training colleges was 8,000. However, the Government recruited only 4,000 new teachers in the public school system, so as not to increase government expenditure on public sector wages. Therefore, the bottleneck was not teacher training capacity but rather the financial means available to employ newly qualified teachers. The tragedy was that, according to Ministry statistics for 2006, there had been 3,347 unqualified teachers teaching in Zambian schools, and at the same time about 6,000 trained teachers unemployed.

This situation was mainly due to World Bank and International Monetary Fund (IMF) conditionalities imposed contrary to policy coherence. The Global Campaign for Education had corroborated that vacancies had not been filled because, according to the IMF, the Government could not afford to hire the teachers it had trained. The ZNTU confirmed that the critical shortage of teaching staff was mostly due to unattractive low salaries, unfavourable working conditions of service and unpredictable deployment policy dictated by conditionalities from the World Bank and the IMF, which capped the percentage of public sector wages permitted.

Positively, the Worker members noted that the Ministry of Education had started recruiting more teachers, albeit too slowly. The abolition of school fees in Zambia had caused a sharp increase in primary enrolment of both girls and boys. Total enrolment had increased too, the number of out-of-school children had fallen from 760,000 to 228,000 between 1999 and 2005. However, disadvantaged children were still two to three times less likely to be in school than other children.

Furthermore, data collection and enforcement remained inadequate, and the figures provided in the Committee of Experts' report required clarification. There had been no survey since 1999 when half a million children were working, and not just in the informal economy (including domestic service) but also in large-scale farming. The Worker members looked forward to the completion of the National Labour Force Survey and would have welcomed more information about the sectoral and geographical incidence of child labour and action in those sectors. The Labour Inspectorate should be strengthened and the Government should also refer to the recommendations of the regional tripartite meeting of experts held in Harare in

2001 on the role of labour inspection in combating child labour.

In the last six months, Zambia had recorded progress in the education, health, mining and human rights. The joint annual review of the Ministry of Education had confirmed an increased budget setting out the following objectives: to increase pupil enrolment and expand the provision of bursaries to orphans and vulnerable children (especially girls) by end of 2008; and to improve the quality of education by means of constructing 1,500 classrooms, recruiting 5,000 more teachers, retaining teachers in rural areas while continuously replacing those who leave, and increasing the number of teachers receiving in-service training.

Negotiations between the Government and the mining companies were under way, which would hopefully result in increased government revenues to fund social and other investments.

The Worker members expressed the hope that, during the country's constitutional review, the interests and rights of children, including the right to education and to be free of child labour, would be clearly spelt out in line with international standards, especially Conventions Nos 138 and 182. A coherent national programme of action against child labour was required, reflecting the complementarities between the two Conventions. Labour inspection had to be child-friendly and significantly strengthened.

In conclusion, Zambia was demonstrating political will but was moving too slowly. While the Government needed to be clear about its obligations and pursue them with vigour, the international community had to support its efforts. The Worker members hoped that the Government's next report to the Committee of Experts would indicate significant further progress towards full compliance with the Convention.

The Employer members underlined that, according to 1999 data from IPEC, in Zambia, 11.3 per cent of boys and 10.3 per cent of girls between 5 and 14 years of age were actively involved in some working activity. Seven per cent of these children were reported not to go to school.

Regarding compulsory education, according to the Committee of Experts, some progress had been achieved. At present, primary education was free and there was a commitment to extend free education until the 12th degree. Moreover, a basic programme of investment in the education sector was being implemented. However, the Government did not provide information allowing the evaluation of progress achieved, particularly with regard to school drop-out rates, especially in rural areas where the higher number of cases of child labour was detected.

The Employer members recognized the difficulties faced by Zambia regarding the economic situation, as well as the need for cooperation in order to further develop and eradicate poverty, which was a key element in combating child labour. However, they also emphasized that the improvement of the education system should be a priority. Zambia recently experienced an important economic evolution producing a 5–6 per cent GNP growth. An improvement in the political situation was also registered. In the framework of a global strategy to combat child labour, the Employer members stressed the importance of taking advantage of these improvements in order to further strengthen compulsory education. In this regard, they urged the Government to redouble its efforts to obtain and provide statistical data on the number of children not attending school, as well as on school attendance and drop-out rates. They also urged the Government to provide information on the measures taken, including through international cooperation, to extend compulsory education at least until the 12th degree.

The Employer members observed that the IPEC programme, by identifying and preventing some cases of

child labour, had achieved important results. The major problem consisted in the high percentage of children working in the informal economy, especially in the agricultural sector, where the highest rates of child labour were reported (around 90 per cent of the total child labour in the country).

In Zambia, as in other African countries, the problem of child labour was aggravated by the plight of HIV/AIDS. According to data from the ILO/IPEC, in Zambia, which had a population of 11.8 million people, more than 630,000 children were orphans. A high rate of these children lost their parents due to HIV/AIDS.

Finally, the Employer members appreciated the Government's initiative regarding the creation of District Child Labour Committees which would possibly solve existing problems in an effective way.

The Worker member of Zambia stated that the country had faced a period of economic decline between 1970 and 1990. Subsequently, a programme for economic revival had been implemented. On the basis of World Bank and IMF advice, public enterprises had been privatized, resulting in massive job losses. Parents who had lost their jobs could no longer afford schooling for their children. The Government also had to freeze the public wage bill which made it impossible to hire additional teachers. This raised issues of policy coherence. Child labour reduction through increased educational opportunities was not possible if, at the same time, World Bank and IMF policies did not allow for sufficient level of public expenditure to hire the required number of teachers. For the same reason, it was difficult to put in place labour inspectors who could monitor compliance with child labour legislation. The workers of Zambia therefore called on the World Bank and the IMF to ensure that their conditionalities supported and did not hinder the application of the Convention.

The Government member of Zimbabwe commended the Government of Zambia for its efforts in addressing the child labour problem in its society and economy. Zambia was one of few sub-Saharan African countries which had taken bold steps to reduce child labour in the context of the increasing poverty in Africa. Very few countries were able to carry out a child labour survey such as the one undertaken by Zambia. Also the programmes for the removal of children from child labour and placing them in schools were exemplary. The Committee should salute the Government of Zambia for its deliberate decision to deal with and eradicate child labour.

The Government representative of Zambia reiterated that child labour was a problem of development and its elimination required policy coherence. The country had been experiencing a favourable economic trend since 2002, but changes could only be achieved over time. A first National Labour Force Survey had been undertaken in 2005 and another one, which also includes a module on child labour, was ongoing. The Government was benefiting from ILO support to ensure that data was established on the basis of sound methodology, and it was committed to making further improvements in this regard. Following technical assistance received from the ILO concerning labour inspection in 2003, the inspection form now specifically addressed child labour. The Government was open to receiving comments and suggestions from trade unions and was looking forward to further social dialogue on the elimination of child labour. The economic regime for mining companies which had been mentioned in the discussion had already been put in place.

The Worker members welcomed the Committee's fruitful discussions on the application of the Convention by Zambia. They particularly noted the Government's readiness to engage in social dialogue on child labour issues, as well as the additional information provided concerning labour inspection and the tax regime for mining companies. With many challenges ahead, including with regard

to the informal economy, Zambia should continue to rely on innovative approaches.

The Employer members emphasized the ethical duty of the international community to express its solidarity and offer help to States having the greatest difficulty in taking effective measures to combat child labour. Special efforts were needed to address alarming situations such as the existence of a high proportion of orphans owing to their parents' death from HIV/AIDS. These efforts had to be supported by international cooperation and be given the utmost priority at the national level.

The Employer members appreciated the Government's efforts to implement programmes, design projects and come up with initiatives intended to eradicate generalized poverty. The Government had taken adequate measures in the area of education and to improve the statistical data, in particular through actions undertaken at the district level.

The Employer members agreed with the Worker members as to the importance of the educational system in combating child labour. The Government should be urged to continue to dialogue intensively with the Committee of Experts so it could continue to follow closely the progress being made.

Conclusions

The Committee took note of the oral information provided by the Government representative and the discussion that followed. The Committee noted that the report of the Committee of Experts referred to comments from the International Trade Union Confederation relating to the absence of compulsory schooling for children as well as the large number of children under the minimum age who worked in the informal economy.

The Committee noted the detailed information provided by the Government outlining laws and policies in place to provide free primary education as well as action programmes that had already been undertaken in collaboration with ILO-IPEC to remove children from situations of child labour. The Committee also noted that the Government of Zambia had expressed its willingness to continue its efforts in cooperation with the social partners to eradicate child labour with the technical assistance and cooperation of the ILO.

The Committee welcomed the Government's commitment to implement the Convention through various measures, including through the provision of inclusive education and appropriate training opportunities, the construction of additional classrooms, the recruitment of additional qualified teachers in rural areas and the establishment of District Child Labour Committees. Considering that free, compulsory education was one of the most effective means of combating and preventing child labour, the Committee urged the Government to ensure that legislation fixing the age of completion of compulsory schooling would be adopted shortly. In this regard it reminded the Government that it was desirable for the age of completion of compulsory schooling to correspond to the minimum age of 15 to employment or work specified by Zambia when it ratified the Convention. It strongly encouraged the Government to continue its efforts to provide free, compulsory education for all children. In addition, the Committee noted the challenge presented by the HIV/AIDS pandemic, especially with regard to orphaned children and children of HIV-positive parents. It also drew attention to the particular needs of girls, and of other vulnerable children.

The Committee further noted that a number of measures were being taken by the Government to address the situation of many children under the minimum age who increasingly worked in the informal economy, often in hazardous work. The Committee recognized the importance of policy coherence and encouraged international cooperation in order to promote poverty eradication, sustainable and equitable development and the elimination of child labour. It neverthe-

less strongly encouraged the Government to improve the situation, notably by taking the necessary measures to further strengthen the capacity of the labour inspectorate and to promote the work of District Child Labour Committees.

The Committee also invited the Government to provide comprehensive information in its report when it is next due, on the manner in which the Convention was applied in practice, including in particular enhanced statistical data on the number of children working in the informal economy, their ages, gender, sectors of activity, extracts from the reports of inspection services and information on the number and nature of contraventions reported and penalties applied. The Committee encouraged the Office to continue to provide technical assistance to the Government and the social partners to encourage their efforts.

Convention No. 162: Asbestos, 1986

CROATIA (ratification: 1991)

A Government representative, recalling that this was the third occasion on which the application of Convention No. 162 by Croatia had been discussed by the Conference Committee, said that many measures had been taken by the Government to achieve full and effective application of the Convention, as well as to conform to European Union standards, including the adoption of several legislative texts.

The Act on mandatory health monitoring of workers occupationally exposed to asbestos, which had entered into force on 7 August 2007, defined who was considered to be a worker exposed to asbestos and regulated the methods for monitoring the health of such workers, the procedure for diagnosing occupational diseases caused by asbestos, the bodies responsible for health monitoring, and the bodies responsible for conducting diagnostic procedures in the event of suspicion of an occupational disease caused by asbestos. The Act provided that the health of workers occupationally exposed to asbestos and of those who had been recognized as suffering from an occupational disease caused by asbestos was to be monitored, and that diagnostic procedures for suspected occupational diseases were to be undertaken by occupational medical specialists. Health monitoring entailed mandatory preventive examinations at least every three years for a period of 40 years following the termination of the worker's occupational exposure to asbestos, irrespective of whether an occupational disease had already been diagnosed.

Under the Act, not only workers currently at risk of occupational asbestos exposure, but also retired workers and unemployed persons previously employed in workplaces where occupational exposure was possible, were considered to be workers exposed to asbestos. All three categories were included in the health monitoring programme. The Croatian Institute for Occupational Health and Safety Insurance (CIOHSI) was responsible for the procedures for diagnosing and recognizing occupational diseases caused by asbestos and for running the occupational safety and health insurance scheme, which included measures to prevent and detect occupational diseases, as well as rights in the event of diagnosis. A register of workers reported to be suffering from occupational diseases caused by asbestos was maintained by the Croatian Institute for Occupational Medicine (CIOM). The Register of Occupational Diseases defined precisely all diseases caused by asbestos, using codes from the European Schedule of occupational diseases and diagnostic criteria from the 10th International Classification of Diseases and Related Health Problems in Occupational Health. The Register had been kept since 2000 and was continually updated.

With a view to regulating the entitlement to financial compensation of workers diagnosed with, and recognized

as suffering from, an occupational disease caused by asbestos, the Act on compensating workers occupationally exposed to asbestos had also entered into force on 7 August 2007. It covered the procedure for granting claims, the procedure and competent body for settling claims, and the provision of funds for making compensation payments to workers suffering from occupational diseases caused by asbestos. Pursuant to this Act, on 23 August 2007, the Government had established a commission to settle compensation claims. The commission was composed of representatives of the ministries responsible for the economy, health, finances and justice; a representative of the CIOM; a representative of the CIOHSI; a representative of associations representing workers suffering from occupational diseases caused by asbestos; and two trade union representatives. Administrative and technical support was provided by the CIOHSI. By the end of May 2008, the commission had received 710 claims for compensation, while 221 cases had been medically recognized by 1 January 2008 and compensation totalling more than 1 million kuna had been paid to nine claimants by June 2008. Many cases had been delayed due to lack of information. The representatives of associations of workers affected by asbestosis and of the CIOM had been consulted in the preparation of both the above Acts, for which two joint meetings had been organized.

A third Act, on the requirements for workers occupationally exposed to asbestos to an old-age pension had entered into force on 7 August 2007, granting such workers more favourable conditions in the pension scheme based on solidarity between the generations. Occupational exposure to asbestos was deemed to be any direct or indirect exposure to asbestos arising from work performed for an employer, whether it was a natural or legal person, with its seat in the Republic of Croatia and using asbestos in their production. By the end of May 2008, 32 claims had been submitted and resolved. Of the 103 people at the Salonit-Vranjic factory, 81 were eligible for a pension under the Act but had not yet submitted claims.

In the area of environmental protection, a waste management plan for 2007–15 had been prepared, and an Act on the transport of hazardous substances and an ordinance on methods and procedures for the management of waste containing asbestos had entered into force. An ordinance on the protection of workers from the risks related to exposure to asbestos had also been adopted.

On 26 September 2007, the disposal and remediation of asbestos cement waste from the Salonit-Vranjic factory had been completed. The work had been carried out in accordance with professional rules and regulations on handling asbestos waste and the regulations and instructions of the competent ministry. On several occasions, work had been performed at night to avoid working in high daytime temperatures. Transportation had been carried out in accordance with the regulations governing the transport of hazardous substances. The asbestos products remaining in the factory area did not represent hazardous waste as the asbestos was bonded in asbestos cement products. Further procedures to deal with those products were included in the remediation programme for clearing the factory area and would be carried out as prescribed by the law. An agreement had recently been signed with the Croatian Institute for Environmental Protection regarding the second phase of the project.

The Government had been extremely active in developing an integral solution to asbestos-related problems across the country. All necessary legislative and institutional measures had been taken, and the Acts adopted provided a complete legal basis for the exercise of the rights of workers occupationally exposed to asbestos. The legislative measures had been prepared in consultation with trade unions and employers through the Economic and Social Council, and the activities reflected the Government's care for every worker affected. All the respon-

sible institutions had been mobilized to give effect to the commitments made to the ILO high-level direct contacts mission, and the Croatian Government was determined to fulfil its obligations under the legislation adopted. To that end, resources had been allocated in the national budget. In conclusion, the Government representative expressed appreciation for the ILO's support and constructive proposals.

The Employer members thanked the Government representative for the detailed information provided, some of which was new. They recalled that Convention No. 162 was a very comprehensive and technical instrument, the main purpose of which was to ensure the safety and health of persons working or who had worked in the production of asbestos products. The Government representative had provided information on various measures adopted prior to the publication of the report of the Committee of Experts. It would have been useful if that information had been available before the present discussion. They recalled that the case had been discussed by the Conference Committee regularly since 2003. Following the last discussion in 2006, the Government had accepted the proposal to invite a high-level direct contacts mission, which had found a great readiness to cooperate. Progress had been achieved, and the direct contacts mission had reported that the sites producing the asbestos products had all been closed or gone bankrupt.

The Employer members recalled that, in particular, two problems remained relating to the application of Articles Nos 19 and 21 of the Convention, namely the removal of asbestos waste without risk to the health of the workers concerned or to the population living in the vicinity of the factory; and the provision of guarantees concerning the income of workers who were no longer able to work because of the health effects of exposure to asbestos, including, of course, workers who were already ill as a result of their exposure to the substance.

The report of the direct contacts mission indicated that several important initial steps had been taken. Several new laws had been drafted, almost all of which had now come into force, covering in particular the compensation of the workers concerned, including the payment of pensions, as well as the regulation of the handling of asbestos waste. The Committee of Experts had noted that the financing of compensation and pensions for workers who had been exposed to asbestos and were suffering from ill health did not yet appear to be ensured. The statement by the Government representative was therefore to be welcomed that both unemployed and retired persons suffering from occupational exposure to asbestos had been included in the occupational diseases scheme. Although the Act, adopted in 2007 for this purpose, appeared to be appropriate, the Employer members called on the Government to provide detailed information on this matter, including data on the compensation already paid, for examination by the Committee of Experts.

The direct contacts mission had also noted that there was still a lack of reliable statistics on the number of workers suffering from asbestos-related diseases. Particularly in view of the fact that many of the workers concerned had been employed in the factories for over 25 years and were now above 50 years of age, it was urgent to give effect to the conclusions of the direct contacts mission. The Employer members therefore urged the Government to give effect to the measures adopted in the very near future and to keep the Office informed of the progress that was being made. They also called on the Office to continue providing support so that the collaboration which had proved to be so effective could be pursued.

The Worker members recalled that the failure to give effect to Convention No. 162 in Croatia had been discussed in 2003 and in 2006. At the Conference in 2006, the Conference Committee had expressed deep concern at the

problem, and especially at the situation at the Salanit-Vranjic factory site. In view of the time that had been wasted, and the gravity of the situation, the Committee had proposed a high-level direct contacts mission with a view to verifying the situation *in situ* and to assess the progress made. Furthermore, it had invited the Government to start consultations with the social partners on the subject and to submit a full report to the Committee of Experts.

Although it was a so-called technical Convention, the failure to give effect to Convention No. 162 had very serious consequences for the workers concerned, their families, as well as the families who lived near such factories. Asbestos was an extremely dangerous product and its harmful effects had been studied and described by various organizations, including the World Health Organization (WHO). The persons affected choked slowly over the years, eventually suffering a horrible, slow and painful death.

The Worker members recalled that the Government of Croatia had accepted the high-level direct contacts mission and welcomed the Government's full cooperation and its close collaboration with the social partners. The mission had been informed of the various administrative and legislative measures that were under preparation, the impressive list of which was contained in the report of the Committee of Experts. Nevertheless, it had expressed the hope that tangible progress would be achieved, especially in settling the financial claims of the workers at the Salanit-Vranjic factory. On several occasions, the mission had called for measures to be taken on an urgent basis and had recommended the acceleration of administrative and legislative procedures, including judicial procedures. Another important element was the wish expressed by the mission that the policy against asbestos should be based on an overall health and safety prevention plan, in accordance with the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187).

The Worker members regretted that the Committee of Experts had had to conclude that it was not able to verify whether all the promises had been followed up by concrete measures or whether its previous recommendations had been given effect, and that the Committee of Experts had had to request the Government, in a footnote, to supply full particulars to the Conference. They, however, admitted that, both on the basis of the replies provided by the Government and in the experience of national trade unions, significant progress had been made. They also recognized that political leaders were willing to give priority to the issue, but the fragmented approach adopted so far was not desirable. Workers needed to be full partners in an integrated national action plan.

The integrated approach needed to offer solutions for workers who continued to work and who were not entitled to a pension; needed to ensure the regular medical supervision and the training and relocation of workers; needed to provide for compensation for workers suffering from asbestos-related diseases; and should be based on a system for the surveillance of all workers and citizens exposed to asbestos. Such an integrated approach was necessary, not only due to the ratification of Convention No. 162, but also in view of Croatia's membership in the European Union, which required the adaptation of national law and practice to the *acquis communautaire*, and particularly the European Directives on the protection of workers against the hazards resulting from exposure to asbestos. It was therefore urgent to take the necessary prevention measures at the Salanit-Vranjic site. Great ecological damage had already been caused by the asbestos waste, stored at the factory site. It was also urgent to remove all asbestos from the site and ensure its remediation so as to avoid any further victims. Moreover, the Worker members regretted that the mission's report and its recommendations were overly focused on this specific

site. In their view, it was essential to take into account all exposed sectors and sites.

Although other countries were confronted with similar problems, the magnitude of the problem in Croatia could not be denied. While it was regrettable that years had been wasted on the problem, the Worker members welcomed the fact that, as a result of the constant pressure exercised by the trade unions and the support of the Committee of Experts and the mission, progress was being made, and challenges, although still numerous, were now being given priority.

The Worker member of Croatia recognized that the initial steps taken and the progress achieved demonstrated the Government's willingness to give priority to this urgent matter. However, she emphasized that, contrary to the proposals made by the trade unions and the direct contacts mission, the legislative measures that had been adopted did not constitute a holistic solution to the situation. Several legislative measures had been adopted, instead of a single integrated legal framework, which meant that both the implementation and the situation of the workers concerned would be more complex. She called upon the Government to ensure tripartism and transparency and to give urgent effect to these measures in practice. It also needed to develop solutions for workers who continued to work and were not entitled to pensions; ensure adequate medical examinations within the prescribed time periods; guarantee retraining and relocation in appropriate jobs; and provide compensation for those suffering from asbestos-related diseases. In other words, it needed to adopt an integrated strategy to ensure decent living standards for the workers affected as part of the national action plan for the sectors concerned.

She added that national trade unions found it extremely disturbing that the package of legislative measures adopted did not include provisions on the most important matter, namely the procedure for the management of waste containing asbestos. It was a matter of great concern that 1,700 tonnes of asbestos waste remained in the vicinity of the factory, posing a threat to the workers and the community. The contract for the consolidation programme covering the Salonit-Vranjic factory had been awarded to a company that had not complied with the relevant requirements. The disposal of the waste had been carried out in an irregular manner under very strange circumstances. The operations had been undertaken in the middle of the night by a company with inadequate equipment and no firm proof of a valid licence for working with asbestos. This was in clear violation of the provision in the Convention, which called for the management of waste containing asbestos to be carried out by companies that were duly qualified for that activity.

The violation of Convention No. 162 was a fundamental matter for the workers concerned, their families and the environment, and also amounted to a violation of the right to health for all as set out in the national Constitution. In this matter of life or death, too much time had been wasted, and there was no room for further delay. Rights delayed were rights denied and, in the present case, "rights" literally meant "human lives". She expressed great appreciation for the assistance provided by the ILO and firmly believed that the Government would fulfil its duty to all Croatians by giving full effect to Convention No. 162.

The Government representative of Croatia thanked those who had intervened in the discussion and said that she had taken careful note of their comments. She observed that several legislative measures had been adopted, which represented a holistic approach to the issue and were based on the adoption of a unique and integrated legal solution. Information on the measures taken had been posted on the web site of the Ministry of Health and Social Welfare so that all interested parties could have access to the necessary indications. The measures that had

been prepared and were now being implemented covered the situation of all persons suffering from asbestos-related diseases, not just those that were work-related. A register of occupational diseases had been kept since 2000, and data was being compiled on the numbers of persons affected by asbestos-related diseases. The social partners had been involved in the formulation of all legal and other measures and programmes adopted through roundtable meetings and other forms of consultation. In conclusion, she re-emphasized the commitment of her Government to take the necessary action to meet its obligations in this matter.

The Employer members thanked the Government for the additional information provided and agreed with the Worker members that there were significant indications of progress in the case. The work of the Office and the missions undertaken had undoubtedly provided the impetus for an improvement in the situation. However, in view of the health situation of the workers concerned, they emphasized the need for rapid action. The situation of these workers was urgent and there was no room for any further delay, especially in terms of measures to provide them with compensation and guarantee their income. The Government representative should provide full information on the implementation in practice of the new laws and other measures adopted. Finally, they called upon the Government to ensure that it complied with all of its obligations in relation to the handling of asbestos and waste containing asbestos with the technical assistance of the Office.

The Worker members again deplored the conclusion of the Committee of Experts that it had been unable to verify whether specific action had been taken by the Government and whether the previous recommendations had been followed. However, on the basis of the Government's reply and the analyses undertaken by the national unions, they noted that considerable progress had been achieved, as indeed might be expected of a State seeking accession to the European Union. Nevertheless, they called on the Government to take all necessary steps, as a matter of urgency, to bring its law and practice into conformity with Convention No. 162, and in particular with the detailed recommendations and conclusions of the direct contacts mission and the observations of the Committee of Experts. In this regard, the Worker members highlighted three major challenges: the underpinning of specific measures through an integrated approach and a proactive national occupational safety and health policy, including measures to combat asbestos in all sectors; the establishment of a monitoring procedure; and, above all, measures to remove asbestos from polluted sites and to treat the waste.

Conclusions

The Committee noted the detailed oral information provided by the Government representative, as well as the discussion that followed.

The Committee recalled the previous discussions and conclusions adopted in the Committee in 2003 and 2006, the comments of the Committee of Experts in 2002–05, the outcome of the High-level Direct Contacts Mission (the Mission) to Croatia in April 2007, and the further comments of the Committee of Experts in 2007.

The Committee noted the information provided by the Government regarding the legislative, institutional, judicial, health and environmental protection measures taken by it to follow up on the conclusions of the Mission and to improve the application of the Convention in the country, including the efforts made to rehabilitate the Salonit Factory and to dispose of the asbestos waste at the factory site and the Mravinacka Kava dump site. The Committee noted, in particular, the information on the adoption of legislative measures on diagnostic procedures, health care, settlement of claims for compensation and qualifying conditions for the

acquisition of old-age pension by workers occupationally exposed to asbestos. The Committee also noted the information concerning the strengthening of the National Council for Occupational Safety and Health and the central function it had been attributed, including in the overall review of the occupational safety and health system and the national policy development.

The Committee welcomed this information and, in particular, the concrete signs of progress made through the adoption of legislative texts, and action taken to alleviate the financial situation for at least some of the workers already suffering from asbestos-related diseases. However, it regretted that this information had not been submitted to the Committee of Experts in time for it to evaluate the progress made by the Government. The Committee wished to underscore the seriousness of this case and the utmost importance that it attached to concrete and swift action by the Government to implement fully the Convention. The Committee urged the Government to continue, with alacrity, to review claims of workers occupationally exposed to asbestos, to ensure that judicial decisions would be handed down in a timely manner and that compensation and old-age pensions due be paid without further delay. The Committee also urged the Government to take concrete measures to enable workers rendered redundant and still able to work to be retrained and redeployed in other employment.

As regards the measures taken by the Government for rehabilitation of the Saloni factory site in a manner which did not pose a health risk to the workers concerned, including those handling the asbestos and in accordance with relevant national and European environmental standards, the Committee expected that this would be pursued without delay using the appropriate expertise.

The Committee noted with some concern that the approach taken to the general application of the Convention in the country remained fragmented. The Committee considered that a single consolidated legislative framework and a national comprehensive preventative plan of action in the area of occupational safety and health should be pursued. Such a national plan should be adopted in consultation with the representative organizations of employers and workers and should include provisions for concerted action in relation to asbestos including a detailed system for the monitoring of all workers and persons that had been exposed to asbestos. It should also include an awareness-raising campaign targeting workers in sectors where asbestos products might be encountered, in particular in the construction, ship repair, ship-scraping and port sectors.

The Committee urged the Government to take all further action as required in order to ensure a complete and timely follow-up to the conclusions of the Mission, the Committee of Experts and this Committee to ensure full application of the Convention in the country. The Committee requested the Government to provide full and comprehensive information in a report to be submitted for examination at the forthcoming session of the Committee of Experts, including all relevant legislative provisions, if possible in one of the working languages of the ILO.

Convention No. 180: Seafarers' Hours of Work and the Manning of Ships, 1996

UNITED KINGDOM (ratification: 2001)

A Government representative, informing the Conference Committee that the previous week his country had become the third country to ratify the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), highlighted the importance of Convention No. 180 in terms of both decent work and safety implications. Important evidence suggested that fatigue at sea was a factor in many maritime accidents, particularly insofar as it affected those with watchkeeping responsibilities.

The United Kingdom's ratification of the Convention in 2001 had followed full consultation with the social partners. It was therefore disappointing to see so many points raised by the Committee of Experts, and in a rather critical tone. His Government took the implementation of the Convention very seriously, and its ratification was based on full implementation.

Convention No. 180 provided for its possible application to fishing. Regulating hours of work in the UK fishing industry needed to be considered in the context that the great majority of workers in the industry were self-employed, and that there were no representative organizations of fishers in the traditional sense. However, the UK fishing federations, as the recognized consultative bodies representing fishing vessel owners and others working in the industry, had been fully consulted about working time regulation in the industry, particularly with regard to the implementation of European Union working time rules, which reflected the fundamental provisions of Convention No. 180, providing for limits on hours of work or rest. The United Kingdom had opted for a system of ten hours of rest in any 24-hour period and 77 hours of rest in any seven-day period, the same as that applied to the merchant shipping sector. A working time regime applicable to those employed in the fishing industry was therefore already in place. The issue was also covered by the Work in Fishing Convention, 2007 (No. 188), on which consultations were currently being held with industry. Hours of work provisions would be discussed further in that context.

He confirmed that the United Kingdom considered sail training vessels to be covered by Convention No. 180, and therefore subject to the Merchant Shipping (Hours of Work) Regulations 2002. He acknowledged a limited area in which the Regulations did not apply, which related solely to volunteers and trainees with no emergency responsibilities. Such people typically spent no more than two or three weeks on board vessels; they sometimes paid for the experience and were not in any usual sense "seafarers" but were more akin to passengers. Full consultation had been held with the organizations of shipowners and seafarers in developing the Regulations, and this minor exemption was generally seen as a practical and commonsense application of Convention No. 180.

In response to the Committee of Experts enquiry as to how it was ensured that the admissible minimum of ten hours rest per day and 77 per week retained an exceptional character, he said that the Convention clearly allowed for such minima and did not refer to them as exceptional. Nevertheless, he recognized that the limits were minima and drew attention to the concept of duty of care and the requirement under health and safety legislation to ensure that work was organized so as not to compromise the health and safety of workers. The Maritime and Coastguard Agency had recently issued a range of guidance on health and safety to the industry, including leaflets on issues associated with fatigue at sea.

With regard to supporting measures to ensure proper understanding of the relevant provisions and facilitate the application in practice of the limits on hours of rest, the Regulations were supported by a Merchant Shipping Notice, available in hard copy and on the Maritime and Coastguard Agency's web site. The Agency had recently published a leaflet on hours of work for seafarers on UK ships and also provided a 24-hour helpline to deal with public enquiries.

The provision of the Convention on ensuring that safety drills were conducted with minimal disturbance of rest periods and did not induce fatigue, and that seafarers required to work during rest periods were given compensatory rest periods, was fully reflected in the Regulations. It was for companies and employers to determine precisely how these requirements were met. Comparison of work schedules and work records would indicate where any

planned rest period had been disturbed because of events such as lifeboat drills.

The provision in the Regulations allowing for exceptions to working time limits based on a collective agreement or workforce agreement had been questioned. The provision for workforce agreements was well recognized in UK legislation, and a workforce agreement was, in effect, an alternative which was relevant where the workforce did not belong to a trade union. In the United Kingdom there was no obligation for workers to belong to a union, and freedom of association was also deemed to include the right not to be unionized. This provision had also been the subject of consultation during the development of the Regulations, and he was not aware that any objections had been raised at that time.

The Committee of Experts had asked how it was ensured that shipowners had the basic responsibility to enable the master, in terms of resources, to implement the requirements of the Convention concerning hours of rest. Regulation 4 placed a responsibility on the company, on the seafarer's employer and on the master of a ship to ensure that a seafarer was provided with at least the minimum hours of rest. If sufficient resources were not provided, particularly in terms of staff, it could be assumed that it would not be possible to comply with this requirement, which would constitute an offence under the Regulations, with appropriate penalties. Other relevant legislation should also be taken into account, particularly the International Maritime Organization (IMO), International Safety Management Code under which shipowners were required to have systems in place providing for the safe operation of their ships, including ensuring provision of the necessary resources to meet the provisions on hours of rest contained in ILO Conventions.

Concerning enforcement, a full programme of inspection was in place for all UK-registered ships, in accordance with the Labour Inspection (Seafarers) Convention, 1996 (No. 178), and the social partners had been fully involved in developing procedures for implementing that Convention, on which detailed reports were prepared, also in consultation with the social partners. The most common deficiencies identified by inspections were in record-keeping. In some cases it was revealed that seafarers were not completing their records properly or that there was no on-board system for verifying records. Inspection of working hours schedules and records were also undertaken as part of port State control inspections of non-UK ships in UK ports.

Turning to the question of consultation with the social partners on the complaints procedure, he said that a merchant shipping notice contained details of the procedure, which covered working time and other issues related to living and working conditions. It had been drawn up in full and detailed consultation with the social partners.

He reaffirmed his Government's commitment to fulfilling its responsibilities under Convention No. 180, adding that the United Kingdom was working towards ratification of the consolidated Maritime Labour Convention, 2006, a highly significant instrument which would do much to enhance the living and working conditions of seafarers worldwide.

The Worker members said that Convention No. 180 was not only a significant instrument in ensuring decent work for seafarers, but also an essential measure to protect their safety and health. Furthermore, given the high number of fatigue-related maritime incidents, the Convention was essential to protect all seafarers and passengers, and the marine environment. The issue affected seafarers not only in the United Kingdom, but also in Europe and throughout the world, and was so significant that the planned ratification of the Maritime Labour Convention, 2006, although welcome, would not be sufficient. To say that all would be well with the transposition of the Maritime Labour Convention into United Kingdom law gave rise to a

false sense of security and was a gross misrepresentation of the situation. The duplicity of the Government in this respect was unacceptable. The hopes of workers were betrayed when countries ratified Conventions, then rendered them ineffective through national legislation, or failed to enforce the legislation implementing them. The Maritime and Coastguard Agency in the United Kingdom was starved of resources, which meant that effective enforcement was non-existent.

Many of the seafarers employed on UK ships were not nationals of the United Kingdom and were subject to all the associated difficulties faced by migrant workers. The UK's criminal legislation applied to all seafarers on UK ships wherever they were, but employment laws provided little protection to foreign seafarers once outside UK waters. The current selective legislation gave the impression that successive UK Governments had cared little for seafarers' lives. The fatality rate for seafarers was some 12 times higher than for land-based workers, and fatigue clearly played an important part in that.

The Worker members fully endorsed all the comments of the Committee of Experts. With regard to Article 1(2) and (3) of the Convention, they highlighted the high death rate of fishers in the United Kingdom. Excessive working hours had been shown to be a cause of marine accidents. While accepting that many in the fishing industry were referred to as self-employed and were outside the scope of the relevant European Union (EU) legislation, they nevertheless said that this should not excuse the Government from applying Convention No. 180 to commercial maritime fishing. The designation "self-employed" had not been accepted on merchant ships, although the idea had been floated. The United Kingdom had accepted that a representative of Nautilus UK, the union for marine professionals, could attend the Conference to represent fishers in the formulation of a Convention for the fishing industry, but had failed to enter into any constructive dialogue on working hours for all fishers, regardless of their employment status.

Turning to Article 2(d), they said that, even given the particular nature of sail training vessels, "trainees" and their supervisors should be subject to the provisions of Convention No. 180 or better. The relevant regulations should be amended to ensure that there was no possibility of any worker not being covered, however well-intentioned the current exceptions. If "trainees" were to be considered passengers, then the vessels in question should be reclassified accordingly. With regard to subparagraph (e), it was of particular importance that the term "shipowner" should be included in UK legislation in order to ensure that owners could be brought to account, as recognized in both marine insurance and the carriage of goods.

It was essential that Article 4 of the Convention was applied in national legislation so that seafarers enjoyed no fewer rights than other workers. The choice of the Government of the United Kingdom to adopt a system of ten hours of rest per day and 77 hours of rest per week, rather than the option of a 72-hour working week, demonstrated that the safety and welfare of seafarers was a secondary consideration. It was ironic that shipping was the only mode of transport for which such long working hours were permitted, given the number of lives that could be lost in the event of an accident.

With reference to Article 5(1), (2) and (5), they observed that the phrases "in any 24-hour period" and "in any seven-day period" were not being interpreted uniformly. The former should be interpreted as meaning that for every hour added, one was taken away, in order to avoid periods of work longer than 14 hours, which had been the original intention of the provision in the Convention. Moreover, although emergency drills were certainly necessary, firmer guidance was required to ensure that they were conducted in such a way as to minimize the

disturbance of rest periods and to guarantee the provision of compensatory rest. Responsibility in this regard should fall neither to companies nor to masters of ships.

Article 5(6) of the Convention only allowed for exceptions to the limits on hours of rest by means of collective agreements. The United Kingdom, which had the most anti-trade union legislation in Europe, had sought to undermine maritime trade unions by making an exception through a “workforce agreement”, and was therefore in breach of the Convention, as the agreement had been imposed on seafarers, who had been subject to intimidation, thereby also contravening Convention No. 98.

With regard to Article 13 of Convention No. 180, shipowners should not be able to escape all responsibility through a series of corporate veils that shifted responsibility onto those who were subject to the financial power of the shipowner.

The current inspection and enforcement regime for the Convention relied on seafarers making reports, thereby exposing themselves to retribution. Even well-known companies routinely breached the regulations on hours of rest, and false records added to the illusion of safe ship operation. The inaction of regulators encouraged substandard practices and sustained unfair competition. Inspections under Convention No. 178 were totally ineffective in policing Convention No. 180, which was a modest Convention providing for either 72 hours of work or 77 hours of rest per week, with the latter being equivalent to 91 hours of work per week. The United Kingdom had chosen the maximum number of working hours possible and had failed to enforce even that, with working weeks frequently in excess of 100 hours. The Government was relying on the future ratification of the Maritime Labour Convention, 2006, and on existing European Union instruments to evade its obligations under Convention No. 180. In seeking to address the intentional short-comings of UK legislation, implementation and enforcement, fishers and seafarers were seeking to protect not only their own safety and long-term health, but also the safety of all seafarers and passengers, and the marine environment.

The Employer members thanked the Government representative for the responses to the questions raised by the Committee of Experts. They noted that with the adoption of a global instrument dealing with all maritime labour matters, a number of the issues raised might be superseded by the ratification of the Maritime Labour Convention, 2006.

With regard to the first point raised by the Committee of Experts, which related to the application of the Convention to fishing vessels, the Employer members concurred with the explanation provided by the Government representative. The regime of working hours and rest periods applicable to fishing vessels and fishers was identical to that of merchant vessels. It should be noted that the recently adopted Convention No. 188 contained the same provisions on working hours and rest periods as Convention No. 180. In light of the absence of a specialized fishers’ union in the United Kingdom, the explanation provided by the Government representative concerning the consultation of fishing vessel owners had to be considered appropriate.

The Employer members noted, with regard to the second issue raised by the Committee of Experts concerning the exemption of non-seafarers on training vessels from the working time regime, that the exception was justified under Article 2(d) of the Convention concerning the definition of a seafarer. Holiday makers on a training sailing ship could be exempted by national laws or regulations from the term “seafarer”, in the meaning of any person defined as such by national laws or regulations or collective agreements engaged in any capacity on board a sea-going ship.

With reference to the third point raised by the Committee of Experts, relating to the minimum of ten hours of

rest per day and 77 hours a week, they recalled that this was not envisaged as an exception in the Convention. The limits had to be observed at all times. Member States could choose either to adopt a maximum number of hours of work, or a minimum duration of rest periods, with no other limitations.

In relation to drills for the safety of life at sea, the Employer members observed that the explanation provided by the Government representative did not indicate any infringement of the Convention. The master of the ship was responsible for observing the limits set out in the Convention, which were reflected in the national legislation.

With reference to exemptions to the minimum rest periods, it was the belief of the Employer members that there was no infringement where such exemptions were permitted through “workforce agreements” in cases where there were no collective agreements. They recalled that Article 5(6) of the Convention allowed member States to make exceptions through national laws or regulations in addition to, or as an alternative to, a procedure whereby the competent authority could approve collective agreements which provided for exemptions.

Finally, with regard to the other issues raised by the Committee of Experts, which related to the responsibility of the shipowner, inspection and complaints procedures, the Employer members indicated that the explanations provided by the Government representative were comprehensive and met the requirements of the Convention.

The Employer member of the United Kingdom said that the Confederation of British Industry and the United Kingdom Chamber of Shipping fully accepted the explanation provided by the Government representative and had nothing further to add.

The Worker member of the Netherlands said that the Committee of Experts had identified in its observation problems concerning the implementation of the Convention that were similar to those found in the Netherlands. It had noted serious gaps in the monitoring of the implementation of the laws and regulations on hours of work. Control of the practice of double bookkeeping was not sufficiently effective and a harmonized system of defining an adequate crew composition was lacking. In the Netherlands, problems also existed with the system of six hours on and six hours off for officers on watch duty. The system was based on the assumption that officers fulfilling this watch duty had no other duties. However, this was very often not the case, which resulted in excessive working hours, overtiredness and, in the end, even fatigue.

In the comment of the Committee of Experts concerning the application of the Convention in the Netherlands, the Netherlands Association of Merchant Navy Captains had stated that profit-making should not prevail over safety and health considerations in decisions concerning the number of officers employed on ships. She recalled that the United Kingdom hosted the International Maritime Organization (IMO). For this reason, many maritime unions and seafarers worldwide looked to the Government of the United Kingdom to set an example. It was therefore all the more important that the Government fully implemented the Convention through proper legislation and effective enforcement.

The Government representative of the United Kingdom thanked the Employer and Worker members for their comments and indicated that he had taken full note of the discussion. He reiterated that his Government took its obligations under Convention No. 180 very seriously and was committed to implementing its provisions in full, including the need to consult the social partners. He indicated that he had shared his intervention with the social partners to keep them fully informed of his country’s position with regard to the Convention.

The Worker members said that they had listened with interest to the discussion and that the difference of views

in relation to the Government and Employer members was not surprising. They maintained that the United Kingdom was selective in its implementation of the Convention, particularly in view of its selection of the option of 77 hours of rest a week. They added that the International Safety Management Code had now been in effect for ten years, and its application was only now beginning to become effective. Although the Government representative had indicated that Convention No. 178 on maritime inspection was applied effectively in the country, they pointed out that the Convention identified 13 matters for inspection, only one of which was related to hours of work. When it was recalled that an average inspection lasted around two hours, it was clear that there was little time for the inspection of hours of work. There was therefore a need for a much more effective inspection system.

The Worker members emphasized that 91 hours should not be a normal working week, and that the option of a maximum working week of 72 hours should be taken up. They added that the Maritime Labour Convention, although important, did not contain new provisions and did not therefore improve on the provisions of Convention No. 180. The workers concerned were in full agreement that working hours were too long and that there was a complete absence of social dialogue in the sector. Moreover, the acceptance by the Government of "workforce agreements" was merely a means of undermining collective agreements.

The Employer members noted that the evident disagreement on the applicability and meaning of Convention No. 180 appeared to be somewhat surprising to outside observers of maritime matters, particularly in view of the consensus-based approach pursued for the adoption of maritime labour Conventions. Moreover, it would appear that the origin of the disagreement was related to the choices made by the Government within the scope of the application of the Convention.

Conclusions

The Committee noted that the report of the Committee of Experts referred to comments from the Trades Union Congress (TUC) relating to the Government's first report on the application of the Convention. It also took note of the detailed information supplied by the Government representative on the following issues raised by the Experts: commercial maritime fishing; definition of "seafarer"; normal working hours' standard for seafarers; minimum hours of rest; musters, firefighting and lifeboat drills and call-outs; exceptions to the limits on hours of rest and workforce agreements; definition of "shipowner" and responsibilities; inspection and enforcement.

The Committee noted the information provided by the Government outlining laws and regulations in place to implement the Convention. It noted, in particular, the information on the application of the Convention in practice, and on inspections undertaken. It also noted the Employers' support for these measures, while at the same time taking into account the Workers' numerous reservations and doubts about the application of the Convention, including the provision for workforce agreements and inadequate enforcement.

The Committee regretted that the information on the highly technical points raised by the Committee of Experts was not provided earlier by the Government, so that it could have been assessed by that Committee. In view of the nature of the issues raised, the Committee urged the Government to provide full information on further measures taken to implement the Convention in its entirety, for examination of the Committee of Experts at its next session. It hoped that, in addition to measures taken in the framework of the Convention, the Government would take all necessary measures to ensure that seafarers' hours of work and rest were in line with the requirements of the Maritime Labour Convention, 2006, which it intended to ratify in the near future.

Convention No. 182: Worst Forms of Child Labour, 1999

MEXICO (ratification: 2000)

A Government representative stated that the worst forms of child labour were a serious affront to childhood and the whole of society. Convinced of the need to eradicate these forms of exploitation, which violated the dignity of childhood and its development, the Government had ratified Convention No. 182 in June 2000. This commitment had been reaffirmed in the National Development Plan 2007–12, formulated with the participation of various Government departments, the Office of the United Nations High Commissioner on Human Rights, academic experts and civil society representatives. The Plan gave priority to the promotion and application of international legal instruments including those relating to trafficking of persons, in particular children, as part of a strategy aimed at guaranteeing the rule of law and security.

Protection against the worst forms of child labour in his country was set out in the Constitution and was regulated by various laws, such as the Federal Labour Act, the Act for the protection of girls, boys and young persons and the Federal Act to Combat Organized Crime. On 27 November 2007, the Act to prevent and punish the trafficking of persons had been published and constituted an important step forward in implementing in domestic legislation the commitments made by his country at the international level. This Act defined the crime of the trafficking of persons and established sanctions which were commensurate to the gravity of the offence, as well as measures so that the victims of trafficking, especially children and young persons, could be protected and assisted in a concerted and appropriate manner. The Act provided for aggravating circumstances where the victim was a minor.

In the framework of the "Permanent Programme for the Collection of Confidential Information on Crimes", anonymous complaints could be filed which were then directly forwarded to the Office of the Attorney-General for analysis with a view to referring them for investigation to the competent services in the local or federal jurisdiction. Since the second half of 2007 and until the month of May 2008, 54 cases relating to the sexual exploitation, prostitution and pornography of minors had been referred to the crime prevention service of the Office of the Attorney-General. This service provided legal guidance, psychological support and social assistance to victims and their families either in person, by telephone, or by email, referring them to various centres for treatment and rehabilitation, according to their profile.

With regard to the crime of pornography involving minors under 18 years of age, there were four cases in which the full investigations had been completed, three that were being prosecuted and another five that were under investigation. With regard to the crime of procuring in relation to the prostitution of minors under 18 years of age, there were three cases in which the preliminary investigation had been completed and in which eight persons were being prosecuted, while two other cases were under investigation. In the context of the "Oasis" programme, three criminal cases were under judicial investigation or the submission of evidence in relation to the crime of the trafficking of minors.

With the objective of investigating and prosecuting the crimes provided for in the new Act on human trafficking, a Special Prosecutor's Office for Crimes of Violence against Women and Trafficking in Persons had been created on 31 January 2008. One of the strategic projects of this Office was to create a database of information on the number and nature of the crimes of prostitution, exploitation and sexual tourism involving persons under 18 years.

Moreover, the situation with regard to the study on trafficking of persons from a gender perspective had also been prepared in nine of the federated entities of the coun-

try as well as a “Model for the Protection of women, adolescents, girls and boys victims of trafficking” and a draft National Programme to Prevent, Repress and Punish Trafficking of Persons in the context of action for the prevention, protection and care of victims, with due regard to human dignity, human rights, the gender perspective and the higher interests of the child. Last year, the Parliaments of the states of Baja California, Guerrero and Chihuahua, had adopted reforms to their respective Criminal Codes in the area of sexual exploitation of children.

In 2007, in the framework of the technical cooperation project of the Government and the ILO’s International Programme for the Elimination of Child Labour (ILO–IPEC), activities had been carried out in the states of Baja California, Guerrero and Jalisco. In particular, meetings and conferences had taken place and awareness-raising campaigns had been launched to eradicate child labour and commercial child sexual exploitation, and to promote children’s rights.

A final report of the ILO Office in Mexico of 30 July 2007 had noted the progress made to combat this scourge through information and awareness raising to prevent and mitigate the commercial sexual exploitation of children, identify its causes, promote legislative reform in the federal and state Parliaments and formulate and apply a model of comprehensive measures for children and adolescents who were victims or in situations of risk. He called on the ILO to implement a new phase of the ILO–IPEC technical cooperation project and to provide support for a specific new programme on daily child agricultural workers. Neither programme had commenced as donors had not been found.

The Programme for the Prevention, Protection, Discouragement and Eradication of Urban Marginal Work was contributing to the increase in the rate of school enrolment and diminishing the drop-out rate. In 2007, assistance had been provided to 73,446 working children and 99,943 children at risk of engagement in child labour, and 6,067 education and training grants had been provided. In the first quarter of 2008, assistance had been provided to 14,199 working children and 18,902 children at risk. Because of the structural link between poverty, child labour and school drop-out rates, social programmes were being established, in particular, the social assistance programme “Opportunities” which helped children and young persons to stay and progress in school, substantially reducing the likelihood that such young persons would enter the labour market. In rural areas, the programme had contributed to a reduction of more than 9 per cent of the probability of girls between 15 and 17 years, becoming domestic workers. In 2007, financial assistance had been provided to 5 million families in extreme poverty. A total of 5.3 million education grants had been provided during the current school year for children in very poor households throughout the country, and over 1.6 million children under 5 years of age were being monitored for their nutrition.

The supervision of conditions of work of workers between 16 and 18 years of age at workplaces was envisaged in the Federal Labour Act, its regulations, and especially by the Official Mexican Standards for the protection of young persons from conditions that could involve such risks as long working hours, underground work, work under water or in open mines, industrial night work and the constant exposure to environmental contaminants. With a view to ensuring that own account workers under the age of 18, such as street children, did not perform hazardous work, 99 projects had been carried out and 1,740 education and food grants provided in 2007, covering a total of 35,514 street children, with the support of 72 municipal authorities and 75 civil society organizations.

The Secretary of Labour and Social Security was implementing the subprogramme “Labour Policy Addressing Child Labour”, in the framework of which three manuals on the topic had been developed and addressed

to employers, trade union organizations and labour inspectors. A module on child labour had been introduced, in the National Survey of Occupation and Employment for the last quarter of 2007, to obtain for the first time complete information on the characteristics of the children and young persons who carried out economic activities. This had taken place with the technical support of the ILO, taking into account the comments of UNICEF. The latter considered that the above was an important step forward in the area of the compilation of information for the dissemination of public policies and the demonstration of political will by national institutions in their efforts to guarantee the right of boys and girls not to be exploited for their labour.

He reiterated his Government’s commitment and political will to achieve progress in eradicating child labour.

The Worker members observed that this case was a perfect example of the extent and importance of Convention No. 182 on the worst forms of child labour. The case revealed, on the one hand, the scope and persistence of the different forms of child labour in the world and, on the other hand, the actions undertaken to fight and eliminate them.

In Mexico, child labour took on many forms, such as the sale of children for commercial sexual exploitation, which affected approximately 5,000 children in the federal district of Mexico, pornography, prostitution and sexual tourism, as well as begging. Street children working to ensure their subsistence, as well as that of their families, also represented a considerable number, some 140,000 in the city of Mexico alone. The majority of child workers in the country were found in the informal sector of urban agglomerations and in the agricultural sector as day labourers. The situation was overwhelming – approximately 1.7 million school-aged children did not receive any education due to poverty, which forced them to work. In the case of indigenous children, education was not provided in their mother tongue.

However, they commended the efforts of the Government to combat these worst forms of child labour through, among other measures, legislative reforms to criminalize the trafficking, prostitution and causing children under 18 years of age to engage in begging, as well as projects to amend the penal codes of a series of states. The progress achieved in the framework of the ILO–IPEC project to prevent and eliminate the sexual exploitation of children, particularly by withdrawing them from that environment and returning them to the school system, also deserved to be commended. Finally, it was appropriate to duly note the information communicated by the Government concerning the number of scholarships allocated in the framework of the “Opportunities” programme and the Programme to promote the rights of girls and boys, child day workers in the agricultural sector and the prevention of child labour (PROCEDER) programmes in the agricultural sector, as well as the Programme of prevention and aid for young persons living in the street, as well as the National System for the Integral Development of the Family (DIF).

Nevertheless, attention needed to be drawn to the persistence of the low school attendance rates, especially among indigenous and migrant children, and the high school drop-out rates in particular for rural children, indigenous children and children of migrant workers. While the action undertaken had certainly lowered the incidence of child labour, the magnitude of the phenomenon remained a matter of serious concern. The Government needed to redouble its efforts to combat the worst forms of child labour in the country.

The Employer members emphasized the importance of this Convention which concerned the lives of innocent children. The observation of the Committee of Experts gave the general impression that, although effect was given to some degree to the provisions of the Convention

through various statutory interventions, the Government had largely failed to provide in its report hard evidence of the actual compliance with, and enforcement of, these statutory provisions. It had thus not been possible to determine from the Government's report how successful, if at all, it had been in eradicating the forms of child labour prohibited by the Convention. They welcomed the details provided to the Conference Committee by the Government representative. They also fully supported the request of the Committee of Experts for information on the results achieved, as it was vital to determining whether Mexico was making real progress in eradicating child labour.

With regard to the requests made by the Committee of Experts in relation to the sale and trafficking of children, child prostitution and the use of children for begging (Article 3(a), (b) and (c) of the Convention), the Employer members applauded the very positive and real measures put in place by the Government to eradicate these forms of child labour, including the establishment of criminal offences for: trafficking persons under 18 years for sexual and economic exploitation; using, procuring or offering a child for prostitution, for the production of pornography or for pornographic performances; and using a child for illicit activities such as begging. However, they also fully supported the request for information on the effect that these statutory interventions had had in practice, particularly through statistics on the number and nature of infringements reported, the investigations undertaken, prosecutions, convictions and penal sanctions applied. Such information was vital to determine whether, in practice, the statutory interventions were effective in eradicating these forms of child labour. They called on the Government to make every effort to provide the ILO with the requested information as a matter of extreme urgency.

With regard to the request for information of the Office of Experts in relation to hazardous work by children aged between 14 and 16 years (Articles 3(d) and 4, paragraph 1), the Employer members reminded the Government that hazardous work was one of the worst forms of child labour and that the labour law in this regard should apply to all persons under 18 years. They called upon the Government to provide information to the Office on the following issues in respect of children aged between 16 and 18 doing hazardous work: the protections put into place, provisions regarding prior training and the consultations that had taken place with employers' and workers' organizations on these issues.

With regard to effective and time-bound measures to prevent the engagement of children in commercial sexual exploitation and the removal of children from the worst forms of child labour and their rehabilitation and social integration (Article 7, paragraph 2(a) and (b)), they commended the Government's involvement and commitment to the ILO-IPEC project entitled "Support for the Prevention and Elimination of the Commercial Sexual Exploitation of Children and the Protection of CSEC Victims in Mexico" (CSEC) and urged the Government to continue its support for and involvement in this project, as the commercial sexual exploitation of children must be eradicated completely. Although they were heartened by the number of children "rescued" through this programme, this number was probably very small when compared to the actual extent of the problem. Much work still needed to be done to address this problem properly. Further information should be provided to the Office to determine the real impact of the project.

With regard to the importance of education in eliminating child labour in general, the Employer members noted the indication by the International Trade Union Confederation (ITUC) that 1.7 million children were unable to receive education as poverty rendered it imperative for them to work. They also noted the efforts made by the Government, particularly in the implementation of the "Opportunities" programme developed by the Ministry of

Social Development, which provided children living in poverty with full and free access to education and to health services. They also noted that over five million children had benefited from the "Opportunities" programme in 2005 and 2006. They commended the Government for its real efforts to provide all children with the chance to receive an education and were heartened by the progress made in this regard. They also supported the Committee of Experts in its strong encouragement of the Government to redouble its efforts to further increase the school enrolment rate and further decrease the drop-out rate, particularly for rural, indigenous and migrant children. They finally called upon the Government to provide information on the results achieved.

With regard to time-bound measures to identify and reach out to children at special risk and take account of the special situation of girls (Article 7, paragraph 2(d) and (e)), the Employer members noted the information provided by the Government on awareness-raising activities on domestic work by girls, including an information leaflet on domestic work distributed in education institutions. However, although awareness-raising was important, it could not replace measures to protect children against working conditions that were likely to harm their health, safety or development. Young girls engaged in domestic work were often the victims of exploitation and it was difficult to supervise their conditions of employment due to the clandestine nature of their work. Thus, although awareness-raising campaigns were very important and should be continued and even expanded, the Employer members supported the request by the Committee of Experts for the Government to redouble its efforts and to take the necessary time-bound measures to protect young girls engaged in domestic work and provide further information in this regard.

With regard to children in agricultural work and marginal urban activities, they commended the Government on the very tangible and positive steps undertaken through the Programme to prevent and eliminate child labour in the marginal urban sector and PROCEDER. They also endorsed the Committee of Experts in its encouragement to the Government to continue its efforts to protect these vulnerable children.

With regard to street children, they applauded the Government's efforts, in collaboration with the ILO, to estimate child labour in a credible and scientific manner and trusted that they would go a long way to determining the scope of the child labour problem in Mexico. The Government should provide the Office with a copy of the national study and information, disaggregated by sex, as this would provide invaluable information on the extent of the employment of girls as domestic workers.

They concluded by noting that this case represented a huge challenge and they urged the Government to continue and escalate its efforts in eradicating the abuse, in whatever manner, of children.

The Worker member of Mexico indicated that the Convention on the worst forms of child labour concerned society in its entirety. The solution to this serious problem required the participation of all parties – trade union organizations, employers, parents' associations, the media, etc. – in concrete action for which the responsibility of coordination clearly lay with the Government.

Since 1999, when the Government of Mexico had ratified the Convention, the Confederation of Mexican Workers (CTM) had been working closely not only with the Ministry of Labour, but also with the institutions responsible for its implementation, such as the National Office of the Attorney-General and the corresponding State Offices, the Secretariat of Education, Social Development and Health, and the National System for the Integral Development of the Family, as well as UNICEF and the ILO. The CTM participated in the mechanism for national coordination created by the Government in 2001 for

the prevention, protection and elimination of the commercial sexual exploitation of children. He announced that in June promotional spots would be diffused on the radio and television for one week so as to coincide with the World Day against Child Labour with the support of the trade unions of media workers. In 2005, the CTM had also called attention to this subject through a campaign entitled "Children are the spring of Mexico", which concerned the need for access to high-quality educational, sporting and recreational activities for children. The activities carried out jointly with fellow workers from the hotels and restaurants industry had led to the identification of commercial sexual exploitation of children, and the CTM had joined prevention programmes through the Secretariat of Public Security of the Federal Government. Referring to the problem of drug trafficking, he explained that in its national programme against addiction, the CTM had placed particular emphasis on prevention by focusing on capacity building for working mothers so that they could observe risky behaviour and attitudes by their children. In June 2008, the CTM would launch the campaign "Children First of All", which, in addition to contributing to the fight against child labour and exploitation, emphasized the importance of paying attention to children and providing access to high-quality education.

Among the matters still pending, he referred to the signing mentioned the signing of a Memorandum of Understanding between the Government and ILO-IPEC to normalize the relationship between the country's labour authorities and the ILO, and the signing of a decree which would give rise to a National Committee for the Eradication of Child Labour. He also referred to the national fact-finding survey that was being prepared on the child labour situation in Mexico and the formulation of a national programme for the effective eradication of child labour, focusing on access to education, health-care and recreational activities. Moreover, the ratification of Convention No. 138 should be promoted along with the implementation of Recommendation No. 146 on the minimum age for admission to work.

He reaffirmed the commitment of the CTM to combat child labour in all its forms and its intention to continue to embark upon action in favour of working children, by developing initiatives for the adoption of comprehensive measures for Mexican children.

The Worker member of the United States said that he would focus on a particular aspect of the question under discussion. The issues which related to this Convention in Mexico's export manufacturing sector had been highlighted by recent research by, inter alia, Mexican expert Mercedes Gema López Limón, who had found that children between the ages of 13 and 15 were working with hazardous material in Mexico's *maquiladoras*.

Particularly troubling questions arose in relation to the Convention, in the special risk area of Mexican agriculture and especially export agriculture. In 2000, there had been national and international press exposés revealing 11 and 12 year old children working in the Guanajuato family ranch of the then-President-Elect Vicente Fox, earning US\$7 a day by harvesting vegetables for export to the United States. A 2006 Mexican Government report funded by UNICEF had concluded that of 3.1 million agricultural labourers in Mexico, at least 400,000, and possibly as many as 700,000, were children between the ages of six and 14.

On 6 January 2007, 9-year-old David Salgado Aranda from Guerrero had been fatally run over by a tractor while harvesting tomatoes on a Sinaloa farm owned by agricultural conglomerate Agrícola Paredes, a major exporter for the North American market. The employer had denied its liability, asserting that the death had occurred on a public road, even though the claim was totally contradicted by eyewitnesses. It had tried to settle by offering the obscenely low sum of US\$6,000 to the family.

The David Salgado case was hardly unique. Excelsior's investigative reporting revealed that at least 30 child labourers between the ages of 6 and 14 had died in rural work-related accidents in Sinaloa in 2006 and 2007 and last December, in Puebla, nine child coffee harvesters had been killed when the company truck had capsized. A 2007 in-depth study conducted by health and safety researchers Gamlin, Diaz Remo and Hesketh found widespread exposure of child labourers to toxic pesticides in the Mexican tobacco industry.

Nayeli Ramírez, the Director of *Ririki* Intervención Social, a renowned Mexican children's rights organization, had concluded that the North American Free Trade Agreement (or NAFTA) had only aggravated the child labour crisis, since the trade pact had encouraged the expansion of gigantic agricultural production and exporting operations in Mexico's northern and central States. Smaller-scale producers and primarily indigenous family farmers from Southern Mexico were devastated by this development and had no alternative but to migrate northward at each harvest season to work the big corporate fields. These displaced families had to put their children to work in order to survive, while most of those operations in the north did not provide any day care or schooling.

The Secretary of State for Labour had stated to the press that enforcement of child labour laws was very difficult due to certain jurisdictional issues between federal and state officials. The Labour Secretariat had a grand total of 318 inspectors nationwide, and farms numbered in the thousands. The Labour Secretariat had also informed the press last month that it could not report on how many of its child labour inspections involved farms, nor on the precise number of violations.

If there was to be a really serious discussion on the future of NAFTA, and of the recent Mérida security initiatives, the critical points raised in the present case should also be taken into consideration. This Committee must maintain a vigilant review of this case in the future sessions. It owed no less to Mexican children and to their right to a decent life.

The Government member of Peru, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), noted that the Committee of Experts had included Mexico among the cases of progress by expressing its satisfaction of some of the measures adopted and taking note with interest of other measures adopted by the Government of Mexico. He said that GRULAC considered that technical cooperation between the ILO and Mexico was a suitable instrument to achieve further progress along the lines indicated by the Committee of Experts in its conclusions.

The Government member of Colombia stated that his Government acknowledged the commitment of the Government of Mexico to ensuring systematic and informed compliance with the provisions of the Convention. The Government of Colombia had made use of programmes and projects developed by Mexico to eliminate child labour in all its forms as best practices guides for the elaboration of its own national strategy against child labour. He therefore, reiterated his country's support for the Government of Mexico in its determination to improve the well-being of families and children in the framework of the Convention, as well as his full conviction that the Mexican Government would redouble its efforts to give effect to the legislative and public policy provisions that would guarantee both the present and the future of Mexican children.

The Employer member of Mexico said that the Convention offered a very wide range of protection and obliged ratifying countries to introduce legislation, action programmes and appropriate methods to ensure effective protection. It was for this reason that Mexico had ratified it one year after its adoption. He also noted with satisfac-

tion that the country had complied with its obligations to provide reports and the information requested by the Committee of Experts within the time limits and in the form and quality required.

A simple reading of the report of the Committee of Experts showed that legislative reforms were being introduced to meet the requirements of the Convention. The Committee of Experts had noted with satisfaction the reform of the Federal Penal Code and of the Penal Procedures Code, as well as of the Federal Act on organized crime in the field of sexual exploitation of children. He also noted that progress had been made in the framework of the application of the ILO–IPEC project entitled “Contribution to the prevention and elimination of commercial sexual exploitation of children and protection of child victims of these forms of exploitation”. Moreover, the Committee of Experts appreciated the methods adopted with respect to the protection of minors under 18 years of age, and that it viewed the development of strategies to combat the problem as an affirmation of its political will. It had also made observations requesting information that the Government was yet to send in order to ensure compliance with this obligation.

He agreed with the statement that education contributed to preventing the use of children in the worst forms of child labour and called on the Government to redouble its efforts to raise school registration rates, improve second-chance education and the numbers of those staying on at school. The Committee had also taken due note of the 5,290,000 child beneficiaries of the “Opportunities” programme between 2005 and 2006, which applied to the poorest, and of the grants to 1.24 million girls and 1.8 million boys, which demonstrated clear progress.

There was still clearly much to be done on this issue, which unfortunately was a global problem, due mainly to poverty. In conclusion, he encouraged the Government to redouble its efforts to comply with its commitments with respect to this complex problem.

The Government representative of Mexico recalled the achievements of his country in eliminating the worst forms of child labour, as well as its commitment to continue work and redouble its efforts on the issue. In order to achieve this, his country once again declared its complete openness to international human rights scrutiny.

The current priority, after having ratified the Convention and integrated its provisions into the legislation, was application. Compliance with this obligation was a firm commitment on behalf of the Government, a commitment that was congruent with the ILO aim of advancing towards elimination of child labour. Special attention was being given to the situation of street children, to ensure that they did not undertake dangerous work, through development of funding of several projects and a large number of education and food grants. He also referred to the issue of vulnerable groups. All the actions mentioned in his intervention were proof of the Government’s political will to continue its efforts to guarantee compliance with the right to the non-exploitation of boys and girls for their labour.

Another Government representative of Mexico responded to the Worker and Employer members by supplying precise figures which demonstrated the progress made in recent years. After announcing that copies of the child labour module would be circulated to members of the Committee, she stated her agreement with the Worker member of the United States regarding the relevance of coordination between the federal Government and State Governments.

The Worker members pointed out that it would have been useful to have the data provided by the Government beforehand. While the reduction of child labour had to be commended, the Government needed to redouble its efforts. The Government needed to: (i) ensure that provisions relating to trafficking of children for economic and

sexual exploitation were applied; (ii) target commercial sexual exploitation, including pornography and paedophilia; and (iii) specify the way in which it planned to extend the “Opportunities” programme to the 1.7 million children outside the school system. They said that it was important to know the impact of this programme on the reduction of child labour and for all countries which had ratified the Convention to provide cooperation and assistance to Mexico.

The Employer members noted that the discussion highlighted once again the need for the social partners to work together internationally and nationally in eradicating all the worst forms of child labour. The good work being done by the Government in cooperation with the ILO should be recognized, in particular with regard to the transparency, urgency and commitment with which the Government was tackling this problem. At the same time, one needed to recognize – and the Government had acknowledged this – that much work still needed to be done. The Employer members associated themselves with the suggestion made by the Government member of Colombia to highlight the programmes under way in Mexico as a case of good practice. It would be helpful if the Mexican experience could be documented so as to use it as an example for other countries. In conclusion, it was clear that the Government understood the extent of the challenge and was taking steps to address it.

Conclusions

The Committee took note of the oral information provided by the Government representative and the discussion that followed. The Committee noted that the report of the Committee of Experts referred to comments from the International Trade Union Confederation relating to the sale and trafficking of children within the country and abroad for prostitution, the engagement of children in commercial sexual exploitation, the lack of access to education for a large number of children, particularly children of rural, indigenous and migrant workers, and the engagement of children in hazardous work in the agricultural sector, in marginal urban activities and on the streets.

The Committee noted the detailed information provided by the Government outlining laws and policies put in place to prohibit and combat the commercial sexual exploitation of children and the trafficking of minors for this purpose, as well as the action programmes that were being undertaken with the full participation of the social partners and in collaboration with ILO–IPEC to remove children from such situations. The Committee also noted that the Government had expressed its commitment and willingness to continue its efforts to eradicate such situations with the technical assistance and cooperation of the ILO.

The Committee noted that, although various legal provisions prohibited the commercial sexual exploitation of children and the trafficking of children for this purpose, it remained an issue of concern in practice. The Committee accordingly called on the Government to redouble its efforts and take, without delay, the necessary measures to eliminate the commercial sexual exploitation of children under 18 as well as the trafficking of children for this purpose. In this regard, the Committee urged the Government to take the necessary measures to ensure that regular unannounced visits were carried out by the labour inspectorate and that the perpetrators were prosecuted and that sufficiently effective and dissuasive penalties were imposed. The Committee requested the Government to provide detailed information in its report when it was next due to the Committee of Experts on measures taken to implement the new legislation, including the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied. The Committee also requested the Government to supply detailed information on effective and time-bound measures taken to provide for the rehabilitation and social integration

of former child victims of trafficking and commercial sexual exploitation, in conformity with Article 7(2) of the Convention. These measures should include the repatriation, family reunification and support for former child victims.

With regard to education, the Committee noted the detailed information provided by the Government on measures taken to implement the “Opportunities” programme developed by the Ministry of Social Development to provide children and young persons living in poverty with full and free access to education and health services. While welcoming these measures, the Committee noted that low school enrolment and high drop-out rates continued to prevail for a large number of children. Underlining that education contributed to preventing the worst forms of child labour, the Committee strongly encouraged the Government to continue its efforts, in particular within the framework of the “Opportunities” programme, to provide free access to basic education for all children, particularly those living in rural areas as well as for children of indigenous and migrant workers.

The Committee further noted that a number of measures were being taken by the Government, particularly in the context of the PROCEDER and DIF programmes, as well as the Programme of Prevention and Assistance to girls, boys and young persons living on the streets, to address the situa-

tion of children carrying out hazardous work in the agricultural sector and of street children. The Committee noted that, pursuant to the implementation of these programmes, many children in the agricultural sector and marginal urban activities had received educational or training grants. Furthermore, the number of street children had fallen in recent years. While welcoming these measures, the Committee noted that the number of children undertaking hazardous work in these sectors of activity remained high. The Committee stressed that the engagement of children in hazardous work in the agricultural sector, in marginal urban activities as well as on the streets constituted one of the worst forms of child labour and that, by virtue of Article 1 of the Convention, the Government was required to take immediate measures to prohibit and eliminate the worst forms of child labour, as a matter of urgency. It therefore invited the Government to continue to take effective and time-bound measures to remove children undertaking hazardous work in the agricultural sector, marginal urban activities and on the streets, and to provide for their rehabilitation and social integration. It requested the Government to provide detailed information, in its next report when it was due, on the results achieved in this regard, and noted the Government’s acceptance of ILO technical assistance.

Appendix I. Table of reports received on ratified Conventions

(articles 22 and 35 of the Constitution)

Reports received as of 13 June 2008

The table published in the Report of the Committee of Experts, page 717, should be brought up to date in the following manner:

Note: First reports are indicated in parentheses.

Paragraph numbers indicate a modification in the lists of countries mentioned in Part One (General Report) of the Report of the Committee of Experts.

Angola 13 reports requested

- 12 reports received: Conventions Nos. 12, 17, 18, 19, 27, 29, 87, 98, 100, 105, 111, 138
- 1 report not received: Convention No. 182

Antigua and Barbuda 22 reports requested

- 5 reports received: Conventions Nos. 14, 17, 87, 98, 138
- 17 reports not received: Conventions Nos. 12, 19, 94, (100), 111, (122), (131), (135), (142), (144), (150), (151), (154), (155), (158), (161), (182)

Armenia 22 reports requested (Paragraph 31)

- 18 reports received: Conventions Nos. (17), (18), (29), (81), (94), (95), (98), (100), (105), (111), 122, (131), (135), (144), (151), (154), (174), (176)
- 4 reports not received: Conventions Nos. (14), (150), (160), (173)

Bahamas 17 reports requested

- 16 reports received: Conventions Nos. 17, 19, 22, 26, 29, 42, 81, 87, 97, 98, 100, 105, 111, 138, 144, 182
- 1 report not received: Convention No. 12

Belize 34 reports requested

- 24 reports received: Conventions Nos. 11, 12, 19, (23), 26, 29, 42, (55), 81, 87, 88, (92), 94, 95, 99, 105, (133), (134), 138, 141, 144, (147), 154, (183)
- 10 reports not received: Conventions Nos. 97, 98, 100, 111, 115, 150, 151, 155, 156, 182

Brazil 15 reports requested

- All reports received: Conventions Nos. 12, 19, 42, 97, 98, 100, 111, 115, 118, 122, 137, 144, 152, 160, 168

Cambodia 12 reports requested

- 3 reports received: Conventions Nos. 87, 98, 138
- 9 reports not received: Conventions Nos. 4, 6, 13, 29, 100, 105, 111, 122, 150

Chad 7 reports requested

- 5 reports received: Conventions Nos. 87, 98, 100, 111, 182
- 2 reports not received: Conventions Nos. (138), 144

China - Hong Kong Special Administrative Region 10 reports requested

- All reports received: Conventions Nos. 12, 17, 19, 32, 42, 87, 97, 98, 122, 144

Congo (Paragraph 25)	18 reports requested
<ul style="list-style-type: none"> · 17 reports received: Conventions Nos. 6, 11, 13, 26, 29, 81, 87, 95, 98, 100, 105, 111, 119, 138, 144, 152, 182 · 1 report not received: Convention No. 149 	
Cyprus	16 reports requested
<ul style="list-style-type: none"> · 15 reports received: Conventions Nos. 87, 88, 97, 98, 100, 102, 105, 111, 122, 138, 143, 144, 152, 182, (183) · 1 report not received: Convention No. 114 	
Denmark (Paragraph 35)	10 reports requested
<ul style="list-style-type: none"> · 9 reports received: Conventions Nos. 81, 87, 94, 98, 100, 111, 122, 144, 152 · 1 report not received: Convention No. 27 	
Djibouti (Paragraph 35)	42 reports requested
<ul style="list-style-type: none"> · 37 reports received: Conventions Nos. 6, 9, 11, 12, 13, 14, 16, 17, 18, 19, 24, 26, 29, 37, 44, 45, 52, 77, 78, 81, 87, 88, 89, 94, 95, 98, 99, 100, 105, (111), 115, 120, 122, 125, 126, (144), (182) · 5 reports not received: Conventions Nos. 38, 96, 101, 124, (138) 	
Equatorial Guinea (Paragraph 25)	10 reports requested
<ul style="list-style-type: none"> · 1 report received: Convention No. 111 · 9 reports not received: Conventions Nos. 29, (68), 87, (92), 98, 100, 105, 138, 182 	
Estonia	19 reports requested
<ul style="list-style-type: none"> · 18 reports received: Conventions Nos. 5, 6, 10, 11, 12, 19, 27, 29, (81), 87, 98, 100, 105, (111), 122, (129), (147), 182 · 1 report not received: Convention No. 144 	
Fiji	9 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 12, 19, 87, 98, 100, 111, 144, (159), 169 	
France (Paragraph 35)	26 reports requested
<ul style="list-style-type: none"> · 23 reports received: Conventions Nos. 81, 87, 88, 94, 96, 97, 98, 100, 102, 111, 113, 114, 125, 126, 144, 152, 156, 158, (163), (164), (166), (178), (179) · 3 reports not received: Conventions Nos. 27, 122, 137 	
France - French Guiana (Paragraph 35)	29 reports requested
<ul style="list-style-type: none"> · 22 reports received: Conventions Nos. 5, 6, 12, 17, 19, 24, 29, 35, 36, 37, 38, 42, 81, 95, 105, 112, 113, 114, 124, 125, 126, 144 · 7 reports not received: Conventions Nos. 27, 32, 87, 98, 100, 111, 123 	
France - Guadeloupe (Paragraph 35)	18 reports requested
<ul style="list-style-type: none"> · 16 reports received: Conventions Nos. 12, 17, 19, 24, 42, 87, 98, 100, 111, 112, 113, 114, 115, 125, 126, 144 · 2 reports not received: Conventions Nos. 27, 32 	

France - Martinique (Paragraph 35)	33 reports requested
· 29 reports received: Conventions Nos. 5, 6, 10, 12, 17, 19, 24, 35, 36, 37, 38, 42, 81, 87, 94, 95, 100, 105, 111, 112, 113, 114, 123, 124, 125, 126, 129, 131, 144	
· 4 reports not received: Conventions Nos. 27, 29, 32, 98	
France - Réunion	21 reports requested
· 6 reports received: Conventions Nos. 112, 113, 114, 125, 126, 144	
· 15 reports not received: Conventions Nos. 12, 17, 19, 24, 27, 32, 35, 36, 37, 38, 42, 87, 98, 100, 111	
France - St Pierre and Miquelon (Paragraph 35)	13 reports requested
· All reports received: Conventions Nos. 12, 17, 19, 24, 42, 87, 98, 100, 111, 122, 125, 126, 144	
Gambia	8 reports requested
· 1 report received: Convention No. (29)	
· 7 reports not received: Conventions Nos. 87, 98, 100, (105), 111, (138), (182)	
Hungary	13 reports requested
· All reports received: Conventions Nos. 12, 17, 19, 24, 27, 42, 87, 98, 100, 111, 122, 144, (147)	
Iraq (Paragraphs 25 and 35)	55 reports requested
· 14 reports received: Conventions Nos. 13, 22, 23, 42, 94, 95, 98, 100, 108, 115, 120, 136, 147, 167	
· 41 reports not received: Conventions Nos. 1, 8, 11, 14, 16, 17, 19, 27, 29, 30, 77, 78, 81, 88, 89, 92, 105, 106, 107, 111, 118, 119, 122, 131, 132, 135, 137, 138, 139, 140, 142, 144, 145, 146, 148, 149, 150, 152, 153, (172), (182)	
Kiribati (Paragraphs 25 and 35)	4 reports requested
· 2 reports received: Conventions Nos. 87, 98	
· 2 reports not received: Conventions Nos. 29, 105	
Liberia (Paragraph 25)	21 reports requested
· 3 reports received: Conventions Nos. 29, 87, 98	
· 18 reports not received: Conventions Nos. 22, 23, 53, 55, 58, (81), 92, 105, 108, 111, 112, 113, 114, (133), (144), 147, (150), (182)	
Malawi (Paragraph 35)	18 reports requested
· 14 reports received: Conventions Nos. 11, 12, 19, 29, 87, 97, 98, 100, 105, 111, 138, 144, 158, 182	
· 4 reports not received: Conventions Nos. 26, 81, 99, 129	
Malaysia (Paragraph 35)	6 reports requested
· All reports received: Conventions Nos. 29, 81, 95, 123, 138, 182	
Malaysia - Sabah	2 reports requested
· All reports received: Conventions Nos. 94, 97	
Malaysia - Sarawak	2 reports requested
· All reports received: Conventions Nos. 19, 94	

Malta**24 reports requested**

- All reports received: Conventions Nos. 11, 12, 19, 22, 29, 32, 42, 53, 77, 78, 81, 87, 95, 98, 100, 105, 111, 124, 129, 131, 138, 141, 180, 182

Mongolia**9 reports requested**

- 1 report received: Convention No. (29)
- 8 reports not received: Conventions Nos. 98, 100, (105), 111, 122, 123, 138, 182

Netherlands - Netherlands Antilles**15 reports requested**

- 14 reports received: Conventions Nos. 10, 11, 12, 17, 25, 29, 33, 42, 90, 94, 95, 105, 118, 122
- 1 report not received: Convention No. 81

Nigeria**16 reports requested**

- 6 reports received: Conventions Nos. 26, 29, 81, 95, 105, 111
- 10 reports not received: Conventions Nos. 8, 32, 94, 97, 123, (137), 138, (178), (179), 182

Pakistan**10 reports requested**

- 8 reports received: Conventions Nos. 29, 32, 59, 81, 90, 105, 118, 182
- 2 reports not received: Conventions Nos. 11, 27

Panama**17 reports requested**

- All reports received: Conventions Nos. 26, 27, 29, 32, 77, 78, 81, 87, 94, 95, 100, 105, 111, 122, 124, 138, 182

Papua New Guinea**17 reports requested***(Paragraph 35)*

- All reports received: Conventions Nos. 11, 12, 19, 26, 27, 29, 42, 87, 98, 99, 100, 105, 111, 122, 138, 158, 182

Peru**17 reports requested***(Paragraph 35)*

- 16 reports received: Conventions Nos. 26, 27, 29, 44, 59, 71, 77, 78, 79, 81, 90, 99, 102, 105, 138, 152
- 1 report not received: Convention No. 182

San Marino**21 reports requested***(Paragraph 35)*

- 18 reports received: Conventions Nos. 29, 87, 98, 100, 105, 111, 119, 138, 142, 144, 148, 150, 151, 154, 156, 159, 160, 161
- 3 reports not received: Conventions Nos. 88, 143, 182

Senegal**14 reports requested***(Paragraph 35)*

- 10 reports received: Conventions Nos. 6, 10, 13, 26, 95, 99, 102, 120, 121, 182
- 4 reports not received: Conventions Nos. 29, 81, 105, 138

Seychelles**15 reports requested**

- 1 report received: Convention No. (155)
- 14 reports not received: Conventions Nos. 22, 26, 29, (73), (81), 99, 105, 138, (144), (147), (152), (161), (180), 182

Slovakia**18 reports requested**

- All reports received: Conventions Nos. 26, 27, 29, 34, 77, 78, 88, 90, 95, 99, 105, 123, 124, 138, 144, 156, 173, 182

Slovenia

13 reports requested

(Paragraph 35)

- 12 reports received: Conventions Nos. 27, 29, 32, 81, 90, 97, 105, 129, 131, 138, 143, 173
- 1 report not received: Convention No. 182

Sudan

9 reports requested

- 1 report received: Convention No. 29
- 8 reports not received: Conventions Nos. 19, 26, 81, 95, 105, 122, 138, 182

United Republic of Tanzania

17 reports requested

- 16 reports received: Conventions Nos. 11, 12, 17, 19, 29, 59, 94, 95, 98, 100, 111, 131, 137, 138, 152, 182
- 1 report not received: Convention No. 105

Uganda

24 reports requested

- 4 reports received: Conventions Nos. 17, (138), 162, 182
- 20 reports not received: Conventions Nos. 11, 12, 19, 26, 29, 45, 81, (87), 94, 95, 98, (100), 105, (111), 122, 123, 124, 143, 144, 158

United Kingdom - Bermuda

5 reports requested

- All reports received: Conventions Nos. 10, 29, 59, 94, 105

United Kingdom - Gibraltar

6 reports requested

- 5 reports received: Conventions Nos. 29, 59, 81, 87, 100
- 1 report not received: Convention No. 105

Uzbekistan

6 reports requested

(Paragraphs 25 and 35)

- All reports received: Conventions Nos. 29, 98, 100, 105, 111, 122

Grand Total

A total of 2,477 reports (article 22) were requested,
of which 1,812 reports (73.15 per cent) were received.

A total of 304 reports (article 35) were requested,
of which 190 reports (62.50 per cent) were received.

Appendix II. Statistical table of reports received on ratified Conventions as of 13 June 2008

(article 22 of the Constitution)

Conference year	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee of Experts		Reports received in time for the session of the Conference	
1932	447	-		406	90.8%	423	94.6%
1933	522	-		435	83.3%	453	86.7%
1934	601	-		508	84.5%	544	90.5%
1935	630	-		584	92.7%	620	98.4%
1936	662	-		577	87.2%	604	91.2%
1937	702	-		580	82.6%	634	90.3%
1938	748	-		616	82.4%	635	84.9%
1939	766	-		588	76.8%	-	
1944	583	-		251	43.1%	314	53.9%
1945	725	-		351	48.4%	523	72.2%
1946	731	-		370	50.6%	578	79.1%
1947	763	-		581	76.1%	666	87.3%
1948	799	-		521	65.2%	648	81.1%
1949	806	134	16.6%	666	82.6%	695	86.2%
1950	831	253	30.4%	597	71.8%	666	80.1%
1951	907	288	31.7%	507	77.7%	761	83.9%
1952	981	268	27.3%	743	75.7%	826	84.2%
1953	1026	212	20.6%	840	75.7%	917	89.3%
1954	1175	268	22.8%	1077	91.7%	1119	95.2%
1955	1234	283	22.9%	1063	86.1%	1170	94.8%
1956	1333	332	24.9%	1234	92.5%	1283	96.2%
1957	1418	210	14.7%	1295	91.3%	1349	95.1%
1958	1558	340	21.8%	1484	95.2%	1509	96.8%
<p style="text-align: center;">As a result of a decision by the Governing Body, detailed reports were requested as from 1959 until 1976 only on certain Conventions.</p>							
1959	995	200	20.4%	864	86.8%	902	90.6%
1960	1100	256	23.2%	838	76.1%	963	87.4%
1961	1362	243	18.1%	1090	80.0%	1142	83.8%
1962	1309	200	15.5%	1059	80.9%	1121	85.6%
1963	1624	280	17.2%	1314	80.9%	1430	88.0%
1964	1495	213	14.2%	1268	84.8%	1356	90.7%
1965	1700	282	16.6%	1444	84.9%	1527	89.8%
1966	1562	245	16.3%	1330	85.1%	1395	89.3%
1967	1883	323	17.4%	1551	84.5%	1643	89.6%
1968	1647	281	17.1%	1409	85.5%	1470	89.1%
1969	1821	249	13.4%	1501	82.4%	1601	87.9%
1970	1894	360	18.9%	1463	77.0%	1549	81.6%
1971	1992	237	11.8%	1504	75.5%	1707	85.6%
1972	2025	297	14.6%	1572	77.6%	1753	86.5%
1973	2048	300	14.6%	1521	74.3%	1691	82.5%
1974	2189	370	16.5%	1854	84.6%	1958	89.4%
1975	2034	301	14.8%	1663	81.7%	1764	86.7%
1976	2200	292	13.2%	1831	83.0%	1914	87.0%

Conference year	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee of Experts		Reports received in time for the session of the Conference	
As a result of a decision by the Governing Body (November 1976), detailed reports were requested as from 1977 until 1994, according to certain criteria, at yearly, two-yearly or four-yearly intervals.							
1977	1529	215	14.0%	1120	73.2%	1328	87.0%
1978	1701	251	14.7%	1289	75.7%	1391	81.7%
1979	1593	234	14.7%	1270	79.8%	1376	86.4%
1980	1581	168	10.6%	1302	82.2%	1437	90.8%
1981	1543	127	8.1%	1210	78.4%	1340	86.7%
1982	1695	332	19.4%	1382	81.4%	1493	88.0%
1983	1737	236	13.5%	1388	79.9%	1558	89.6%
1984	1669	189	11.3%	1286	77.0%	1412	84.6%
1985	1666	189	11.3%	1312	78.7%	1471	88.2%
1986	1752	207	11.8%	1388	79.2%	1529	87.3%
1987	1793	171	9.5%	1408	78.4%	1542	86.0%
1988	1636	149	9.0%	1230	75.9%	1384	84.4%
1989	1719	196	11.4%	1256	73.0%	1409	81.9%
1990	1958	192	9.8%	1409	71.9%	1639	83.7%
1991	2010	271	13.4%	1411	69.9%	1544	76.8%
1992	1824	313	17.1%	1194	65.4%	1384	75.8%
1993	1906	471	24.7%	1233	64.6%	1473	77.2%
1994	2290	370	16.1%	1573	68.7%	1879	82.0%
As a result of a decision by the Governing Body (November 1993), detailed reports on only five Conventions were exceptionally requested in 1995.							
1995	1252	479	38.2%	824	65.8%	988	78.9%
As a result of a decision by the Governing Body (November 1993), reports are henceforth requested, according to certain criteria, at yearly, two-yearly or five-yearly intervals.							
1996	1806	362	20.5%	1145	63.3%	1413	78.2%
1997	1927	553	28.7%	1211	62.8%	1438	74.6%
1998	2036	463	22.7%	1264	62.1%	1455	71.4%
1999	2288	520	22.7%	1406	61.4%	1641	71.7%
2000	2550	740	29.0%	1798	70.5%	1952	76.6%
2001	2313	598	25.9%	1513	65.4%	1672	72.2%
2002	2368	600	25.3%	1529	64.5%	1701	71.8%
2003	2344	568	24.2%	1544	65.9%	1701	72.6%
2004	2569	659	25.6%	1645	64.0%	1852	72.1%
2005	2638	696	26.4%	1820	69.0%	2065	78.3%
2006	2586	745	28.8%	1719	66.5%	1949	75.4%
2007	2477	845	34.1%	1611	65.0%	1812	73.2%

**II. SUBMISSION TO THE COMPETENT AUTHORITIES OF THE
CONVENTIONS AND RECOMMENDATIONS ADOPTED BY
THE INTERNATIONAL LABOUR CONFERENCE
(ARTICLE 19 OF THE CONSTITUTION)**

Observations and information

Failure to submit instruments to the competent authorities

The Committee expressed great concern at the delays and omissions in submissions, and also at the increase of such cases, given that they were obligations that stemmed from the Constitution and were essential to the efficient functioning of normative activities. In this respect, the Committee recalled that the ILO

could provide technical assistance to assist in compliance with this obligation.

The Committee expressed the firm hope that the countries mentioned, namely Sierra Leone, Solomon Islands, Somalia, Turkmenistan and Uzbekistan, would transmit in the near future information on the submission of Conventions, Recommendations and Protocols to the competent authorities. The Committee decided to mention all these cases in the corresponding paragraph of the General Report.

III. REPORTS ON UNRATIFIED CONVENTIONS AND RECOMMENDATIONS (ARTICLE 19 OF THE CONSTITUTION)

(a) Failure to supply reports for the past five years on unratified Conventions and Recommendations

A Government representative of The former Yugoslav Republic of Macedonia referred the Committee to his previous statement.

A Government representative of Kiribati presented her Government's apologies regarding its failure to submit reports under article 19 of the ILO Constitution. She noted that ILO technical assistance had been provided recently, including the training of a staff member in Turin.

A Government representative of Uganda expressed the hope that ILO technical assistance would be forthcoming and promised delivery before the end of the next reporting period.

A Government representative of the Russian Federation stated that non-compliance with obligations was due to issues of an administrative and technical nature, but that all was being done to submit responses as soon as possible before the end of the current reporting period.

A Government representative of San Marino stated that this year his country was able to rectify the delay accumulated in 2004, 2005 and 2006 in supplying the reports due under article 22 of the Constitution, as it had provided 15 of the 20 overdue reports. Unfortunately, the workload faced by the administration to reach this result had prevented it from meeting its obligation under article 19 of the Constitution, namely providing reports on the Conventions that are not ratified and on the Recommendations. The San Marinese administration committed itself to rectifying this situation.

A Government representative of Yemen recalled that Yemen had ratified 29 Conventions, including eight core Conventions. Regretting the failure to submit reports, he gave assurances that the Government would respond on non-ratified Conventions. He appealed for documentation to be made available in Arabic in order to improve the process of submission.

A Government representative of Sudan stated that his Government was attempting to comply with its obligations. However, the ongoing situation in his country had prevented these obligations from being met successfully.

The Committee took note of the information provided and of the explanations given by the Government representatives who had taken the floor. The Committee stressed the importance it attached to the constitutional obligation to supply reports on non-ratified Conventions and Recommendations. In effect, these reports permitted a better evaluation of the situation in the context of the General Survey of the Committee of Experts. In this respect, the Committee recalled that the ILO could provide technical assistance to help in complying with this obligation.

The Committee insisted that all member States should fulfil their obligations in this respect and expressed the

firm hope that the Governments of Antigua and Barbuda, Cape Verde, Democratic Republic of Congo, Equatorial Guinea, The former Yugoslav Republic of Macedonia, Gambia, Guinea, Haiti, Iraq, Kiribati, Kyrgyzstan, Liberia, Pakistan, Paraguay, Russian Federation, San Marino, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, Tajikistan, Togo, Turkmenistan, Uganda, Uzbekistan and Yemen would comply in future with their obligations under article 19 of the Constitution. The Committee decided to mention these cases in the corresponding paragraph of the General Report.

The Worker members concluded by pointing out that, in the face of these serious failures, a mere show of good will by States was not sufficient. Furthermore, certain Governments had not even expressed themselves. Those who did referred to many reasons explaining their failure to meet their obligations, namely crisis situations, conflicts, a lack of trained staff, insufficient resources and administrative reforms. The commitments and promises that were made must be noted and this Committee, as well as the Office, must stress to member States that they have to take the necessary measures to meet their obligations, and remind them of the possibility of obtaining technical assistance.

The Employer members noted that the activities of the ILO were the result of a common agreement. It did not make sense, therefore, to request that these activities be brought closer to the real needs of member States when these States did not show the basic and necessary willingness to understand, analyse and follow through the implementation of the Conventions they had ratified through dialogue. Some of the explanations given by various States were insufficient and did not contribute to the improvement of the efficiency of this Committee and the Organization in general.

Finally, they emphasized the importance of highlighting in this Committee the seriousness of many of these failures and insisting on the need to continue to reinforce, in the future, as over the last two years, the discussions on the failure to comply with reporting obligations and the non-submission of adopted instruments to the competent authorities.

(b) Information received

Since the meeting of the Committee of Experts, reports on unratified Conventions and Recommendations have subsequently been received from the following countries: **Armenia, Congo and Djibouti.**

(c) Reports received on unratified Convention No. 94 and Recommendation No. 84

In addition to the reports listed in Appendix II on page 114 of the report of the Committee of Experts (Report III, Part 1B), reports have subsequently been received from the following countries: **Belgium, Djibouti, Namibia, Slovakia and Philippines.**

INDEX BY COUNTRIES TO OBSERVATIONS AND INFORMATION CONTAINED IN THE REPORT

Afghanistan

Part One: General Report, paras 155, 173
Part Two: I A (c)

Albania

Part One: General Report, paras 153, 173
Part Two: I A (b)

Antigua and Barbuda

Part One: General Report, paras 153, 155, 159, 180
Part Two: I A (b), (c)
Part Two: III (a)

Bangladesh

Part One: General Report, para. 168
Part Two: I B, No. 87

Barbados

Part One: General Report, paras 155, 156
Part Two: I A (c)

Belarus

Part Two: I B, No. 87

Belize

Part One: General Report, paras 155, 180
Part Two: I A (c)

Bolivia

Part One: General Report, paras 152, 155
Part Two: I A (a), (c)

Bulgaria

Part Two: I B, No. 87

Cambodia

Part One: General Report, para. 155
Part Two: I A (c)

Cape Verde

Part One: General Report, paras 152, 155, 159, 173
Part Two: I A (a), (c)
Part Two: III (a)

Chad

Part One: General Report, paras 155, 173
Part Two: I A (c)

Congo

Part One: General Report, paras 155, 156
Part Two: I A (c)

Croatia

Part Two: I B, No. 162

Czech Republic

Part Two: I B, No. 111

Democratic Republic of the Congo

Part One: General Report, paras 155, 156, 159
Part Two: I A (c)
Part Two: III (a)

Denmark – Faeroe Islands

Part One: General Report, para. 152
Part Two: I A (a)

Dominica

Part One: General Report, paras 153, 180
Part Two: I A (b)

Dominican Republic

Part Two: I B, No. 111

Egypt

Part Two: I B, No. 87

Equatorial Guinea

Part One: General Report, paras 153, 155, 159, 180
Part Two: I A (b), (c)
Part Two: I B, No. 87
Part Two: III (a)

Ethiopia

Part One: General Report, para. 155
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PART THREE

OBSERVATIONS AND INFORMATION CONCERNING PARTICULAR COUNTRIES

Special sitting to examine developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)

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A. RECORD OF THE DISCUSSION IN THE COMMITTEE ON THE APPLICATION OF STANDARDS

A Government representative of Myanmar said that Myanmar was now passing through a most important phase in its modern history. The national referendum to adopt the new State Constitution had been held successfully on 10 May 2008 in 278 out of 325 townships in Myanmar, and in the remaining townships of Yangon Division and Irrawaddy Division, which had been hit by the severe cyclone Nargis, on 24 May 2008. According to the result, over 26.8 million eligible voters had voted in favour of the Constitution, accounting for 92.48 per cent in the referendum. Therefore, the new State Constitution had already been approved by the overwhelming majority of the people of Myanmar. The State Peace and Development Council (SPDC) issued Announcement No. 7/2008 on 29 May 2008 announcing that the State Constitution had been ratified and promulgated by the national referendum. Myanmar had therefore successfully completed the fourth step of the Seven-Step Road Map. The multi-party democracy general elections, which was the Fifth Step, would be held in 2010. This was indeed significant progress in Myanmar's political transition towards a democratic society.

He added that the joint field visit of the Ministry of Labour and the ILO Liaison Officer on 20 to 21 May 2008 to Nyaung Lay Bin Township, Bago Division, for awareness raising had proved the freedom of movement of the ILO Liaison Officer to carry out his responsibilities. Another area in which significant progress had been made was public awareness and educational activities. A special press conference organized by the Ministry of Labour had been held on 26 March 2007 in Nay Pyi Taw. The Director-General of the Department of Labour had explained in detail about the Supplementary Understanding and had replied to the questions raised by reporters and journalists. The Ministry of Labour had also published news about the prohibition of forced labour in the country in the local newspaper, the New Light of Myanmar, on 31 March 2007.

He informed the Committee that in response to the request of the Governing Body, the translation of the Supplementary Understanding into the Myanmar language had been completed and uploaded onto the web site of the Ministry of Labour. The translated version of the Supplementary Understanding had also been sent to the ILO Liaison Officer.

He noted that since the 301st Session of the Governing Body, the Liaison Officer had received 78 complaints, of which 45 had been transmitted to the Working Group for necessary action after the preliminary investigation had been made by the Liaison Officer. Of the 45 cases, 29 had already been closed after necessary investigation by the Ministry of Labour. The remaining 16 cases were under investigation and would be finalized in the near future. At the end of February 2008, the ILO Liaison Officer had transmitted 19 cases relating to the military to the Chairperson of the Working Group, the Deputy Minister of Labour. The Ministry of Labour had submitted those cases to the Adjutant General's Office of the Ministry of Defence for the necessary action. The details of these cases had already been provided to the Committee of Experts on the Application of Conventions and Recommendations on 28 February 2008. The Ministry of Labour subsequently received another six new cases from the ILO Liaison Officer, which had also been forwarded to the Adjutant General's Office for necessary action. The total number of cases related to the military was therefore 25, of which 16 had already been closed and only nine remained. Of the nine remaining cases, replies had already been provided to the ILO Liaison Officer on four cases, and five cases were still under investigation.

He emphasized that his country attached great importance to the question of the protection and promotion of the rights of the child. Myanmar was a party to the United Nations Convention on the Rights of the Child and had enacted the Child Law, as well as the Military Service Recruitment Laws and Regulations, under which the recruitment of minors under the age of 18 was illegal. He added that the United Nations Country Team in Myanmar had been cooperative and supportive of the Government's endeavours to prevent the recruitment of under age children. Cooperation would be continued with the United Nations Country Team and also with the Special Representative of the Secretary-General for Children and Armed Conflict.

With regard to Su Su Nway, he indicated that she had been charged in two cases. The first was under sections 124(a), 130(b) and 505(b) of the Penal Code. The second was under sections 143 and 147 of the Penal Code. The trial at the West Yangon District Court was still proceeding. In both cases, the sections of the Penal Code under which she had been charged did not relate to either the Supplementary Understanding or workers' affairs.

With regard to the case of Min Aung, he had been charged under Penal Code section 143 providing for the punishment of a member of an unlawful assembly, and section 295 respecting a malicious act intended to outrage religious feelings of any group by insulting its religion or religious beliefs, as well as under section 505(b) respecting statements leading to public mischief. He had been found guilty under the above sections and sentenced accordingly by the Thandwe District Criminal Court. Upon appeal to the Rakhine State Criminal Court, the sentences had all been reduced. All of the above sections of the Penal Code were beyond the scope of the Supplementary Understanding and workers' affairs, and the Supreme Court confirmed the decision of the Rakhine State Criminal Court. In another case, Min Aung had been charged in the Thandwe District Criminal Court under section 6 of the Formation of Associations Law and had been found guilty and sentenced. Following an appeal to the Rakhine State Criminal Court, the sentence had been reduced.

He reconfirmed that the case of Thet Wai was not in any way associated with activities against forced labour. He had been charged under section 353 of the Penal Code respecting assault or criminal force to deter a public servant from discharging his duty, and section 189 respecting the threat of injury to a public servant. The trial was still proceeding.

He indicated that, among the basic principles enshrined in the new State Constitution, a provision relating to forced labour was specifically included in Chapter VIII, paragraph 359. This clearly demonstrated that the Government had put in place a comprehensive framework of legislative measures to eliminate the practice of forced labour in the country.

He took the opportunity to provide information on the situation in Myanmar after the powerful tropical cyclone which had severely affected the country. Earlier in the month, Myanmar had faced the most severe natural disaster in its history. Cyclone Nargis had hit Ayeyawady and Yangon Divisions on 2 and 3 May. The effect had been devastating. About two days before the natural disaster, national television and radio had continuously warned the people in the regions about the storm. However, the magnitude of the storm had been very severe with very high winds and a very high tide, preventing the local people from moving from the areas. As a result, 77,738 people had been confirmed dead, 55,917 people were still missing and 19,359 had been injured.

The Government, in cooperation with the international community, was taking emergency relief and rescue

measures including the establishment of emergency relief camps and the distribution of emergency relief provisions to the cyclone victims. The Government of Myanmar was also working closely with the Association of South-East Asian Nations (ASEAN), neighbouring countries and the international community. On 19 May, ASEAN had established an ASEAN-led coordinating mechanism to facilitate the effective distribution and utilization of assistance from the international community. A task force headed by the ASEAN Secretary-General had been formed to operate the mechanism. As of 25 May 2008, 3273.20 tonnes of humanitarian supplies delivered by 221 cargo flights from various countries and organizations had been received. In addition, emergency relief provisions were being received by sea and land everyday. These supplies had been distributed to the victims immediately.

The Government had announced a three-day national mourning period for the cyclone victims from 20 to 22 May 2008. The Chairperson of the State Peace and Development Council had toured the cyclone-hit areas on 19, 20 and 21 May 2008 and had encouraged the victims in the affected areas. The Government had arranged a visit to the relief camps in Yangon and Ayeyawady Divisions for diplomats, United Nations agencies, representatives of donor countries and international organizations on 17, 21 and 22 May 2008. The United Nations Secretary-General Ban Ki-moon visited relief camps in the hardest-hit delta areas on 22 May; the local authorities explained to the Secretary-General the measures being taken for rehabilitation, health-care services and to meet the needs of the victims. He had been received by the Head of State and the Prime Minister.

On 25 May 2008, an ASEAN-United Nations International Pledging Conference had been held in Yangon. A total of 51 countries and 24 international organizations had participated in the Conference, which had been attended by Ban Ki-moon. The Conference had focused on cooperation in providing assistance to the victims of the cyclone.

In conclusion, he extended his deep appreciation to governments, the United Nations, including the International Labour Organization, international organizations, non-governmental organizations, private individuals and friends far and near for the sympathy and condolences expressed and the kind generosity in donating emergency relief provisions as well as financial support for relief and resettlement of the victims in the cyclone-hit areas. He also expressed gratitude to Mr Marshall and the staff of the ILO Liaison Office which, as part of the United Nations Country Team, was cooperating actively with the Government in the relief efforts.

The Worker members emphasized that for many years the Conference Committee on the Application of Standards had been holding a Special Sitting on the serious and continuing situation with regard to forced or compulsory labour in Myanmar. This year, however, and unlike in previous years, when the Conference Committee had had to be content with small steps forward or backward, the situation had been deeply affected by dramatic political and humanitarian events.

It should be recalled that the 1997 Commission of Inquiry had concluded that widespread and systematic violations of Convention No. 29 existed in both national law and practice. In July 2008, it would be ten years since the Commission of Inquiry had formulated the following three recommendations: (1) that the relevant legislative texts should be brought into line with Convention No. 29; (2) that in actual practice, no more forced or compulsory labour should be imposed by the authorities, in particular the military; and (3) that the penalties which could be imposed for the exaction of forced or compulsory labour should be strictly enforced.

In addition, to ensure the implementation of these three recommendations, the Committee of Experts had identi-

fied four areas in which concrete measures should be taken. However, the continued failure by the Government to implement the recommendations of the Commission of Inquiry had led the Governing Body to have recourse to article 33 of the ILO Constitution in March 2000, an unprecedented decision. Despite this decision, however, year after year the Committee of Experts and the Conference Committee had only been able to highlight the flagrant continuing violations of Convention No. 29 and the systematic refusal to give effect to the recommendations of the Commission of Inquiry. Ten years later, none of the recommendations had been implemented. During this time, a large number of multinational enterprises, however, had no hesitation in remaining in the country.

What is the situation today? According to the latest observation of the Committee of Experts, as well as the report of the Liaison Officer and the new facts reported in documents D.5 and D.6 to the Conference Committee, the Government, although it had drafted a new Constitution, had not included the principle of freedom of association or a clear prohibition of forced labour. Freedom of association was therefore still entirely subject to laws on state security. The Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87) would be respected no more in the future than it had been in the past. Moreover, the provision in the draft new Constitution prohibiting the use of forced labour contained such restrictions that it contradicted Convention No. 29.

Furthermore, no high-level statement on forced labour had been made by the Burmese authorities, despite the fact that the Governing Body had requested such a statement on several occasions. With regard to adequate budgetary means to replace forced or unpaid labour, the Government had indicated that a share of the budget was allocated to every ministry to cover labour costs. Nevertheless, as the Committee of Experts had mentioned in its observation, it was difficult to understand why recourse to unpaid forced labour remained widespread, particularly by the military and local civil administrations.

With regard to the dissemination of information and enforcing the prohibition of forced labour, the Supplementary Understanding of February 2007 represented an interesting development, in that it contained a new mechanism for the submission of complaints through the Liaison Officer. This mechanism was a step forward. However, it was only a very small step forward as the Liaison Officer could only receive complaints and assist complainants, but could not report violations himself. In addition, the mechanism was still little known, for at least two reasons. First, even after 15 months, no understandable version of the Supplementary Understanding was available because the Junta had not yet approved a translation. Second, those who did not live close to Yangon encountered significant practical difficulties in presenting complaints, in view of the lack of a communication network covering the whole country. Finally, a number of people who had made complaints or who had been engaged in activities to implement the Supplementary Understanding had been harassed or detained.

In that context, the number of complaints received could not be considered to reflect the extent of forced labour in the country. Moreover, the means – that is to say the complaints mechanism – should not be confused with the end, namely the abolition of forced labour. However, the mission of the Liaison Officer should not be restricted to implementing the Supplementary Understanding. Priority must always be given to working toward the implementation of the three recommendations made by the Commission of Inquiry.

The new mechanism was nonetheless revealing in two respects, namely the continued existence of forced labour and the glaring lack of democracy and freedom of expression. With regard to the continued existence of forced labour, the International Trade Union Confederation

(ITUC) had provided the Committee of Experts with extensive documentation. In relation to the extent of democracy, certain facts and events should be recalled, such as the following:

- the severe repression by the Government of the peaceful demonstrations of September 2007 and the higher death toll than initially reported;
- the detention and imprisonment of individuals who had exercised their fundamental right of expression, including Min Aung, Su Su Nway and the six trade union activists sentenced in September 2007, and the charges made against one of the facilitators of the new complaints mechanism, U Thet Wai, simply for being in contact with the ILO;
- the arrest this week of 18 people protesting peacefully against the extension of the house arrest of Aung San Suu Kyi, despite the draft new Constitution guaranteeing freedom of expression;
- the referendum on the draft new Constitution, which had been prepared and drawn up in an authoritarian manner, without any dialogue with the opposition and excluding any participation by nuns, monks and Hindu and Christian leaders, as well as Aung San Suu Kyi and others;
- the three-year prison sentence for disseminating leaflets, posters, speeches and other means of criticizing the referendum; and finally
- the reservation for the military of 25 per cent of parliamentary seats and of the right of veto.

The restriction of democracy had been dramatically demonstrated after cyclone Nargis had struck. The areas affected had been closed to all humanitarian aid from outside. The population had been unable to express either its suffering or its urgent needs, with the result that, according to estimates, at least one third of those affected still lacked vital aid. The Worker members expressed their full sympathy and complete solidarity with the Burmese people.

The humanitarian disaster should not divert attention from forced labour in Burma. Indeed, the Junta might well try to take advantage of the disaster to increase the use of forced and child labour in the long process of reconstructing the country. It was therefore incumbent upon all international organizations and governments to ensure that their aid was in compliance with the fundamental rights of the workers of Burma. Similarly, the International Labour Organization should ensure that reconstruction of the country was carried out in accordance with the rights of workers and the principle of decent work.

The Worker members added that the Committee had been holding a Special Sitting on the case for almost a decade and the case had been before the Conference Committee for over 26 years. The cause of Burmese workers and their struggle against the slave labour regime in the country were also those of the worldwide labour movement, notwithstanding the unacceptable libel by the regime that the Federation of Trade Unions of Burma (FTUB), was a terrorist organization. It was impossible to review the case in a vacuum. It was therefore necessary to recall the brutal crackdown in September 2007 against the largest democratic mobilization since 1988, in which at least 110 people had been killed and thousands wounded; the imposition of 20 to 28 year prison sentences on six trade union activists last year, namely Thurein Aung, Kyaw Kyaw, Shwe Joe, Wai Lin, Aung Naing Tun and Nyi Nyi Zaw, merely for meeting to discuss labour rights; and the odious interference by the regime with the entry of international relief workers and the confiscation of vital

food and medicine in the midst of the tragic national disaster of cyclone Nargis. Moreover, as recently as the previous week, the regime had even violated its own laws and Constitution by extending the detention of Aung San Suu Kyi for five more years, as well as arresting the peaceful demonstrators who had protested against this measure. These events merely added to the incontrovertible evidence of the chronic bad faith of the regime in relation to internationally recognized human rights and the ILO's fundamental Conventions, as well as its total disdain for nearly the whole of its people.

The Worker members also recalled their comments the previous year on the relative merits, but also the limitations of the Supplementary Understanding, including the real fear of reprisals by its State Peace and Development Council (SPDC), restrictions on freedom of travel for complainants in outlying regions, and the thousands of Burmese victims living in Bangladesh, Malaysia, Thailand and other countries unable to have access to the system. The very basis of the Supplementary Understanding was that there should be no more reprisals against complainants or potential complainants. Yet, notwithstanding the protestations of the Government representative, only a few months ago U Thet Wai of the National League of Democracy had been arrested for possessing reports on forced labour which were to be delivered to the ILO Liaison Officer. The media had also reported that over 30 activists investigating labour issues had been arrested and were still being detained.

Contempt and impunity, both in law and in practice, had been the primary response of the military regime in relation to the recommendations of the Commission of Inquiry, approved by the Governing Body over ten years ago. Firstly, with regard to the recommendation to issue specific and concrete instructions to the civilian and military authorities, as noted by the Committee of Experts, the Government had still not provided even minimal details of the content of such instructions. Indeed, in view of the extensive documentation gathered together by the ITUC on the continued existence of forced labour in virtually every region, it was clear that such instructions had not been given. Secondly, with regard to the call to give wide publicity to the prohibition of forced labour, and despite the claim that publicity had been given to the Supplementary Understanding, there had still been no unambiguous public statement at the highest level that all forms of forced labour were prohibited throughout the country and would be duly punished. Thirdly, the demand for the Government to provide for the budgeting of adequate means to replace forced and unpaid labour remained unheeded. Fourth, in relation to ensuring the enforcement of the prohibition of forced labour, the Committee of Experts concluded that the regime had still not repealed the authorization of forced labour in the respective legislation despite promising to do so for over 40 years. The regime had also failed to adopt positive legislation prohibiting forced and bonded labour by children, including in the armed forces. The Committee of Experts further noted that the authorities had failed to bring any administrative or criminal action against military personnel for the imposition of forced labour conditions on the population. Of the 24 complaints that had been forwarded by the Liaison Officer to the Government, only two civilian officials had been subject to any serious and effective prosecution. The Worker members therefore reiterated their profound concern at the lack of criminal liability.

Finally, the Worker members recalled that the Governing Body had decided in March 2007 to defer the question of an advisory opinion by the International Court of Justice until the necessary time. The latest report of the Committee of Experts made it abundantly clear that the cooperation and actual progress achieved in complying with the recommendations of the Commission of Inquiry did not even come close to meeting the relevant threshold,

which had been identified as one of the basic issues for review by the International Court of Justice.

The Employer members thanked the Government representative for appearing once again before the Conference Committee in its examination of the ongoing failure of his country to implement Convention No. 29. They affirmed that the hearts of the global community went out to the country because of the devastation of cyclone Nargis. However, they believed that the country's handling of the tragedy, and particularly its slowness in accepting aid from the international community and the lack of transparency, illustrated some of the root causes of forced labour, which was still prevalent. The causes of the forced labour situation included the lack of fundamental civil liberties, and particularly the right to freedom and security of the person, freedom of opinion and expression, freedom of assembly and association, the right to a fair trial by an independent and impartial tribunal, and protection of private property.

They emphasized that two events had had a significant impact on the context within which the ILO was working in the country, namely the civil unrest and its repression in the autumn of 2007 and the devastation caused by cyclone Nargis. When discussing the case, the ILO's supervisory bodies had focused attention on the recommendations of the Commission of Inquiry, in respect of which the Committee of Experts had identified four areas in which measures needed to be taken: issuing specific and concrete instructions to the civilian and military authorities; ensuring that the prohibition of forced labour was given wide publicity; providing for the budgeting of adequate means for the replacement of forced or unpaid labour; and ensuring the enforcement of the prohibition of forced labour.

The Employer members welcomed the extension of the trial period of the Supplementary Understanding and recognized that the number of complaints had increased. However, fundamental practical problems seemed to persist in the physical ability of victims or their families to file a complaint and for the Liaison Officer and his team to carry out their duties. They expressed serious concern that a number of persons associated with the application of the complaints mechanism remained in detention, and were of the view that the low level of complaints was an indication that the citizens might not have adequate access to the mechanism nor feel that they had the freedom to file complaints. Moreover, commenting on the statement by the Government representative that criminal law was outside the scope of the Supplementary Understanding with the ILO, the Employer members emphasized that the important point was to ensure that criminal law did not override human rights, violate the right of freedom of association, or facilitate or condone forced labour.

The Employer members welcomed the approval by the Government of a translation of the Supplementary Understanding and understood that the draft text of a proposed brochure was currently under consideration by the Government. They emphasized that continued publicity of the mechanism was vital to ensure wide knowledge of the prohibition of forced labour and its effective application in practice, so as to send a message to potential perpetrators that they were not free to act with impunity. They hoped that the ILO text for the brochure would be approved and distributed throughout the country without delay. Targeted training and joint missions to follow-up specific complaints would also be helpful. But they emphasized that a high-level public statement on the Government's policy on the prohibition on forced labour remained vital to demonstrate a clear commitment to the eradication of forced labour.

Although it was too early to assess the effects of cyclone Nargis, they emphasized that forced labour and other human rights abuses should not occur in the reconstruction process. In this respect, they expressed apprecia-

tion of the work carried out by the Liaison Officer and other United Nations agencies under difficult circumstances, and urged the Government to facilitate their task.

The Employer members noted that the recently adopted Constitution contained specific articles on the right to freedom of association, freedom of expression and the right to organize. However, they observed that the article banning the use of forced labour contained qualifications which raised questions concerning its conformity with the Convention. Time would tell whether and how the rights contained in the two fundamental Conventions ratified by Myanmar would be applied in practice following the adoption of the Constitution. Words were not enough. Full and complete implementation in practice was required in accordance with the obligations of Convention No. 29.

The ILO had been calling on the Government to apply the Convention in both law and practice and to bring an end to the intolerable climate of impunity. The Government remained far from applying the measures recommended by the Commission of Inquiry, or from giving effect to the four areas of action identified by the Committee of Experts. It was a matter of concern that the Government had not replied in detail to the information requested by the Committee of Experts in its previous observation or to the ITUC's latest communication. The Employer members urged the Government once and for all to provide full and detailed information to the Committee of Experts as an unequivocal sign of its willingness to engage in genuine cooperation with the ILO's supervisory bodies. They also reminded the Government that the Supplementary Understanding and the establishment of a complaints mechanism in no way relieved the Government of its obligation to suppress forced labour under the Convention.

In conclusion, the Employer members urged the Government to make tangible improvements in national legislation and to provide sufficient funds to ensure that paid labour replaced forced labour under both civil and military administration as a demonstration of its unambiguous will to combat forced labour and the longstanding and unacceptable climate of impunity. The situation had gone on for too long. It was time for the Government to adopt a sense of humanity, bring an end to forced labour and rebuild the country without resorting to forced labour, as demanded by its own citizens and by the world.

The Government member of Slovenia, speaking on behalf of the Governments of Member States of the European Union (EU), the candidate countries of Croatia, The former Yugoslav Republic of Macedonia and Turkey, as well as Armenia, Georgia, Iceland, Republic of Moldova, Montenegro, Norway, Switzerland and Ukraine, reaffirmed their solidarity with the people of Burma/Myanmar affected by cyclone Nargis and welcomed the international conference held in Yangon on 25 May 2008, co-sponsored by the United Nations and ASEAN, to address the pressing needs of those affected by the terrible natural disaster. He expressed strong support for the efforts of the United Nations, international and local agencies, non-governmental organizations, the International Red Cross and Red Crescent Movement, donors and all others to bring vital aid to the people of the country. Free and unfettered access for such actors was urgent to prevent an even greater tragedy. He therefore called on the authorities to ensure expeditious delivery of visas and travel permits to all international humanitarian workers and took note of the gradual openings made so far. The European Union expected the authorities not to use forced or child labour in the reconstruction of the country, as had been the case after the tsunami of December 2004.

This case was one of the most serious and long-standing cases that the ILO had ever had to address. He therefore reiterated full support and appreciation for the work of the

ILO and the Liaison Officer in assisting the Government to abolish the practice of forced labour. In that regard, he recalled the Conclusions of the Commission of Inquiry, the resolution of the 89th Session of the International Labour Conference, the conclusions of past sessions of the Governing Body and the four measures identified by the Committee of Experts to comply with the recommendations of the Commission of Inquiry, namely the following: issuing specific and concrete instructions to the civilian and military authorities; ensuring that the prohibition of forced labour was given wide publicity; providing for the budgeting of adequate means for the replacement of forced or unpaid labour; and ensuring the enforcement of the prohibition of forced labour. He called upon the authorities to ensure that children were not recruited for military service and that all perpetrators of the illegal extraction of forced labour were adequately penalized, with the penalties being strictly enforced.

Welcoming the Supplementary Understanding of 26 February 2007 between the ILO and the national authorities, the aim of which was to eradicate forced labour and establish an effective complaints mechanism for victims of forced labour to seek redress without fear of harassment or reprisal, he noted with interest that the trial period of the Supplementary Understanding had been extended for a further year. Nevertheless, he reasserted the deep concern that the population outside Yangon was, by and large, unaware of the complaints mechanism set up by the Supplementary Understanding, owing to lack of translation, distribution and awareness-raising activities. He again urged the authorities to implement fully the Supplementary Understanding and arrange for further translation into local languages and for wide and easily understandable dissemination of the Supplementary Understanding and other awareness-raising materials.

The report of the Committee of Experts concluded that the complaints mechanism, while valuable, did not by itself address the root causes of the forced labour problem that had been identified by the Commission of Inquiry and the High-level Team. In particular, it did not address the basic governance relationships prevailing in the country, the role of the army and its self-reliance policy, and the absence of freedom of association and, more generally, freedom of assembly.

Clearly, the implementation of the Supplementary Understanding was not and could not be sufficient. In order to achieve substantial and lasting progress in eliminating forced labour, the national authorities needed to undertake a number of more-than-overdue measures beyond implementing the Supplementary Understanding, which was only one step towards achieving compliance with Convention No. 29. It was of paramount importance that the authorities reaffirmed, in a public and unambiguous statement at the highest level, the prohibition and illegality of all forms of forced labour, including the recruitment of child soldiers, and replaced contradictory legal provisions with the appropriate legislative and regulatory framework to give effect to the recommendations of the Commission of Inquiry. He shared the concern of the Liaison Officer that the article in the new Constitution banning the use of forced labour contained qualifications that could raise the question of its conformity with Convention No. 29. Finally, he encouraged neighbouring countries to continue with their efforts to lead Myanmar towards the ending of forced labour and the encouragement of national reconciliation.

The Government member of New Zealand expressed her Government's sincere appreciation for the continued dedication of the ILO Liaison Office in Yangon in promoting observance of Convention No. 29 by the Government, particularly in the face of the added challenges of the September 2007 protests, the constitutional referendum held in May 2008 and the major natural disaster of cyclone Nargis. The Liaison Office had been unstinting in

its work, even managing to expand its range of activities, which had included a training of trainers course for military recruitment.

Her Government welcomed the extension of the Supplementary Understanding for a further 12 months, hoping that it would continue to produce results and that understanding of the issue would grow. Nevertheless, more was needed. To that end, the Government was urged to implement the recommendations of the Commission of Inquiry and to make a clear commitment to bringing an end to the practice of forced labour. The recent approval of a translation of the Supplementary Understanding was a step in the right direction. Her Government looked forward to its effective use, along with other informational material under consideration, including an explanatory brochure, in raising awareness of what forced labour was, explaining citizens' rights under the law and describing how complaints could be made using the ILO mechanism.

The people of Myanmar had the heartfelt sympathies of her country following the devastation wreaked by cyclone Nargis. Expressing concern that the risk of trafficking and forced labour might increase in the wake of the cyclone, the Government was urged to work with the ILO and others involved in relief efforts to ensure that reconstruction did not involve the use of forced labour. The absolute commitment of the Government to the process remained paramount. Her Government looked forward to deeper cooperation between the authorities and the ILO in the months and years ahead, with the goal of eradicating forced labour wherever and in whatever guise it appeared.

The Worker member of Japan referred to statistical data from various organizations concerning living conditions in Burma. According to the United Nations Children's Fund (UNICEF), the infant mortality rate remained high, with one death in ten births. Malnutrition was widespread among children with about one third of children severely or moderately stunted and underweight. More than 25 per cent of the population lacked access to safe drinking water and arsenic contamination was a major concern.

She also referred to the warning issued by the Director of the World Food Programme (WFP) in October 2007 that at least 5 million people were short of food and that humanitarian assistance was not enough to meet their needs. The WFP had also indicated in a project proposal submitted to its Executive Board that one third of the children were malnourished and one fifth were born underweight. The maternal mortality rate was 230 per 10,000 live births.

The United Nations Development Programme (UNDP) had recently conducted a household survey with the permission of the Government. The survey found that 95 per cent of the population lived on less than US\$1 a day and 90 per cent on less than 65 cents a day. The average household spent almost 75 per cent of its income on food.

She stated that everybody should feel uncomfortable with the current situation in which, while the Government allocated only 0.5 per cent of its budget to health, 40 per cent of the budget went to the armed forces. Moreover, the Government had reportedly spent over US\$300 million for the construction of its new capital, Naypyidaw.

The people of the country were in need of access to international aid. In reality, however, due to the Government's deplorable human rights record, including workers' rights and forced labour, the amount of official development assistance provided by foreign governments had been sluggish, amounting to US\$147 million in 2006, a slight increase by US\$2 million from the previous year. Japan was the largest donor, with a contribution of US\$25.49 million or 33 per cent of the total assistance received by the country. Such data did not provide a complete picture. Based on statistics of the Organization for Economic Development and Co-operation (OECD), the

contributions of emerging economic powers sharing the national boarder remained uncertain.

The role of the Asian Development Bank (ADB) could not be overlooked. In its annual report for 2007, it had stated that it continued to monitor economic development and would formulate an operational strategy when appropriate, and that no loan or technical assistance project had been approved since 1987. This was in contradiction with the fact that in developing the Greater Mekong Subregion Energy Strategy, a regional cooperation programme with the participation of six countries, including Burma, the ADB had been the driving force since the programme's inception in 1992. In many development projects under this scheme, numerous problems had been reported in relation to environmental assessments, the livelihoods of the people affected and damage to the biological and cultural diversity. She indicated her concern with respect to forced relocations and the use of forced labour in Burma.

Concerning the emergency assistance following the cyclone Nargis, there could be no question of opposing the humanitarian aid provided or pledged by many foreign governments to meet the urgent needs of the victims. She called on the Government and donors to ensure that assistance reached the people who were badly in need of it, as well as the country's democratic organizations, and that as the focus shifted from disaster relief to reconstruction no forced labour was used in the process.

She urged the Government to reallocate its budget to make greater provision for health, food, water and education. She also requested other governments to respect and apply the resolution adopted by the 88th Session of the ILC in 2000, to review their relations with the country and to report back to the Governing Body.

The Government member of Canada extended his Government's sympathies to the many thousands in Burma who had lost loved ones and whose lives had been severely affected by cyclone Nargis. The leadership of the United Nations, including its Secretary-General, in coordinating relief efforts with ASEAN and the national authorities was recognized, and the ILO Liaison Officer and his team were thanked for their work under difficult conditions. Although a small, but increasing number of international aid workers were gaining access to affected areas, he expressed concern at the ongoing challenges reported by humanitarian actors.

May 2008 had not been an encouraging month for the Burmese people. A reluctant regime continued to be slow to provide full and unhindered access for humanitarian actors to the affected populations, and his Government called for it to afford such access without delay. A new Constitution had been adopted with no credible consultation of citizens, and the house arrest of Aung San Suu Kyi, who had been in detention for more than 12 of the last 18 years, had been extended once more. His Government had condemned that decision. Such deeply disappointing but entirely predictable developments provided a critical and instructive context for the particular work on forced labour that the ILO had to do in the country.

At its 301st Session (March 2008), the Governing Body had formulated conclusions calling, inter alia, for steps to be taken by the authorities to communicate to their own people the action agreed with the international community, represented by the ILO. The simplest step was the reproduction and dissemination of the Supplementary Understanding in local languages. More demanding, perhaps, was the call for the authorities to make an unambiguous public statement at the highest level reaffirming the prohibition of any form of forced labour and their ongoing commitment to enforcing that policy. The Supplementary Understanding had now been translated into Burmese and discussions were under way concerning its effective promulgation. This development, although modest, was welcome and his Government hoped to see the Supplementary Understanding disseminated soon throughout the

country. The unambiguous high-level statement, however, remained unspoken and, as a next step, the authorities were called to make such a statement and implement the recommendations of the Commission of Inquiry in order to bring an end to forced labour.

The reference to forced labour in the new Constitution was not only insufficient; it appeared to be problematic, raising questions about its conformity with the provisions of Convention No. 29. The work of the Committee of Experts was commended and attention drawn to the last line of its report: "The Committee remains hopeful that, having agreed the Supplementary Understanding, the Government will finally take the required steps to achieve compliance with the Convention in law and in practice and resolve one of the most serious and long-standing cases that this Committee has ever had to address."

The Government member of China took note of the statement by the Government representative. Her Government was delighted that the Government of Myanmar had been working closely with the ILO since the conclusion of the Supplementary Understanding. Since the Governing Body had reviewed the situation in March this year, the Government had taken concrete steps.

A referendum had been conducted in May 2008 on the new Constitution which clearly prohibited all forms of forced labour, thereby resolving the remaining legal issue. The ILO's Liaison Office was working closely with local focal points to prevent the use of forced labour. The complaints mechanism was functioning smoothly. The Supplementary Understanding had been translated and was being disseminated by the Ministry of Labour. In collaboration with UNICEF and other agencies, training had been undertaken for trainers. All these efforts indicated the Government's sincere political will to eradicate forced labour.

As seen in the cooperation between the Government and the ILO, there was effective collaboration based on mutual trust for the sustainable well-being of the people. Her Government hoped that the ILO and the international community would remain committed to continuing the constructive dialogue and would provide encouragement and assistance, especially in terms of infrastructure. These would help to eradicate forced labour and guarantee fundamental rights and equality of access to development and its benefits.

The Worker member of Malaysia expressed concern that among ASEAN member States, different standards of practice existed with regard to human rights. The ASEAN Charter stated that its member States adhered to the principle of democracy, the rule of law and good governance, and respect for and protection of human rights and fundamental freedoms. Fundamental human rights needed to be respected, upheld and practised, which he hoped would contribute to establishing the conditions necessary for the realization of decent work for all human beings so as to improve equity and human dignity in the ASEAN area.

Since 1991, the UN General Assembly had adopted 16 resolutions on Burma which directly addressed a range of issues, including denial of human rights, lack of progress towards democracy and the ongoing detention of political prisoners. Strongly worded statements had been issued year after year, highlighting the military nature of the Burmese regime and the failure of the State Peace and Development Council (SPDC) to address the concerns of the United Nations in a meaningful way. Since 1992, the United Nations Human Rights Committee and the Human Rights Council had adopted 15 resolutions on the SPDC's refusal to respect the fundamental human rights of Burma's people. Resolutions had time and again called on the SPDC to end systematic human rights violations, including forced labour and forced relocation, and to respect fundamental freedoms, including freedom of assembly, association, expression and movement.

These United Nations human rights bodies recognized that respect for human rights, the rule of law, democracy and good governance were essential to achieving sustainable development and economic growth, and had affirmed that the establishment of genuine democratic government was fundamental to the realization of human rights and fundamental freedoms. Forced labour could only truly be eliminated by ensuring respect for human decency and human rights. Impunity must also be combated, and there was a need to investigate, prosecute and punish human rights violations, including forced labour, by members of the military and other officials in all circumstances.

Despite attempts by the international community to accelerate the process of finding a political solution and to assist in engaging the SPDC in substantive political dialogue with the National League for Democracy (NLD) and ethnic nationalities, the SPDC had established, as a precondition to dialogue with NLD leader Aung San Suu Kyi, that the NLD abandon its long-standing call for economic sanctions. Although the Special Rapporteur on the situation of human rights in Myanmar, appointed by the United Nations Human Rights Council had been allowed to visit the country to carry out his mandate for the first time in four years, in his final report in March 2008 he stated that the SPDC's initial willingness to address issues under his mandate had disappeared and, regrettably, many recommendations formulated had therefore not been implemented.

This high level of engagement by major international institutions demonstrated the international community's strong commitment to support a process of the restoration of democracy and national reconciliation and the establishment of respect for human rights. However, despite its support for the related initiatives, the permanent members of the UN Security Council had not reached agreement on a binding resolution on Burma.

In December 2007, the UN Secretary-General had established a "Group of Friends" comprising closely interested countries. Following the devastating cyclone Nargis in May 2008, the UN and ASEAN Secretaries-General had intervened to negotiate access for the delivery of humanitarian relief and access for international aid specialists. He expressed satisfaction that the UN-ASEAN-led team had finally been able to assist people in gaining better access to urgently needed humanitarian relief supplies.

The international community had faced great frustration over the years in pushing for political reform and respect for human rights. Measures such as an arms embargo, trade and investment bans, targeted sanctions, visa bans and the freezing of assets had been taken by various governments and should be strengthened. Recalling the conclusions of the 300th and 301st Sessions of the Governing Body and the Special Sitting on Myanmar of the Conference Committee in 2007, he emphasized that the country had made no progress in fulfilling its obligations under Convention No. 29 to eliminate the widespread practice of forced labour. All options available in international law to ensure full implementation of the Convention should be explored, including the possibility of referral to the International Court of Justice. The dignity and rights of the people of Burma demanded nothing less.

The Government member of Japan expressed his Government's profound sympathy for the tragedy caused by the cyclone which had claimed so many lives earlier this month.

Since the successful conclusion of the Supplementary Understanding last year, progress had been made in its operation, including the approval of its translation, which was essential to raise the awareness of citizens and workers of their rights under the Understanding. His Government also welcomed the educational activity jointly undertaken by the Ministry of Labour and the ILO Liaison Office which had also served to enhance awareness. The Government's commitment in principle to holding the

second round of training soon should also be commended. His Government hoped that efforts to further enhance awareness would lead to the effective application of the Supplementary Understanding.

His Government appreciated the detailed explanations of the Government representative on the implementation of the laws and regulations against forced labour. With regard to the application of the Supplementary Understanding, he noted with concern the report of the Liaison Officer that a number of complaints on forced labour had been received and submitted to the Government. He expressed the hope that the Government would sincerely examine these cases and take proper and swift action to improve the situation.

A referendum had recently been held on the new Constitution. While recognizing the inclusion of an article banning the use of forced labour, he noted with apprehension the indication by the Liaison Officer that the article contained qualifications, giving rise to questions as to its conformity with the Convention. He expressed the hope that this apprehension would be dispelled as soon as possible.

With regard to the recent cyclone, while earnestly hoping that the country would recover from the disaster as soon as possible, and his Government was ready to maintain its assistance, his Government urged the Government of Myanmar to ensure that there was no risk of the increased use of forced labour, child labour, human trafficking and migrant labour in the recovery and reconstruction processes.

In conclusion, with the reinforcement of the presence and activities of the ILO in Myanmar, he expressed the hope that the Government and the ILO, particularly through its Liaison Officer, would continue their close collaboration and cooperation to address these issues and improve the situation.

The Government member of the United States thanked the Office for the detailed and candid report and commended the admirable work of the Liaison Officer under very difficult circumstances. The ILO had exhibited exceptional judgement in seeking to maintain dialogue with the military regime while simultaneously holding it to the high standards of labour and human rights upheld by the Organization.

She recalled that it was now a decade since the Commission of Inquiry had formulated very specific and clear recommendations to the Burmese authorities to bring the legislation into line with Convention No. 29; end the imposition of forced or compulsory labour by the authorities, in particular the military; and ensure that penalties for forced labour were strictly enforced. The Committee of Experts had also identified four equally clear areas in which measures still needed to be taken by the authorities in order to give effect to the recommendations of the Commission of Inquiry: issuing specific and concrete instructions to the civilian and military authorities; ensuring that the prohibition of forced labour was given wide publicity; providing for the budgeting of adequate means for the replacement of forced or unpaid labour; and ensuring the enforcement of the prohibition of forced labour.

In the light of these recommendations, she noted the modest steps taken in recent months relating to the translation, distribution and publicity of the Supplementary Understanding. However, her Government regretted the lack of more meaningful progress. Although a number of complaints had been registered and processed under the complaints mechanism, there was no doubt that forced labour remained a widespread and serious problem and that the filing or facilitating the filing of a complaint about the exaction of forced labour was still a high-risk activity. Furthermore, based on the Office's report, it would appear that the penalties imposed on military perpetrators of forced labour were not credible and that the article in the new Constitution banning forced labour con-

tained qualifications that might not be in conformity with Convention No. 29. She also noted with concern that labour activists remained in prison, children continued to be coerced into military service and the authorities had still not issued a high-level statement on forced labour.

Although the Supplementary Understanding was undeniably significant, there were evident constraints and limits on the contribution that it and its complaints mechanism could make to the eradication of forced labour in the country. In particular, it did not address the root causes of the problem. Her Government therefore once again called on the regime to implement in full and without delay the recommendations of the Commission of Inquiry and the Committee of Experts.

The present Special Sitting of the Committee was being held in the wake of the devastating national tragedy of cyclone Nargis. She expressed her Government's deepest sympathy to the victims and noted that the President of her country had promised every effort to help the people of Burma recover from the disaster. However, in view of the regime's record, it would be critical to ensure that the reconstruction process did not involve or accommodate the use of forced labour in any of its forms. Anything less was unacceptable.

She added that the elimination of forced labour was inextricably linked to progress in guaranteeing freedom of association and restoring democracy in the country. She expressed deep concern at the general lack of regard for fundamental worker and human rights and noted that her Government had as a consequence imposed broad sanctions against the regime under several legislative and policy vehicles. These measures would be kept under review and additional measures would be considered as long as the authorities failed to end the brutal repression of their own people. Her Government called for the release of all political prisoners and for genuine dialogue with Aung San Suu Kyi, the National League for Democracy and other democratic and ethnic groups on a transition to democracy. Such a dialogue could only have a positive effect on eliminating the scourge of forced labour in the country.

The Worker member of the Republic of Korea called on all ILO constituents to take action in line with the 2000 resolution. It was regrettable that more than 400 multinational companies continued to support directly or indirectly the military regime's repression of the Burmese people, the use of forced labour, the denial of freedom of association and other human rights abuses, by maintaining business ties with Burma. For the past 20 years, foreign investment had been flowing to Burma, 98 per cent of which went to the oil, gas and power sectors last year. Gas exports accounted for half of the country's exports in 2006 and the sales to its main buyer, Thailand, brought in US\$2.16 billion. The funds strengthened the military's capacity for repression because most business was carried out through joint ventures with the military or directed through military-owned and -operated companies. A "production-sharing contract" between foreign companies, many of which were partially or wholly government-owned, and the Myanmar Oil and Gas Enterprise (MOGE), specified how much the company had to pay the Burmese regime in fees and taxes.

For example the Yadana pipeline, a Chevron-led project carrying natural gas to Thailand, was the military regime's financial lifeline. Yadana gas production in 2007 amounted to approximately 758 million cubic feet per day, 650 million of which was exported. The Burmese military's estimated budget, which supported a massive armed force of 428,000 troops, could be completely funded by the revenues from the Yadana Project (about US\$972 million a year). Moreover, many human rights abuses occurred in the gas pipeline region, including murder and rape by pipeline security soldiers, forced conscription of porters for security patrols, land confiscation,

forced plantation programmes, and widespread theft of goods. Another example was the Shwe gas project, which brought in between US\$600 and \$850 million to the military regime. The Shwe gas consortium was composed of the South Korean company Daewoo International, state-owned companies from India and the Republic of Korea, and MOGE.

Many of the problems in the Burmese economy stemmed from the fact that investment in the oil and gas sector, and other extractive industries, did not generate significant employment nor ensured substantial transfer of skills or technology to local people. This implied that, while the benefits to the regime were great, benefits to Burma's people were very limited.

Whereas more and more governments, especially in the wake of the brutal crackdown on Burmese protesters in September 2007, did impose sanctions on Burma, the country's neighbours and other economic powers in the region seemed ever more eager to do business with the regime. The Republic of Korea, the Russian Federation and Singapore were some of the largest investors in the oil and gas sector last year, and China was the main foreign investor in the power sector (US\$281 billion). With respect to trade, investment, economic cooperation and political influence taken together, Burma's three immediate neighbours stood out as the main backers of the regime, and hence as the holders of the keys to the freedom of the Burmese people.

It was therefore crucial that all governments, international institutions, workers' and employers' organizations fully implemented the 2000 resolution, that targeted economic sanctions, in particular relating to import and export of goods, were imposed to stop the financing of the military regime, and that a total arms embargo was implemented as suggested by the European Union. The conclusions of the Committee should call for the adoption of an enhanced reporting mechanism and for a multi-stakeholder conference to be convened by the ILO to ensure full implementation of the 2000 resolution.

The Government member of India expressed his Government's satisfaction at the tangible progress that had been made and the further strengthening of cooperation between the Government of Myanmar and the ILO. The translation of the Supplementary Understanding and its publication on the web site of the Ministry of Labour was welcomed, as was the progress in the ILO Liaison Officer's work which was being facilitated by the Government of Myanmar. It was a matter of satisfaction that cases concerning forced labour were being resolved through the mutually agreed mechanism between the Government of Myanmar and the ILO. The institutional mechanism to address the issue of recruitment of under-aged soldiers was functioning effectively. India had always encouraged dialogue and cooperation between the ILO and the member States to resolve all outstanding issues. The ILO Director-General was commended for his efforts in assisting Myanmar to eradicate the practice of forced labour. His Government continued to remain strongly opposed to the practice of forced labour, which was expressly prohibited under the Constitution of India. The Government of India therefore welcomed recent developments and progress on the issue of the eradication of forced labour in Myanmar.

The Worker member of Italy expressed her concern about the ongoing implementation of the Supplementary Understanding and the impact of the recent humanitarian crisis on the use of forced labour. Persons associated with the complaints mechanism had expressed concerns over reports of harassment and detention; despite that, at its November 2007 session the Governing Body noted some progress in the operation of the Supplementary Understanding. At the March 2008 session, the Workers' group welcomed the extension of the trial period of the Supplementary Understanding, thereby recalling that rapid pro-

gress should have been seen by the present session of the Conference, in line with the decisions already taken by the Governing Body. Unfortunately, the decisions had not yet been implemented. Only on 2 May 2008, did the Government approve the translation of the Supplementary Understanding and its publication on the ministerial web site.

The Committee of Experts' conclusions underlined that there were obvious constraints and limits on the contribution that the complaints mechanism could make to the eradication of forced labour because of its structural limitations and that whilst valuable, it does not address the root cause of the problem of forced labour. This same preoccupation is shared by the Worker members. The Liaison Officer's report indicated that his activities are mainly concentrated on the implementation of the Supplementary Understanding, while his work should be focused primarily on the implementation of the recommendations of the Commission of Inquiry. In order to overcome such constraints, the need of putting more human and financial resources at his disposal was underlined.

To date, and despite the increase of forced labour, only 89 complaints had been received, many of which had been rejected by the authorities as minor community work or because they were considered to be beyond the mechanism's mandate. According to the workers, the rejection of some complaints might be in contradiction with the Committee of Experts' jurisprudence, for example, on land confiscation, which the Committee of Experts regularly considered to be a form of forced labour. In addition, while the junta accepted complaints of forced recruitment of children for labour, very few and irrelevant sanctions had been imposed on the military.

In such a situation, the lack of political commitment, the absence of information and of consequent awareness-raising initiatives, the physical inability of victims to complain, and the fear of reprisal constituted major obstacles for reporting. Furthermore, it was unacceptable that the Liaison Officer was not authorized to present complaints himself. Therefore, it was reiterated that the Committee's conclusions should reaffirm the following previous decisions: that a formal statement be published at the highest level and in all local languages stating that all forms of forced labour are prohibited and will be duly punished; that a wide network of complainant facilitators is urgently put in place including in the combat zones; that the Government urgently provide the reproduction of the Supplementary Understanding in all local languages and ensure wide dissemination and publication of awareness-raising materials; that the mechanism under the Supplementary Understanding remain fully functional with no further detention or harassment of complainant facilitators or others, that adequate penalties are enforced toward perpetrators, and that forced labour victims are able to access easily the complaints mechanism; and that the Liaison Officer is able to move freely throughout the country and is able to raise complaints himself.

The Burmese people were now living in a new intolerable situation which was not only a direct result of the cyclone, but also a result of the junta's inhuman actions, its imposition of a referendum with predefined results, its refusal to act, and its obstruction of the international community's help, causing an even greater humanitarian crisis.

Reports had already been received of forced labour being exacted by military and local authorities in the Irrawaddy Delta area. One example was the case of the Maubin displacement camp, where 1,500 men and women were forced to work in quarries. In the village of Nga-byama in the Southern Bogale township, authorities had forced survivors to cut trees and reconstruct roads. In Bogalay, soldiers had used local people for forced labour. All these examples confirmed the validity of the alarm raised by the Liaison Officer's report underlining the in-

creased risk of incidence of forced labour, child labour, human trafficking and migrant labour in the Irrawaddy Delta region. The Liaison Officer was thanked for his huge work, particularly in view of the situation and during the early recovery cluster work set up by the UN agencies present in Burma.

In this regard, the Committee's conclusions should emphasize the need for the promotion of Convention No. 29 and fair labour practices in the relief and reconstruction activities, through procedures involving the ILO to ensure respect for the Convention, and to include democratic organizations in the reconstruction process. More human and financial resources should be allocated to the ILO for such activities. It was unacceptable that under the pretext of the humanitarian crisis, fundamental human rights were being denied to the victims of the dictatorship and of the humanitarian crisis.

The striking tragedy in which the Burmese people found themselves struggling for their lives, their freedom, and their human rights needed a consistent and clear answer from the Committee and from the International Labour Conference as a whole. As the Commission of Inquiry had stated, the forced labour occurring in Burma was a crime against humanity. There was a need to act consistently using all means available through international criminal law and from previous Governing Body decisions. The Office should prepare a request for an advisory opinion from the International Court of Justice on the violation of Convention No. 29 because the Burmese people deserved it.

The Government member of Australia expressed the sympathy of his Government and the people of Australia to the people of Myanmar for the loss of life, suffering and devastation caused by cyclone Nargis. His Government stood ready to help the people of Myanmar in their time of desperate need and was pleased to have been able to make a contribution to the relief effort. The damage caused by the cyclone was extensive and reconstruction in the affected areas, particularly the Irrawaddy Delta, would be a huge task. It would be critical that forced and child labour were not used in the reconstruction effort. The international community had already made a generous contribution to the relief efforts in the affected areas. If the Government of Myanmar would engage constructively with the international community and allowed relief agencies full access to the affected areas, a much greater level of international assistance would be possible.

He expressed his Government's continuing appreciation of the ILO's ongoing efforts to encourage the Government of Myanmar to respect its international obligations under the Convention. In this regard, his Government paid tribute to the efforts of Executive Director, Mr Kari Tapiola, to the Special Adviser, Mr Francis Maupin, and to the Liaison Officer, Mr Steve Marshall. They had all continued to seek out progress on this vital issue for the benefit of the people of Myanmar and his Government would like to extend its full support and encouragement to them.

The mechanism established by the Supplementary Understanding had played a role in providing an avenue for a limited number of people in Myanmar to allege violation of their right not to be forced into labour. Through the dedication and attention of the Liaison Officer, several people had benefited from the operation of the mechanism. However, the results achieved by the mechanism to date had been modest at best.

The Government of Australia remained concerned that the limited number of cases reflected a lack of awareness in Myanmar of the operation of the mechanism and of the people's right to complain, the logistical difficulty people faced in registering a grievance and their fear of reprisals. Further, he expressed the Government's grave concern about the situation of six labour activists who had been imprisoned in 2007 for sedition, and for U Thet Wai, who

was arrested on 24 February 2008, for being in possession of information on forced labour issues. It was further concerned that the outcome of many of the cases brought to the ILO's attention appeared far from satisfactory. Only one case had resulted in prosecutions being pursued by the Government. The ILO's assessment that, "There continues to be differences of opinion as to the appropriate remedy for complaints and punishments for perpetrators", was worrying and indicated a continuing lack of commitment by the Government and authorities of Myanmar to see justice done.

The Australian Government shared the ILO's assessment that the mechanism could play an important role in helping the ordinary people of Myanmar and address the scourge of forced labour. However, a far greater commitment from the Government of Myanmar would be required to achieve this end.

As an immediate sign of this commitment, his Government strongly urged the Government of Myanmar to make readily available to all of its citizens an unambiguous public statement that all forms of forced labour were prohibited. It also urged the Government of Myanmar to ensure that adequate publicity was given to the Supplementary Understanding in appropriate languages. In this regard, it was very important that the Government made available a suitable translation of the Understanding in the Myanmar language as soon as possible. Any further delay implementing these basic steps could only be interpreted in a most negative way.

Finally, he noted that the mechanism could only ever be part of a broader solution, and the recommendations of the Commission of Inquiry showed the direction that any genuine attempt by the Government would take to meet its international obligations. To reiterate, the Commission recommended that the Government of Myanmar, without delay:

- bring its legislation into conformity with the Forced Labour Convention;
- cease its exaction of forced labour, particularly by the military;
- ensure the public is informed of the illegality of forced labour; and
- strictly enforce the criminal penalties in its legislation pertaining to the exaction of forced labour.

The Worker member of Bangladesh expressed solidarity with the Burmese people who were fighting for their legitimate rights and democracy. More recently, the population had been severely affected by cyclone Nargis. Unfortunately, the Government of Myanmar had been preventing international aid efforts, while violations of Convention No. 29 continued. Bangladesh, as a neighbouring country, was receiving large numbers of Burmese refugees. This placed a heavy burden on Bangladesh which itself was a least developed country. All trade unions, employers' organizations, governments, as well as the ILO Director-General, were called upon to take the steps necessary to end forced labour in Myanmar.

The Government member of the Russian Federation expressed his Government's sympathy to the people of Myanmar for the loss of life and suffering caused by the natural disaster and wished a prompt reconstruction of the affected regions. His Government noted with satisfaction that the Supplementary Understanding had been extended for a further 12 months. It welcomed the following developments which confirmed that constructive dialogue between the Government of Myanmar and the ILO was taking place: the creation of a working group within the Ministry of Labour to examine complaints of forced labour, and involvement of the Ministry of Defence in examination of such complaints; two ILO officials were working in Myanmar, thus enhancing the effectiveness of the

ILO's actions; the recently adopted Constitution explicitly provided for the prohibition of forced labour; and the publication of the text of the Supplementary Understanding on the official web site of the Ministry of Labour. The ILO and the Government of Myanmar should therefore continue constructive cooperation with a view to ensuring implementation of Convention No. 29.

The Government member of Cuba welcomed the results so far achieved to comply with the objectives fixed by Convention No. 29. He further underlined that such results were exclusively accomplished thanks to the cooperation between the ILO and the Myanmar authorities. The coercive measures, public condemnations, blockades and other punitive actions, far from contributing to the improvement of the conditions required to fulfil the objectives set forth in the ILO's Conventions, had a counter-productive effect. All conclusions to be adopted by the Committee should be based on the continuity of technical cooperation, as well as on the open and unconditioned dialogue with the Myanmar authorities.

The Worker member of Indonesia stated that forced labour remained among the most pervasive human rights violations in Burma, involving harassment, threats and physical abuses. Forced labour undermined the livelihoods of whole communities and led to the complete collapse of village economies, large-scale displacement and refugee flows. Both the army and local authorities continued to force thousands of people to work in brick baking, construction of roads and military facilities and agriculture, including plantation for biofuel production. Portering services for military purposes also continued. Many forced labourers who had escaped from the army reported that hundreds of people had been used as porters after having served prison sentences.

In October 2007, in the Tangoo District, the Military Operation Command No. 9 obliged the villagers of Play Has Loh to carry out work for the army, including cutting of bamboo poles and carrying of soil. The Military Operation Command No. 5 forced hundreds of villagers to carry military supplies, and to clear an army camp and roads. On 14 November 2007, the Light Infantry Battalion 599 forced hundreds of villagers to build army offices and camps in the Kler Law Htoo District. Other examples of forced labour exacted by the army occurred in December 2007 in Hakha and Mantaw townships in Chin State, and in January 2008 in Mong Hsat in Shan State. Forced labour was essential for the survival of the army and serious political commitment was needed to stop this vicious circle.

In November 2007, the army decided to establish a new model village in Nurullah, Arkan State. Following confiscation of lands, villagers were forced to prepare the land for construction and carry building materials. In January 2008, the villagers were ordered to complete the construction of 120 houses within a month. By the end of April 2008, 200 houses had been built. None of the 200 to 270 labourers from nine villages that were used in this project had been paid.

The approaching monsoon season would create a dramatic situation in the delta region. The authorities were bringing cyclone victims back to their destroyed villages with no aid supplies and there were reports of new cases of forced labour imposed by the army and local authorities in the devastated areas.

The ILO and its member States were urged to take the most effective measures for the immediate and full compliance with Convention No. 29 and the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The world could not sit by while the Burmese people were suffering. The Government must implement fully the recommendations of the Commission of Inquiry. As a matter of urgency, the military, particularly the regional commanders, and the local authorities must change the existing laws, behaviour and practices. It

was crucial that the authorities made an unambiguous public statement in all local languages concerning the prohibition of forced labour and that a consistent budget for public works was defined. Further, respect for freedom of association must be ensured for all workers to allow them to organize and denounce forced labour. The Government and the international institutions were called upon to assist in the relief and reconstruction programmes. All trade union activists and political prisoners, including Aung San Suu Kyi, should be released.

The Government representative of Myanmar noted that a number of speakers had acknowledged the efforts made by its authorities and the progress achieved so far. Those who had expressed different views had their own agendas, attempting to undermine the Government's efforts. The Government representative also expressed the hope that the Committee members would henceforth refer to his country by its official name as included in the new Constitution which had been approved by referendum.

The Worker members wished to focus on the conclusions, which should, in their view, include the following points: a request to liberate Aung San Suu Kyi as well as trade union activists and political prisoners who had exercised their right to freedom of expression and freedom of association; the recognition of the Federation of Trade Unions of Burma (FTUB), which should no longer be considered as a terrorist organization by the authorities; the immediate cessation of harassment and the liberation of persons submitting complaints of forced labour. Finally, the conclusions should also deplore the fact that persons having recourse to forced labour did not incur penal sanctions.

Whereas recalling the need to implement urgently the recommendations formulated by the Commission of Inquiry ten years ago, the Worker members underlined that the Government also needed to implement fully all decisions taken in the past by various ILO bodies, including the 2006 conclusions of the Selection Committee and subsequently reaffirmed by the Governing Body. Some of the following issues needed to be subject to serious consideration: the Office should call on governments, employers, international organizations, financial institutions and international or regional banks, to modify or suspend, according to their mandates, their direct or indirect relations and programmes with the enterprises of the Government, of the military or of the Burmese private sector; a reporting mechanism should be established, on the basis of a user-friendly questionnaire, concerning the measures to be implemented in accordance with the recommendations contained in the 2000 resolution; conferences including the various actors should be organized in order to discuss the best way to enforce the resolution of 2000; measures available under international criminal law should be applied to punish those guilty of imposing forced labour; the ILO and governments should inform the public through a special page on the ILO's web site; the Government should put in place a network of facilitators in order to examine complaints, at the same time ensuring the increased implementation at the national level, including in the conflict areas, of the Supplementary Understanding, through its translation in all local languages, as well as through public awareness campaigns; the ILO Liaison Officer should be able to submit complaints and to effectively make the necessary investigations.

The Worker members requested that governments not recognize the new Constitution. Furthermore, they reserved the possibility of submitting to the International Court of Justice a request for an advisory opinion regarding the consequences in international law of the violation by Burma of Convention No. 29.

Concerning the tragic humanitarian situation, the Worker members, by way of conclusion, requested the Office to ensure – through promotional measures and information on cases of good practice – the implementa-

tion of Convention No. 29 in the context of the country's reconstruction activities. In this regard, the Office should enjoy increased human and financial resources, as well as the cooperation of other international agencies in order to monitor compliance with Convention No. 29. The Government should allow all democratic organizations to participate freely in the reconstruction activities, as well as inform the ILO's Governing Body, at its next session in November 2008, of any measures taken to implement the Committee's conclusions.

The Employer members stated that the Government's response had been lacking any serious commitment to end forced labour. The Government had failed to take the steps necessary to this end. Widespread forced labour continued to exist and the right to freedom of association was being violated with impunity, contrary to Myanmar's international obligations. The Government did not appear to understand the consequences of its human rights abuses. Violations of human rights were not only harmful for the country's citizens, but also caused the Government to lose its moral authority to govern the country and its credibility within the community of nations. In addition, disrespect of human rights impeded economic development, as broad-based and continuous investment would not take place where democracy and civil liberties were nonexistent and where human development remained at a low level. The Employer members expressed their profound concern that forced labour in Myanmar continued as widespread as before. Concrete and verifiable evidence that the practice of forced labour was being eradicated was needed on an urgent and comprehensive basis.

Conclusions

The Committee extended its sympathies and condolences to the people of Myanmar in the wake of cyclone Nargis. It expressed its sincere hope that the continuing humanitarian needs would be met and that the required rehabilitation and reconstruction work would be undertaken, without any use of forced labour and in a spirit of cooperation and constructive dialogue, in full respect of civil rights and international labour standards.

The Committee noted the observations of the Committee of Experts and the report of the ILO Liaison Officer in Yangon that included the latest developments in the implementation of the complaints mechanism on forced labour established on 26 February 2007, with its trial period extended on 26 February 2008 for a further 12 months. The Committee also noted the discussions and decisions of the Governing Body of March 2007, November 2007 and March 2008. It also took due note of the statement of the Government representative and the discussion that followed.

The Committee noted that certain steps had been taken in the application of the Supplementary Understanding, and that some awareness-raising activities had taken place since the last session of the Conference in June 2007. However, it expressed its concern that these steps were very small and considered that much more needed to be done with commitment and urgency. In particular, the Government should, as requested by the Governing Body, make, without delay, an unambiguous statement at the highest level that the exaction of forced labour was prohibited and that violators would be prosecuted and convicted. It also expressed concern at the restrictive provisions in the newly adopted Constitution which could raise issues of compliance with Conventions Nos 29 and 87 ratified by Myanmar.

The Committee expressed its profound concern that forced labour in Myanmar, including the recruitment of children into the armed forces, remained as widespread as before, as reflected in the observation of the Committee of Experts. None of the recommendations of the Commission of Inquiry had yet been implemented, and the exaction of forced labour continued to be widespread, particularly by the army. Any instructions to cease the practice of utilizing

forced labour appeared to have been disregarded regularly and with impunity. Similarly, although it was now some 15 months since the coming into effect of the Supplementary Understanding, a translation of it had only recently been approved for distribution. The Committee continued to be concerned that awareness of the existence of both the legal provisions against forced labour (Order 1/99) and the complaints mechanism under the Supplementary Understanding, remained very low. The Committee urged the Government to give early approval to the translation, in all local languages, of an easily understandable brochure, for wide public distribution, explaining the law and the procedure for lodging a complaint under the Supplementary Understanding.

The Committee took note that the complaints mechanism on forced labour continued to operate and that the authorities were investigating cases referred to them by the Liaison Officer. However, the Committee expressed its continued concern that penalties imposed on perpetrators of forced labour had, in general, not been imposed under the Penal Code. As a result, no criminal convictions of members of the armed forces had taken place.

The Committee noted that an international professional staff member has been appointed to assist the Liaison Officer. The Committee emphasized that it was critical that the Liaison Officer had sufficient resources available to undertake his responsibilities. The Committee underlined that there was an urgent need that the Government accepts a strengthened network of facilitators to deal with complaints from all over the country. The Committee noted with concern the reported cases of retaliation and harassment against complainants and volunteer facilitators who cooperated with the Liaison Officer. Such action was a fundamental breach of the Supplementary Understanding. The Committee called on the Government to ensure that all retaliation and harassment – based on any legal or other pretext – ceased with immediate effect and that the perpetrators were punished with the full force of the law.

The Committee recorded with extreme concern that many people remain in prison for exercising their rights to freedom of expression and association. The Committee called for the immediate release of these persons and, in particular, for the release of Daw Su Su Nway, U Min Aung and U Thurein

Aung and his associates: U Kyaw Kyaw, U Shwe Joe, U Wai Lin, U Aung Naing Tun and U Nyi Nyi Zaw. These persons all had links with the ILO and were labour activists legitimately seeking to achieve acceptance of international labour standards and, in particular, those ratified by the Government of Myanmar. The Committee re-emphasized the expectation of the Governing Body that U Thet Wai remain free from further persecution and detention.

The Committee also stressed the need to allow all citizens of Myanmar to fully exercise their civil rights, and called on the Government to immediately end the detention of Daw Aung San Suu Kyi. It also recalled the recommendations of the Committee on Freedom of Association, in March 2008, with respect to trade union rights and the recognition of trade union organizations, including the Federation of Trade Unions of Burma (FTUB).

The Committee also recalled the continued relevance of the decisions adopted by the Conference in 2000 and 2006 concerning compliance by Myanmar with Convention No. 29.

The Committee strongly urged the Government to take all the necessary measures to give full effect to all of the recommendations of the Commission of Inquiry, without any further delay. It urged the Government of Myanmar to provide full information to the Committee of Experts in time for its next session later this year, including concrete and verifiable evidence of action taken with a view to the full implementation of the recommendations of the Commission of Inquiry.

The Worker members stated, in their acceptance of the conclusions, that they also understood that the reference in the conclusions to the discussion and decisions of the Governing Body in March 2007, November 2007 and March 2008, and to the decisions adopted by the Conference in 2000 and 2006 concerning compliance by Burma with Convention No. 29, effectively incorporated the Worker members' suggestions for this year's conclusions, including an International Court of Justice advisory opinion at the necessary time. The Worker members also reiterated the need for the ILO Liaison Officer to be able to submit complaints and make the necessary investigations.

Document D.5

B. Report of the Liaison Officer to the special sitting on Myanmar (Convention No. 29) of the Committee on the Application of Standards

I. Follow-up to the 96th Session (2007) of the International Labour Conference

1. Following the 96th Session (2007) of the International Labour Conference, the Office continued discussions with the Government of Myanmar on the implementation of the recommendations of the Commission of Inquiry, including through the complaints mechanism established on a trial basis by the Supplementary Understanding between the Office and the Government, which had been concluded on 26 February 2007. On 26 February 2008, the trial period was extended for another 12 months.
2. Reports on the application of the Supplementary Understanding were submitted to the Governing Body at its 300th (November 2007) and 301st (March 2008) Sessions. Documents GB.300/8, GB.300/8(Add.), GB.301/6/1 and GB.301/6/2 are attached to this report. It is also important to recall that over the past 12 months, two events have had an impact on the framework in which the ILO activities are carried out. They are the civil unrest and its suppression in September–October 2007 and the devastation caused by Cyclone Nargis in early May 2008.
3. In the conclusions of its 300th Session, the Governing Body noted progress made in the operation of the Supplementary Understanding, including educational activity jointly undertaken by the Ministry of Labour and the ILO Liaison Officer. However, it did so against the backdrop of the Government's crackdown on the peaceful protests of September 2007 as well as the detention and imprisonment of persons who had exercised their fundamental rights of expression and freedom of association. The Governing Body noted with concern reports of harassment and detention of persons associated with the application of the complaints mechanism. It called for the release of those persons, together with the issuance of a highest level statement which would unambiguously reconfirm that forced labour, including the recruitment of child soldiers, is illegal and the Government of Myanmar remains committed to its elimination.
4. At its 301st Session, the Governing Body welcomed the extension of the trial period of the Supplementary Understanding. It noted with serious concern however that a number of persons associated with the application of the complaints mechanism remained in detention, as did six labour activists who after their detention on 1 May 2007 were finally sentenced on 7 September 2007, receiving long prison terms for exercising their freedom of association rights (see also CFA 349th Report, GB.301/8, Case No. 2591). The Governing Body again called for the release of the detained persons, Min Aung and Su Su Nway, as well as the six labour activists. It further called on the Government to approve the translated text of the Supplementary Understanding for free distribution to administrators, the military and the general public, to increase awareness of the rights and responsibilities it contains. The Governing Body repeated its call for a high-level public statement on the Government's policy on the prohibition of forced labour.

5. The Governing Body further took note of the Government's acceptance of the appointment of an additional international staff member to support the Liaison Officer. It also noted the undertaking of a joint presentation to a deputy township judges' refresher training course.

II. Activities since the 301st Session (March 2008) of the Governing Body

6. On 2 May 2008, the Cabinet of the Government of Myanmar approved a translation of the Supplementary Understanding for distribution for awareness-raising purposes. A draft ILO text for a proposed brochure, in accessible language, is currently under consideration by the Government.
7. The first of two five-day training for trainers' courses, led by the Assistant to the Liaison Officer, in association with UNICEF and the ICRC, has been successfully completed. Its 37 participants were officers and non-commissioned officers of the Recruitment Regiment, the Basic Training Camps, and personnel of the Social Welfare Department. The second programme of this kind is scheduled for the last week of June. It will be followed by the participants leading multiplier training courses around the country.
8. The Liaison Officer undertook a joint mission with the Ministry of Labour on 20–21 May 2008. This mission followed the receipt of the report of the Government's inquiry into a complaint of forced sentry/guard duty. It was agreed to in order to clarify some areas which remained unclear and also for the purpose of awareness raising. It was ascertained that following the lodging of the complaint, all of the activity that was subject to the complaint had been stopped. One army officer has been reprimanded for his actions. A further recommendation for disciplinary action has been made, and copies of interview statements in respect of the alleged detention/harassment of the case facilitator have been requested. The Government is expected to respond on these matters.
9. In April and early May 2008, the Government proceeded with the preparations for the referendum for the adoption of a new Constitution. The referendum went ahead as planned on 10 May 2008 although the Government postponed the voting for people in 47 townships affected by Cyclone Nargis until 24 May 2008. On 16 May, the Government publicly announced an interim result, declaring a 99.07 per cent turnout with 92.4 per cent voting their support for the Constitution, 6.12 per cent voting against and 1.49 per cent of votes not being accepted. There has been considerable commentary on both the process adopted and the content of the new Constitution. The Constitution contains specific articles on the right to freedom of association, freedom of expression and the right to organize. The article banning the use of forced labour contains qualifications which could raise the question of its conformity with the Forced Labour Convention, 1930 (No. 29). Time and future events will determine whether, and how, the rights contained in the two fundamental ILO Conventions ratified by Myanmar will be applied in practice following the adoption of the Constitution. No new high-level statement on forced labour as requested by the Governing Body has been made; the Government has considered that the new Constitution restates the commitment to the elimination of forced labour.
10. At the time of writing, Min Aung, Su Su Nway and the six labour activists sentenced in September 2007, all remain in prison. The Liaison Officer has requested permission to visit them but this has not as yet been agreed. The number of charges against one of the facilitators, U Thet Wai, who was freed from detention in early March 2008 has been reduced, but the court hearings on the remaining charges continue. The Government has been reminded that the Governing Body underlined that U Thet Wai should remain out of prison, as the initial charges against him were related to his contacts with the ILO.

III. The functioning of the Supplementary Understanding

- 11.** As of 19 May 2008, a total of 89 complaints have been received under the Supplementary Understanding. Of those complaints, 46 have been assessed and submitted to the Government for investigation and action, while 36 have been assessed as not being within the mandate or not sufficiently supported or substantiated for submission. At present seven complaints are under assessment towards acceptance or otherwise for submission. The number of complaints dropped immediately after the unrest and its suppression in September–October 2007, but complaints have been steadily received since then. It is still too early to assess what effect Cyclone Nargis has had.
- 12.** Of the 46 cases submitted to the Government, 28 cases have been closed following an investigation by the authorities. In two of these cases, a note has been made that the Liaison Officer considers the action taken by the Government against the perpetrators as inadequate. Responses continue to be in discussion in eight cases, and responses have not yet been received to the original letter of complaint in respect of the remaining ten cases. In 15 of the closed cases, recommendations have been made towards improving ongoing practice.
- 13.** The complaints submitted can be broken down into the following categories:

 - (a) forced labour under the instruction of civil authorities – 17 cases;
 - (b) forced labour under the instruction of military authorities – five cases;
 - (c) recruitment of minors into the military – 21 cases;
 - (d) complaints concerning the application of the Supplementary Understanding – harassment/detention – three cases.
- 14.** In general the Ministerial Working Group, chaired by the Deputy Minister of Labour and supported by the Department of Labour, has responded in a reasonably timely manner to the complaints that were submitted. However, it must also be said that the absence of a translation of the Supplementary Understanding has acted to keep awareness of the rights it contains low, and the incidence of harassment and detention of persons associated with its application has severely limited its operation. The number of complaints therefore cannot be seen to reflect the size of the issue.
- 15.** There are continuing practical problems in the physical ability of victims of forced labour or their families to complain. The ILO Liaison Officer is in Yangon, and the facilities available consist of one additional international professional staff, supported by six local staff contracted to the ILO for interpretation, administrative and transport support purposes. Myanmar is a very large country with somewhat unreliable communication systems and where it is not easy for citizens to travel. Therefore, a network of complaints facilitators is necessary. Facilitators undertake this activity because they are socially aware and committed to support the elimination of forced labour, including the use of child soldiers. They are not paid and receive no financial support or reimbursement of their costs in accepting this responsibility. They also accept a level of risk of potential harassment and even detention.
- 16.** Some facilitators belong to political or social organizations while others are ordinary committed individuals. The Government has maintained on a number of occasions that facilitators may use the provisions of the Supplementary Understanding as a means of undermining the State by actively seeking out and encouraging complaints, and as a means to gain protection for themselves under the non-retribution provision of the Supplementary

Understanding. The Liaison Officer has in response stressed the fact that he accepts, and exercises, his responsibility to properly assess every complaint to ensure as best as possible its legitimacy. This includes verification that there is a genuine complaint and a willing complainant, the critical issue being the substance of the complaint not the identity or motivations of the personality. In respect of protection, the Liaison Officer has the responsibility to exercise judgement in the acceptance of complaints of reprisal/harassment. However, he must also be convinced that the alleged offences are genuine.

17. A number of recent complaints concerned obliging farmers to change their crop under threat of penalties, including the loss of their land. The Government has stressed that its actions in this regard are due to the importance of agriculture for the development of the national economy. It has for some time been actively building dams for both electricity generation and irrigation. It has expressed the view that some complaints have been encouraged by politically motivated facilitators seeking to undermine its policy of agricultural enhancement. The Liaison Officer has assured the Government that complaints that he has received and submitted further are not due to any opposition to government policy. Many of the farmers concerned have welcomed the irrigation projects and enhanced income prospects. The complaints have concerned the insistence of certain authorities that farmers change the crop on all of their land notwithstanding whether or not it is appropriate to do so in light of the need to rotate crops, the soil type and the particular specifications of the land in question. In other instances complaints have related to the requirement that crops be changed to meet the supply demands of government-owned food processing and refining facilities without consideration of the economic consequences of such a change to the farmer.
18. In respect to the issue of child soldiers and recruitment of minors, the Government has raised concerns that facilitators are encouraging parents to make a complaint when in fact they and their child are in favour of the child adopting a military career. The Government claims to have ascertained that most children subject of complaints were volunteer recruits who entered the military of their own free will. It has further objected to the lodging of retrospective complaints of recruitment taking place before the Supplementary Understanding was signed. The Liaison Officer has advised that even if a child does “volunteer”, under the law no person under 18 years can join the Myanmar military services. Whilst some young men do offer themselves for recruitment, others are coerced, tricked or forced to do so. It is the recruiting officer’s responsibility to apply the law and regulations and to verify the applicant’s age prior to accepting a recruit. The Liaison Officer has also noted that notwithstanding the facts of a particular case, the penalty for military personnel for recruitment of minors has at most been a serious reprimand on the officer’s personal file. The Liaison Officer has considered that this is not credible, as there is an expectation that the punishment fits the crime. In particularly blatant cases of forced recruitment or the recruitment of very young children, the full force of either penal or military law should be applied with protagonists receiving the penalties provided under those laws, i.e. fines and/or imprisonment.
19. The question of whether an illegally recruited child can legally be considered a deserter if he tries to run away and go back home has also been discussed. There is a continuing tendency for underage recruits who have tried to go home to be considered absent without leave or deserters and to be punished, including being imprisoned, notwithstanding that this is both legally flawed and constitutes a severe human rights violation.

IV. The continuing situation

20. Myanmar has been severely hit by a major cyclone, with the loss of many tens of thousands of lives (the final death toll is yet to be determined) and major dislocation of a

huge number of people. Every sympathy is due to all affected, as reflected by the large humanitarian response from all over the world. It is critical at this time that in addition to making every effort to restore the lives of victims to some form of normality, both the Government and its partners, including the UN and all relief agencies and actors, are conscious of the increased risk of incidences of forced labour, child labour, human trafficking and migrant labour as the authorities and individuals come to grips with the sheer size of the tragedy and the ongoing implications for the population in the affected areas. An early return to relative normality and the ability of individuals and families to generate sustainable income through access to decent work to support their and the nation's recovery is critical. The ILO Liaison Officer and his team in Yangon are currently working with others, including the authorities and the people of Myanmar, to help to ensure that the reconstruction effort does not involve the use of forced labour in any of its forms.

21. The UN Country Team is working closely together. The ILO is supporting a range of agencies working within the cluster system that has been adopted to achieve coordinated and integrated responses to the various post-crisis issues. Across the board, attention is being given to ensure that relief and recovery operations do not inadvertently accommodate forced labour or other human rights abuses. Under the protection cluster, particular emphasis is being placed on preventing displaced and orphaned children from dropping into forced labour, and in the early recovery cluster programming, emphasis is being placed on the promotion of sound employment practice to avoid forced labour.
22. The ability to raise public awareness as to citizens' and workers' rights under both Myanmar law and the Supplementary Understanding will be significantly enhanced by the publication and distribution of the recently approved translation of the text of the Supplementary Understanding, supported by a simply worded brochure which hopefully can be approved and carried out shortly. The continuation of targeted training activity and the undertaking of joint missions in follow-up to specific complaints will also assist to this end. However, awareness of the law and the rights and responsibilities under it is only one part of the equation. It is critical that there is an increased ability for victims of forced labour complaints to physically submit their complaints directly or indirectly, with the help of facilitators, and to be able to do so without fear of retribution. The Government has agreed in principle to a second round of training sessions within the administrative authorities, and this will go some way towards achieving this objective. However, given that the facilities available to the Liaison Officer are unlikely to be expanded, the continued development of a network of facilitators is vital. Similarly important would be an assurance by the Government that victims of forced labour can complain and facilitators can support the complaints without fear of reprisal.

Yangon, 23 May 2008

Appendices

Supplementary Understanding dated 26 February 2007

Extension of the Supplementary Understanding dated 26 February 2008

Copy of the register of cases as of 19 May 2008

Supplementary Understanding

In the framework of the Conclusions adopted by the 95th Session of the International Labour Conference (Geneva, June 2006) in order to give full credibility to their commitment to effectively eradicate forced labour, the Government of the Union of Myanmar and the International Labour Organization have agreed to adopt the present Understanding relating to the role of the Liaison Officer with respect to forced labour complaints channelled through him/her, which supplements the "Understanding between the Government of the Union of Myanmar and the International Labour Office concerning the Appointment of an ILO Liaison Officer in Myanmar" (Geneva, 19 March 2002) as follows.

Object

1. In line with the recommendations of the High-Level Team (Report, GB.282/4, 282nd Session, Geneva, November 2001, para.80) to the effect that victims of forced labour should be able to seek redress in full confidence that no retaliatory action will be taken against them, the object of the present Understanding is to formally offer the possibility to victims of forced labour to channel their complaints through the services of the Liaison Officer to the competent authorities with a view to seeking remedies available under the relevant legislation and in accordance with the Forced Labour Convention No.29 (1930). This Understanding is without prejudice to other steps to accommodate the requests of the competent supervisory bodies of the ILO.

I. Treatment of complaints of forced labour

2. In accordance with the objective of the appointment of a Liaison Officer, the functions assigned, and the facilities extended to him/her under the March 2002 Understanding, any person or their representative(s) bona fide residing in Myanmar shall have full freedom to submit to the Liaison Officer allegations that the person has been subject to forced labour together with any relevant supporting information.

3. In accordance with his/her role of assisting the authorities to eradicate forced labour, it shall be the task of the Liaison Officer and/or any person that he/she may appoint for that purpose to examine the complaint objectively and confidentially, in the light of any relevant information provided or that he/she may obtain through direct and confidential contact with the complainant(s), their representative(s) and any other relevant person(s), with a view to making a preliminary assessment as to whether the complaint involves a situation of forced labour.

4. The Liaison Officer will then communicate to the relevant Working Group established by the Government of the Union of Myanmar those complaints which he/she considers to involve such a situation of forced labour, together with his/her reasoned opinion, in order for these cases to be expeditiously investigated by the most competent

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civilian or military authority concerned as appropriate. In minor cases the Liaison Officer may at the same time provide suggestions on ways in which the case could be settled directly among those concerned.

5. The Liaison Officer shall at all times during and after the treatment of the case have free and confidential access to the complainant(s), their representative(s) and any other relevant person(s) to verify that no retaliatory action has been taken. The Liaison Officer shall be informed by the authorities of any action taken against the perpetrator(s) with its motivation. In the event that penal action is taken he/she will have full freedom to attend any relevant court sittings personally or through a representative, in accordance with law.

6. The Liaison Officer will report through the ILO Director-General to the Governing Body at each of its sessions on the number and type of complaints received and treated under the above provisions as well as their outcome. He/she will provide at the end of the trial period his/her evaluation as to whether the scheme has been able to fulfill its objective, any obstacle experienced, and what possible improvements or other consequences could be drawn from the experience, including its termination. These interim and final reports will be communicated in advance to the authorities for any comments they would like to make.

II. Guarantees and facilities to be accorded to the Office in the discharge of the above responsibilities

7. The facilities and support extended to the Liaison Officer under the March 2002 Understanding and the present Understanding shall include timely freedom to travel for the purpose of establishing the contacts referred to in paragraph 3. While the designated representative of the Working Group may accompany the Liaison Officer, assist him/her at his/her request or otherwise be present in the area he/she is visiting in particular for security reasons, this presence should in no way hinder the performance of his/her functions, nor should the authorities seek to identify or approach the persons he/she has met until such time as he/she has completed his/her task under paragraph 3.

8. The two sides recognize that appropriate steps are to be taken to enable the Liaison Officer or his/her successor to effectively discharge the additional work and responsibilities arising out of this Understanding. The necessary adjustments will be made to the staff capacity available to him/her in a reasonable time, to meet the workload after due consultation.

9. Complaints submitted under the present Understanding shall not be a ground for any form of judicial or retaliatory action against complainant(s), their representative(s) or any other relevant person(s) involved in a complaint, at any time either during the implementation of the arrangements in the present Understanding or after its expiration, whether or not the complaint is upheld.

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III. Time frame and trial period

10. The arrangements in the present Understanding shall be implemented on a trial basis over a period of 12 months that may be extended by mutual agreement.

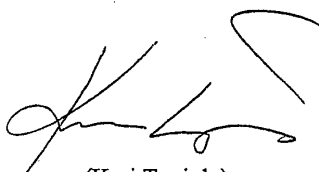
11. It will then, subject to any modification that may appear appropriate and acceptable to both parties, either be consolidated or terminated in the light of the evaluation referred to in part I.

12. During the trial period, in the event that either party fails demonstrably to fulfill its obligations under the March 2002 Understanding or the present Understanding, the other party may terminate the mechanism by giving one month's notice in writing.

IV. Miscellaneous

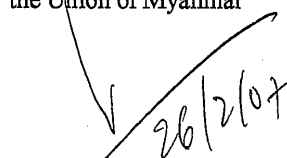
13. The Government of the Union of Myanmar and the International Labour Organization shall give adequate publicity to the present Understanding in the appropriate languages.

For the International Labour Organization



(Kari Tapiola)
Executive Director

For the Government of
the Union of Myanmar



(Nyunt Maung Shein)
Ambassador/Permanent Representative

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15/2/07

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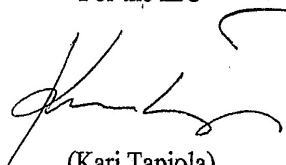
Minutes of the Meeting

The text, attached hereto, reflects the agreement between the Government of the Union of Myanmar and the International Labour Organization on a Supplementary Understanding relating to the role of the Liaison Officer with respect to forced labour complaints channelled through him/her, which supplements the "Understanding between the Government of the Union of Myanmar and the International Labour Office concerning the Appointment of an ILO Liaison Officer in Myanmar" (Geneva, 19 March 2002).

It is understood that:

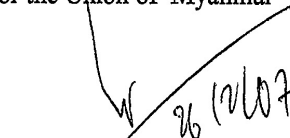
1. In connection with operative paragraph 1, last sentence, the Understanding cannot effect constitutional obligations under ratified Conventions, including reporting obligations under article 22 of the Constitution, and thus cannot prejudice the responsibilities that the competent supervisory bodies (Committee of Experts and the Committee on the Application of Conventions and Recommendations of the ILC) are called upon to discharge in that connection;
2. In connection with operative paragraph 4, the ILO agrees that in line with the whole purpose of the mechanism, and the specific concern reflected in this paragraph with respect to the subsequent investigation of the complaint by the Myanmar side, the assessment of the Liaison Officer should be carried out expeditiously;
3. The original of this Understanding has been written and signed in English. If this Understanding is translated into a language other than English, the English version shall govern and prevail;
4. This Understanding shall enter into force upon its signature by the authorized representatives of the parties.

For the ILO



(Kari Tapiola)
Executive Director
Standards and Fundamental Principles
and Rights at Work
International Labour Office
Geneva

For the Union of Myanmar



(Nyunt Maung Shein)
Ambassador
Permanent Representative
Permanent Mission of
the Union of Myanmar
to the United Nations and other
International Organizations
in Geneva

Geneva, 26 February 2007

KT
26/2/07


26/2/07

**An Agreement for Extension to the Supplementary Understanding and
its Minutes of the Meeting dated 26th February, 2007, done at
Geneva**

This Agreement is hereby concluded between the Government of the Union of Myanmar and the International Labour Organization represented by the undersigned authorized representatives. Noting Clause 10 of the Supplementary Understanding (hereinafter SU) and the Minutes of the Meeting dated 26th February, 2007, (hereinafter Minutes of the Meeting) it is herewith agreed as follows:-

- 1. Both parties agreed to extend, on the same trial basis, the SU and its Minutes of the Meeting being an integral part of the SU, for one year with the extension period commencing on 26th February, 2008, to the day one year thereafter being 25th February, 2009.**
- 2. The spirit and letters of the SU and the Minutes of the Meeting remain *In toto* unchanged.**
- 3. The SU and the Minutes of the Meeting shall continuously remain in legal effect upon signing by the authorized representatives of the parties mentioned below.**
- 4. This agreement will be submitted to the Governing Body in accordance with its conclusions at its 300th Session.**

This Agreement is done at Nay Pyi Taw, the Union of Myanmar on the 26th day of February, 2008.



**(Brig-Gen. Tin Tun Aung)
Deputy Minister
Ministry of Labour
Government of the Union of Myanmar**



**(Mr. Kari Tapiola)
Executive Director
International Labour Office**

Copy of the register of cases as of 19 May 2008

Register of Cases

Case	Date received	Accepted	Intervention-date	Status	Comments
001	28-Feb-07	Yes	9-Mar-07	Closed	Prosecution- 2 x imprisonment 1x acquitted
002	28-Feb-07	Yes	29-May-07	Closed	Child Released, disciplinary action-formal reprimand
003	5-Mar-07	No		Closed	Not related to mandate (worker welfare issue).
004	13-Mar-07	Yes	20-Mar-07	Closed	Not forced recruitment-under age-discharged to parents
005	29-Mar-07	No		Closed	Not related to mandate (land issue).
006	6-Apr-07	No		Closed	Not related to mandate (pension issue).
007	6-Apr-07	No		Closed	Not related to mandate (pension issue).
008	6-Apr-07	Yes	16-May-07	Closed	Compensation paid. Instigator dismissed.
009	9-Apr-07	Yes	10-Apr-07	Closed	Civil Sanctions and reprimands
010	9-Apr-07	No		Closed	Insufficient basis to proceed at this stage.
011	19-Apr-07	No		Closed	Insufficient information at this stage
012	19-Apr-07	No		Closed	Not related to mandate (employment dispute).
013	23-Apr-07	No		Closed	Complaints unwilling to be identified
014	23-Apr-07	No		Closed	Complaints unwilling to be identified
015	23-Apr-07	Yes	16-May-07	Open	Further verification in process
016	25-Apr-07	No		Closed	Not related to mandate (employment dispute).
017	26-Apr-07	Yes	22-Aug-07	Closed	Administrative instructions issued and educative activity undertaken .
018	9-May-07	Yes	22-May-07	Closed	Military Officer disciplined-joint training seminar re-proposed.
019	9-May-07	No		Closed	Not related to mandate (property dispute).
020	9-May-07	No		Closed	Insufficient basis to proceed.
021	9-May-07	Yes	10-May-07	Closed	Victim discharged to parents-disciplinary action as the result of Military Enquiry inadequate.
022	18-May-07	No		Closed	No evidence that the work constituted forced labour
023	18-May-07	Yes	23-May-07	Closed	Field Visit, Education activity undertaken
024	25-May-07	No		Closed	Insufficient information to proceed
025	22-Jun-07	Yes	14-Aug-07	Closed	4 officials dismissed, administrative instructions re-issued
026	26-Jun-07	Yes	13-Aug-07	Closed	Local Authorities instructional activity undertaken.
027	28-Jun-07	No		Closed	Not related to mandate-Pension/gratuity matter
028	7-Jun-07	No		Closed	Not related to mandate-Pensions matter
029	14-Jun-07	Yes	2-Aug-07	Closed	Village Chairman dismissed.
030	31-Jul-07	Yes	31-Jul-07	Closed	Child released-summary military trial-recruiting officer disciplined
031	25-Jun-07	No		Closed	Not related to mandate-Mass termination
032	29-Jun-07	No		Closed	Not related to mandate-land confiscation
033	6-Jul-07	Yes	9-Aug-07	Closed	Child Released, Training seminar proposed and agreed
034	12-Jul-07	No		Closed	Not related to mandate-hours of work/ Overtime issue
035	23-Jul-07	Yes	17-Aug-07	Closed	Gvt instructions issued, retrospective remuneration, Joint field trip for awareness education undertaken
036	24-Jul-07	No		Closed	Insufficient basis to proceed at this stage.
037	29-Jun-07	No		Closed	Not related to mandate-Migrant worker/payment of wages
038	25-Jul-07	No		Closed	Not related to mandate-termination of employment issue
039	12-Jun-07	No		Closed	Insufficient basis on which to proceed.
040	31-Jul-07	Pending		Pending	Assessment in process.
041	6-Aug-07	No		Closed	Not related to mandate-termination grievance
042	7-Aug-07	Yes	8-Aug-07	Closed	Not within mandate of forced labour SU-Issue of FOA remains.
043	15-Aug-07	Yes	16-Aug-07	Closed	Child Released, disciplinary action as the result of Military Enquiry inadequate.
044	16-Aug-07	No		Closed	Not related to mandate-wages/fees payment issue
045	20-Aug-07	Yes	10-Sep-07	Closed	New instructions issued.
046	24-Aug-07	No		Closed	Not related to mandate-commercial dispute
047	27-Aug-07	Yes	12-Sep-07	Open	Government response receive. Joint-mission undertaken, further recommendation made, awaiting government's response.
048	7-Sep-07	No		Closed	Insufficient evidence to proceed
049	7-Sep-07	Yes	19-Dec-07	Closed	Compensation package. One perpetrator demoted. Recommendation on policy review made.
050	14-Sep-07	Yes	20-Sep-07	Closed	Child released-Military enquiry resulted in disciplinary reprimand.

Register of Cases

Case	Date received	Accepted	Intervention-date	Status	Comments
051	20-Sep-07	Yes	25-Feb-08	Open	Awaiting Government response
052	20-Sep-07	Yes	22-Feb-08	Open	Government Response received and under consideration
053	10-Oct-07	Yes	9-Nov-07	Open	Government Response received-further verification sought and joint mission proposed.
054	17-Oct-07	Yes	18-Oct-07	Open	Clause 9 breach-negotiation continues
055	19-Oct-07	Yes	31-Oct-07	Closed	Child released-Military enquiry resulted in disciplinary reprimand.
056	25-Oct-07	Yes	09-Nov-07	Closed	Child released-Military enquiry resulted in disciplinary reprimand.
057	7-Nov-07	No		Closed	Not related to mandate - cross-border trafficking & HIV and AIDS
058	15-Nov-07	Yes	23-Nov-07	Closed	Child released-summary military trial-recruiting officer disciplined
059	15-Nov-07	Yes	30-Nov-07	Closed	Official translation approved
060	19-Nov-07	No		Closed	Not related to mandate - wages claim issue
061	17-Dec-07	Yes	19-Dec-07	Open	Government response under consideration
062	20-Dec-07	Yes	28-Dec-07	Closed	Victim discharged to custody of parents. Responsible recruiting officer officially reprimanded.
063	7-Dec-08	Yes	14-Jan-08	Closed	Victim discharged, recruiting officer reprimanded, instruction on humane treatment of trainees issued. Ongoing procedure recommendation made.
064	7-Dec-08	Yes	11-Feb-08	Open	Awaiting Government response
065	08-Jan-08	No		Closed	Not related to mandate-corruption allegation
066	14-Jan-08	Yes	22-Feb-08	Open	Government Response received and under consideration
067	16-Jan-08	Pending		Pending	Further info. from complainants required.
068	16-Jan-08	Yes	25-Feb-08	Open	Awaiting Government response - associated with 080
069	31-Jan-08	Yes	25-Feb-08	Open	Submitted in association with Case 051
070	6-Feb-08	Yes	12-Feb-08	Closed	Victim discharged, recommendation on proof of age documentation procedure made.
071	29-Jan-08	No		Closed	Not related to mandate - compensation for damaged crop
072	30-Jan-08	Yes	11-Mar-08	Open	Awaiting Government response
073	20-Feb-08	Yes	3-Mar-08	Open	Awaiting Government response
074	21-Feb-08	No		Closed	Insufficient basis to proceed.
075	03-Mar-08	Yes	11-Mar-08	Open	Victim discharged, follow up communication re disciplinary action
076	03-Mar-08	Yes	10-Mar-08	Closed	Child discharged - recruitment officer reprimanded. Victim admits voluntary recruitment - referred to UNICEF for reintegration
077	5-Mar-08	No		Closed	Not within SU mandate-FOA issue subject to <u>separate consideration</u>
078	5-Mar-08	No		Closed	Not within SU mandate-FOA issue subject to <u>separate consideration</u>
079	14-Mar-08	No		Closed	Not within SU mandate-FOA issue subject to <u>separate consideration</u>
080	14-Mar-08	Yes	08-Apr-08	Open	Awaiting Government response - associated with 068
081	17-Mar-08	Pending		Pending	Assessment in process.
082	17-Mar-08	No	21-Mar-08	Closed	Complainants unwilling to be identified
083	20-Mar-08	Yes	08-Apr-08	Open	Awaiting Government response
084	26-Mar-08	Pending		Pending	Assessment in process.
085	28-Mar-08	Pending		Pending	Assessment in process.
086	28-Mar-08	Yes	07-Apr-08	Open	Awaiting Government response
087	11-Apr-08	Yes	11-Apr-08	Open	Awaiting Government response
088	22-Apr-08	Pending		Pending	Awaiting supporting documentation
089	19-May-08	Pending		Pending	Awaiting supporting documentation

Document D.6

C. Special sitting to examine developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)

Contents

1. Observation of the Committee of Experts on the Application of Conventions and Recommendations on the observance of the Forced Labour Convention, 1930 (No. 29), by Myanmar
2. Conclusions of the Committee on the Application of Standards in its Special sitting to examine developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29) (International Labour Conference, 96th Session, June 2007)
3. Documents before the Governing Body at its 300th Session (November 2007) (documents GB.300/8 and GB.300/8(Add.))
4. Documents before the Governing Body at its 301st Session (March 2008) (documents GB.301/6/1, GB.301/6/2, GB.301/6, Appendices I, II, III and IV to document GB.301/6/2, as well as document GB.301/6/3)

1. Observation of the Committee of Experts on the Application of Conventions and Recommendations on the observance of the Forced Labour Convention, 1930 (No. 29), by Myanmar

Myanmar (ratification: 1955)

Historical background

1. In previous comments the Committee has drawn attention to gross breaches of the Convention by the Government of Myanmar and the failure by the Government to implement the recommendations of the Commission of Inquiry, appointed by the Governing Body in March 1997.

2. The Commission of Inquiry, appointed in 1997 under article 26 of the Constitution, concluded that the Convention was violated in national law and in practice in a widespread and systematic manner, and made the following recommendations:

- (1) that the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Convention;
- (2) that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military; and
- (3) that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced.

The Commission of Inquiry emphasized that, besides amending the legislation, concrete action needed to be taken immediately to bring an end to the exaction of forced labour in practice, in particular by the military.

3. The continued failure of the Government to comply with those recommendations and the observations of the Committee of Experts as well as other matters arising from the discussion in the other bodies of the ILO, led to the unprecedented exercise of article 33 of the Constitution by the Governing Body at its 277th Session in March 2000, followed by the adoption of a resolution by the Conference at its June 2000 session. The detailed history of this extremely serious case has been set out at length in previous observations of this Committee in recent years.

4. Each of the ILO bodies, in discussing this case, had focused attention on the recommendations of the Commission of Inquiry. The Committee of Experts has in its previous observations identified four areas in which measures should be taken by the Government to achieve those recommendations. Specifically, the Committee indicated the following measures:

- issuing specific and concrete instructions to the civilian and military authorities;
- ensuring that the prohibition of forced labour is given wide publicity;
- providing for the budgeting of adequate means for the replacement of forced or unpaid labour; and
- ensuring the enforcement of the prohibition of forced labour.

Developments since the Committee's last observation

5. There has been a number of discussions and conclusions by ILO bodies and also further documentation received which the Committee has considered in the course of making this observation. In particular the Committee notes:

- the discussions and conclusions of the Conference Committee on the Application of Standards during the 96th Session of the International Labour Conference in June 2007;
- the documents submitted to the Governing Body at its 298th and 300th Sessions (March and November 2007) as well as the discussions and conclusions of the Governing Body during the sessions;
- the comments made by the International Trade Union Confederation (ITUC) in a communication received on 31 August 2007 together with the detailed appendices of some 740 pages;
- the reports of the Government of Myanmar received on 17 and 20 August, 10 September and 12 and 23 October as well as 3 December 2007; and
- the Supplementary Understanding (SU) of 26 February 2007 to the earlier Understanding of 19 March 2003 concerning the appointment of an ILO Liaison Officer in Myanmar.

The Supplementary Understanding of 26 February 2007

6. The Committee notes at this point that the SU is a very important development and its significance is discussed in greater detail towards the end of this observation. It is important for the SU to be viewed in the context of the other documentation, discussions and conclusions referred to above.

7. The SU concerns the appointment and role of an ILO Liaison Officer in Myanmar, and was concluded after long negotiations between the ILO and the Government of Myanmar. The SU provides for a new complaints mechanism to be established and put into operation, and has as its prime object “to formally offer the possibility to victims of forced labour to channel their complaints through the services of the Liaison Officer to the competent authorities with a view to seeking remedies available under the relevant legislation”. The mechanism was to be implemented on a trial basis over a period of 12 months and could thereafter be extended by mutual agreement (GB.298/5/1, appendix).

8. The role of the Liaison Officer in the context of the SU and the impact of his work in the circumstances in which he was required to perform it in the country, was a major subject of later discussion in ILO bodies.

Discussion and conclusions of the Conference Committee on the Application of Standards

9. The conclusion of the Conference Committee during the 96th Session in June 2007, was that, whilst the complaints mechanism set up under the SU was continuing to function, it had to be assessed against the ultimate goal of eliminating forced labour.

10. In this connection, the Committee notes that the Committee on the Application of Standards in its conclusions in June 2007 (ILC, 96th Session, *Provisional Record* No. 22, Part 3) “observed that the mechanism had to be assessed against the ultimate goal of eliminating forced labour, and it remained to be seen what the impact would be”; and that the recent documentation submitted to the Governing Body stated that “it is both

physically and financially very difficult for victims of forced labour or their relatives to lodge a complaint if they live outside Yangon” noting that “informal networks have been developed” which “although valuable ... do not necessarily extend to all parts of the country” (GB.300/8, paragraph 9). The Committee also notes from the documentation that “regarding the mechanism set up by the Supplementary Understanding, it is not possible today to say to what extent it is fully functional after the civil unrest and its suppression, and thus to what extent experiences from it can be built upon” (GB.300/8, Add, paragraph 9).

Discussions in the Governing Body

11. The Committee notes that the reports to the Governing Body at its 300th Session in November 2007 regarding the progress of the complaints mechanism indicated that as of 7 November 2007, the Liaison Officer had received 56 complaints (GB.300/8(Add.), paragraph 3). Of those complaints, 19 were assessed as falling outside the mandate of the Liaison Officer and 24 were formally submitted for investigation and appropriate action to the Deputy Minister of Labour in his capacity as Chairman of the Government Working Group on Forced Labour. Four complaints were closed after being assessed as having an insufficient basis to proceed, and nine complaints were still being processed or could not proceed until further information was received from the complainants (GB.300/8, paragraph 5, and GB.300/8(Add.), paragraph 5).

12. In addition, the Governing Body called upon the Government to ensure that the mechanism provided by the SU remained fully functional with no further detention or harassment of complainants, facilitators or others, and that it should be fully applied to the military authorities. It considered that full attention should also be given to preventing the recruitment of child soldiers (paragraph 5). Importantly, the Governing Body also called for the putting into place of an appropriate network towards ensuring that the nationwide application of the SU, including in the combat zones, and to ensure that forced labour victims are able to easily access the complaints mechanism (paragraph 6).

Communication received from the International Trade Union Confederation

13. The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication received on 31 August 2007. Appended to this communication were 45 documents, amounting to more than 740 pages, containing extensive and detailed documentation referring to forced labour practices on the part of civil and military authorities. In many cases, the documentation refers to specific dates, detailed locations and circumstances, and specific civil bodies, military units and individual officials. The documentation covers a broad area of the country (including many parts of Chin, Kayah, Kayin, southern Mon, northern Rakhine and Shan States, and of Ayeyarwady, Bago, Mandalay and Tanintharyi Divisions) during the period from the second half of 2006 through the first half of 2007. The incidents referred to involve the alleged requisition of labour for the full range of tasks identified by the Commission of Inquiry:

- portering for the military (or other military/paramilitary groups, for military campaigns or regular patrols);
- construction or repair of military camps/facilities;
- other support for camps (guides, messengers, cooks, cleaners, etc.);
- income-generation by individuals or groups (including work in army-owned agricultural and industrial projects);

- various infrastructure projects; and
- cleaning/beautification of rural or urban areas.

14. The documentation includes copies of 145 written orders apparently from military and other authorities to villages in Kayin State, containing a range of demands entailing in most cases a requirement for (uncompensated) labour. It also includes photographs purporting to show people in Mon State being forced to work on military development projects, as detailed in an accompanying report. It further includes a video in which five men state that they were forced to work for the Myanmar army since April 2007 as porters, sentries, carrying out construction projects, building fences and doing various tasks in army camps, as well as being forced to provide ox carts and tractors to the army. A copy of the ITUC's communication and its annexes was transmitted to the Government for such comments as it may wish to provide.

The Government's reports

15. The Committee notes the Government's reports received on 17 and 20 August, 10 September, 12 and 23 October, and 3 December 2007. These reports make reference to information contained in a communication from the ITUC to the Committee dated 31 August 2006 that was forwarded to the Government and to which reference was made in the Committee's previous observation. The Government has not responded in detail to the information contained in the ITUC's communication, except to state its view that "most of the issues raised by the [ITUC] are totally groundless" and to note that such cases "would be covered by the mechanism to deal with the forced labour complaints under the Supplementary Understanding" agreed between the ILO and Myanmar on 26 February 2007.

16. The Committee must point out that agreement on the Supplementary Understanding and the establishment of the complaint mechanism provided for thereunder, in no way relieves the Government of its obligation under the Convention to suppress the use of forced labour. Rather, they are a means to assist the Government in meeting this obligation through the full implementation of the recommendations of the Commission of Inquiry.

17. *The Committee requests the Government to respond in detail in its next report to the numerous specific allegations contained in the most recent communication from the ITUC as well as that of the previous year.*

Assessment of the situation

Issuing specific and concrete instructions to the civilian and military authorities

18. The Committee notes that in its report the Government has again referred to a series of letters, directives, telegrams and rules issued by various civil and military authorities relating to the Orders prohibiting forced labour. However, as noted in its previous observation, since the Government has supplied minimal details of the content of these instructions, and given that all the indications suggest that the imposition of forced labour continues to be widespread, the Committee is yet to be convinced that clear instructions have been effectively conveyed to all civil authorities and military units. ***The Committee reinforces the need for appropriate publicity to be given to these Orders.***

19. The Committee must also emphasize that, even if the Orders provide a statutory basis in practice for ensuring compliance with the Convention, this still falls far short of the formal repeal of the provisions of the relevant legislation requested by the Commission of Inquiry. ***The Committee therefore hopes that the Government will take the necessary***

steps to amend these provisions as soon as possible, something it has been promising to do for 40 years. The Committee also hopes that the Government will take advantage of the opportunity to bring constitutional clarity to the prohibition of forced labour.

Ensuring that the prohibition of forced labour is given wide publicity

20. In relation to ensuring that the prohibition of forced labour is given wide publicity, the Committee refers to its comment above. The Committee also notes the agreement on 26 February 2007 of a Supplementary Understanding between the ILO and the Government, which is a welcome development. The mechanism that it establishes to deal with complaints of forced labour provides an opportunity to the authorities to demonstrate that continued recourse to the practice is illegal and will be punished as a penal offence, as required by the Convention. The fact that Order No. 1/99 as supplemented by the Order of 27 October 2000, has been used as a legal basis for criminal convictions of government officials for exacting forced labour, is in line with the Committee's conclusion in its observation published in 2001, that these Orders "could provide a statutory basis for ensuring compliance with the Convention in practice, if given bona fide effect not only by the local authorities empowered to requisition labour under the Village and Towns Acts, but also by civilian and military officers entitled to call on the assistance of local authorities under the Acts".

21. The Committee also notes that some publicity has been given to the signing of the Supplementary Understanding and to the subsequent prosecutions of two officials for imposing forced labour (a press release on 26 February 2007; a press conference by the Director-General of the Department of Labour on 26 March 2007; and an article on the prosecutions in the *New Light of Myanmar* on 31 March 2007). The Committee also notes from the report submitted to the 300th Session of the Governing Body that the Government "has undertaken widespread training for administrators to raise awareness of the law and to explain the Supplementary Understanding procedure", that "a further round of such training on a joint ILO/Ministry of Labour basis has been discussed" and that "the Government has drafted a booklet entitled *Eradication of forced labour – Educational Paper No. 1*", consultations on the content and format of which are continuing prior to its dissemination throughout the administration (GB.300/8, paragraph 8).

22. The Committee considers that such publicity is vital in ensuring that the prohibition of forced labour is widely known and applied in practice, and should continue and be expanded. The Committee shares the view of the Governing Body that "an unambiguous public statement that all forms of forced labour are prohibited throughout the country and will be duly punished" from the Government of Myanmar "at the highest level" (GB.300/8, conclusions) would be extremely valuable.

Providing for the budgeting of adequate means for the replacement of forced or unpaid labour

23. In this regard, the Committee stresses the importance of its request, made regularly in previous observations and underlined in the recent conclusions of the Conference Committee on the Application of Standards, that specific instructions be issued to all military units making clear the prohibition of forced labour and the fact that this will be strictly enforced. This requires the budgeting of adequate means for the replacement of forced labour, which tends also to be unpaid, are necessary if recourse to the practice is to end.

24. Similarly, the Committee notes that the Government's report of 17 August 2007 states that it provides a budget allotment including labour costs "for all Ministries to implement their respective projects" and that a signed statement from the Ministry of Construction indicating the sum in question is provided in an annex to the report. Again,

the Committee fails to understand, if adequate resources really are provided to civil and military authorities, why it is that recourse to unpaid forced labour apparently remains widespread, particularly by the military and by local civil administrations. ***The Committee repeats its earlier request that the Government, in its next report, provide detailed information about the measures taken to budget for adequate means for the replacement of forced or unpaid labour.***

Ensuring the enforcement of the prohibition of forced labour

25. The Committee is bound to express its concern that, as stated in the reports submitted by the Office to the Governing Body referred to above, and in the information provided by the Government, that out of 24 complaints (as of 7 November) forwarded by the Liaison Officer to the authorities for investigation and appropriate action, only one case has so far resulted in the prosecution of those responsible (Case No. 001, which led to the prosecution of two civilian officials). A number of other cases have led to administrative action against civilian officials (for example, dismissals or warnings for the officials concerned). Although seven of the cases forwarded to the authorities by the Liaison Officer involved allegations against military personnel (for forced recruitment of children into the army, and imposition of forced labour against villagers), there are so far no indications that any action, criminal or even administrative, has been taken against any military personnel. The Committee notes the recent information provided by the Government on 3 December 2007 that it has taken concrete measures to prevent recruitment of children into the military by setting up a central committee and working committees, with follow-up workshops.

26. The Committee notes the information from the Liaison Officer that the Government Working Group “appears to be more successful in achieving prompt and constructive outcomes in cases associated with civil administrations. It is more difficult to obtain timely and appropriate responses on complaints involving the military” (GB.300/8, paragraph 6). The Committee indicates that this is all the more concerning, as it has previously observed that forced labour is a particular problem in areas of the country with a heavy presence of the army.

27. The Committee reemphasizes that the illegal exaction of forced labour must continue to be punished as a penal offence, rather than an administrative issue, as required by Art. 25 of the Convention. While taking account of the measures to be taken by the Government regarding recruitment of children, it is also essential that the legal penalties be strictly enforced in cases involving military personnel, including in cases of forced recruitment of children into the armed forces.

Conclusion

28. The Committee considers that there are obvious constraints and limits on the contribution that the complaint mechanism can make to the eradication of forced labour. This is due to structural limitations on the mechanism and is magnified by the uncertainties of the present situation in the country. The mechanism can certainly provide welcome relief to individual victims by offering an objective and safe channel for complaints to be raised and addressed, and beyond this it can send a powerful signal to potential perpetrators that they are not free to act with impunity. However, the mechanism is not obviously well-suited to dealing with some of the more extreme and widespread violations in remote areas, of the kind referred to in the documentation submitted by the ITUC.

29. More fundamentally, the complaint mechanism, whilst valuable, does not address the root causes of the forced labour problem that were identified by the Commission of Inquiry and by the High-level Team (see GB.282/4). Namely, it does not address the basic governance relationships prevailing in the country, the role of the army and its self-reliance policy, and the absence of freedom of association and, more generally, freedom of

assembly, which recent events have served to graphically illustrate. The prevailing situation in Myanmar, ten years after the establishment of the Commission of Inquiry, seems to provide sad support to the perception that addressing these root causes remains indispensable.

30. In the light of this, the Committee believes that the only way that genuine and lasting progress in the elimination of forced labour can be made is for the Myanmar authorities to demonstrate unambiguously their commitment to achieving that goal. This requires, beyond the agreement of the Supplementary Understanding, that the authorities establish the necessary conditions for the successful functioning of the complaint mechanism, and that they take the long overdue steps to repeal the relevant provisions of domestic legislation and adopt the appropriate legislative and regulatory framework to give effect to the recommendations of the Commission of Inquiry. ***The Committee remains hopeful that, having agreed the Supplementary Understanding, the Government will finally take the required steps to achieve compliance with the Convention in law and in practice and resolve one of the most serious and long-standing cases that this Committee has ever had to address.***

2. Conclusions of the Committee on the Application of Standards in its special sitting to examine developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)
(International Labour Conference, 96th Session, June 2007)

The Committee examined the observations of the Committee of Experts and the report from the ILO Liaison Officer a.i. in Yangon, which included the latest developments in the implementation of the complaint mechanism on forced labour that was established on 26 February 2007. The Committee noted the decisions of the Governing Body of March 2007. It also listened to the statement of the Government representative. The Committee expressed its profound concern at the forced labour situation in Myanmar, as reflected in the observation of the Committee of Experts. It concluded that none of the recommendations of the Commission of Inquiry had yet been implemented, and the imposition of forced labour continued to be widespread, particularly by the army to which specific instructions should be issued. The situation in Kayin (Karen) State and northern Rakhine (Arakan) State was particularly serious. The Committee strongly urged the Government to take all the necessary measures to give effect to the recommendations of the Commission of Inquiry. The Committee took due note of the fact that the complaint mechanism on forced labour continued to function, and that the authorities were investigating the cases referred to them by the Liaison Officer and taking action against those officials found to have illegally imposed forced labour. It was observed, however, that in a number of cases the action taken had been limited to administrative measures rather than the required criminal penalties. It was also observed that the mechanism had to be assessed against the ultimate goal of eliminating forced labour, and it remained to be seen what the impact would be, particularly in the border areas. The Committee underlined the need for the Liaison Officer to have sufficient staff resources available to him as provided for in the Supplementary Understanding and requested by the Governing Body in March 2007. It noted with concern that the Government had not yet agreed to the appointment of an international staff member to assist the Liaison Officer, even though the workload continued to increase, and urged that the necessary cooperation and facilities be given without delay. The Committee requested the Myanmar authorities to give full cooperation to the ILO and extend to the new Liaison Officer all the facilities necessary under the agreement and appropriate under usual diplomatic practice. The Government of Myanmar was requested to provide full information to the Committee of Experts in time for its session later this year, including concrete and verifiable evidence of action taken towards the implementation of the Commission of Inquiry's recommendations. Finally, the Committee welcomed the appointment of Mr Stephen Marshall as the new ILO Liaison Officer in Yangon and expressed its deepest appreciation for the work carried out by the outgoing ILO Liaison Officer a.i., Mr Richard Horsey.

3. Documents before the Governing Body at its 300th Session (November 2007)



INTERNATIONAL LABOUR OFFICE

GB.300/8
300th Session

Governing Body

Geneva, November 2007

FOR DEBATE AND GUIDANCE

EIGHTH ITEM ON THE AGENDA

Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)

Introduction

1. The recent situation in Myanmar has been extensively documented in the world news. The large-scale demonstrations in September 2007 started as protests over rising prices resulting from major fuel price increases following the Government's reduction of fuel subsidies. Actions on the part of the authorities to stop these demonstrations resulted in their gaining momentum and evolving into broader based action, not only in protest against rising prices but also seeking redress to perceived social wrongs and promoting political reform. The serious concerns of the international community with regard to the Government of Myanmar's violent repression of the protest led to high-level intervention by the United Nations Security Council, through the services of the Secretary-General's Special Envoy to Myanmar.
2. At the time of writing this report, steps are being taken to promote negotiation and dialogue between Senior General Than Shwe and his Government and Daw Aung San Suu Kyi and her National League for Democracy (NLD). A relative calm has returned to the streets, but the night-time curfew remains in force. There are continuing reports of home occupancy inspections and the detention of perceived protesters, potential leaders and opposition supporters.
3. This report will be submitted in two parts. This initial part reports on progress since the 298th Session of the Governing Body in respect of the application of the Supplementary Understanding signed between the ILO and the Government of Myanmar on 26 February 2007, establishing a mechanism to enable victims of forced labour to seek redress, and covers the period through to the end of September 2007. The second part will report on the situation after September as regards both the application of the Supplementary Understanding and the activities of the Liaison Officer. It will be distributed at a later date as a separate addendum, so as to be as relevant as possible.

Position and activities to 30 September 2007

4. As at 30 September 2007, the Liaison Officer had received 53 complaints. Of these, 19 fell outside the Officer's mandate, relating for example to such matters as land confiscation, payment of wage disputes and unjustified termination of employment claims; 21 had been duly assessed and formally submitted to the Deputy Minister of Labour, Major-General Aung Kyi, in his capacity as Chairman of the Government Working Group on Forced Labour; four had been closed after assessment determined insufficient basis to proceed; and nine are still being assessed or cannot proceed until further information is received from the complainants.
5. As at 30 September, of the 21 complaints submitted to the Deputy Minister of Labour, ten had been processed through to a conclusion considered acceptable for the closure of the file. In respect of the other 11, information is still pending from the Government Working Group on the findings of its investigation and the action it proposes to take in response to those findings. A copy of the up to date complaints register will be attached to the addendum to be distributed at a later date.
6. Within the limitations of the Supplementary Understanding, the Government Working Group and the Ministry of Labour have been cooperative in their administration of the procedure and have responded seriously to complaints. While there have been no further prosecutions of offenders resulting in imprisonment or criminal conviction beyond those reported to the Governing Body at its March 2007 session, a number of complaints have resulted in the termination of the employment of the responsible officials and the issuing of administrative warnings. The Government Working Group appears to be more successful in achieving prompt and constructive outcomes in cases associated with civil administrations. It is more difficult to obtain timely and appropriate responses on complaints involving the military.
7. During August and September 2007, two joint ILO/Ministry of Labour mediation, training and awareness-raising exercises were carried out in a number of villages. While there were attempts at some levels to downplay forced labour complaints, the cooperation of the Ministry at the senior level was positive. This approach, combining education and mediation, has been useful in the context of forced labour complaints relating to community-based infrastructure projects. It entails raising the awareness of all the people in a village as to the difference between forced labour and voluntary work. It envisages the introduction of a procedural protocol, acceptable to all parties, for the identification, acceptance, planning and undertaking of beneficial community projects where the requirement for labour is not too great. This approach is, of course, valid only for small projects within a community, where work is to be undertaken on a purely voluntary basis with no reprisal or punishment for non-involvement. An understanding along these lines has been reached in two villages so far. If the planned follow-up and verification show that the approach is effective, this model could potentially be used elsewhere in the country in similar small-scale circumstances.

8. Such an approach is not applicable to activities which quite clearly involve forced labour rather than community projects, including major infrastructure works such as large-scale road- and bridge-building projects. Obviously, such an approach cannot be applied to forced labour exacted by the military. In both of these areas, it is necessary to remind the administration continuously of the legal prohibitions relating to forced labour and of its responsibilities under the law, and also to ensure that the law is enforced. The Government has undertaken widespread training for administrators to raise awareness of the law and to explain the Supplementary Understanding procedure. A further round of such training on a joint ILO/Ministry of Labour basis has been discussed. The Government has drafted a booklet entitled *Eradication of forced labour – Educational Paper No. 1*; consultations on its content and format are continuing prior to the intended publication and dissemination of the booklet throughout the administration. In parallel to this educational activity, measures must be taken to enforce the law, with formal investigations taking place and with perpetrators being charged under the law or otherwise appropriately dealt with. The Supplementary Understanding procedure can only play a limited role in that regard.
9. It is both physically and financially very difficult for victims of forced labour or their relatives to lodge a complaint if they live outside Yangon. Informal networks have been developed to make it easier to lodge complaints. Although valuable, these informal networks do not necessarily extend to all parts of the country. Discussions are under way on the establishment of a more formal network encompassing international organizations, international non-governmental organizations and non-governmental organizations. It is hoped that such a network will facilitate the broader dissemination of materials explaining the law and rights under that law. In the absence of a network of ILO representation throughout the country, such a network could be used as a local repository for the receipt of complaints. Network partners would, by necessity, act solely as “mailboxes” for complaint submissions. If such a network is developed, emphasis must be placed on selecting appropriate partners and providing their field staff with basic training on complaint receipt procedures, confidentiality and security.
10. Although the international press regularly publishes allegations of widespread and brutal forced labour practices, very few of these reported cases are referred directly to the Liaison Officer. The same is true for the publications and reports produced by a number of border organizations. It would be in the interests of all for such allegations and reports to be brought under the ambit of the Supplementary Understanding, to enable the verification of the facts and an investigation into the complaints to be carried out.
11. In May 2007, six labour activists were detained in connection with a May Day meeting held in the American Center in Yangon. The arrests were brought to the Liaison Officer’s attention and the matter was raised with the Government in the context of its responsibilities as a signatory to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). In July, it was established that the detainees had been charged and that court hearings had commenced. On 7 September, the detainees were convicted and sentenced for alleged offences under the Unlawful Associations Act, the Immigration (Emergency Provisions) Act and the sedition sections of the Penal Code. They each received a prison sentence of between 20 and 28 years. The ILO, through its Geneva headquarters, issued a press statement calling for the review and overturning of those convictions and the release of the individuals concerned. These calls were reconfirmed by the Liaison Officer in communication with the Government, both orally and in writing.

12. Since the last session of the Governing Body, the Government has granted an entry visa for an assistant to the Liaison Officer. Ms Piyamal Pichaiwongse started work in Yangon on 24 July 2007. This additional professional resource has provided valuable support to the Liaison Officer, including with regard to receiving and assessing complaints and undertaking field investigations. It has further permitted the Liaison Officer to involve the ILO as appropriate in such matters as the forced labour aspects of children in armed conflict zones, child soldiers, child protection, juvenile justice and the trafficking of children, in cooperation with other United Nations agencies, in particular the United Nations Children's Fund (UNICEF). Similarly, the presence of additional professional support has permitted the Liaison Officer to be part of the Human Rights Group recently formed by the United Nations Country Team, the aim of which is to ensure that appropriate emphasis is placed on fundamental human rights issues in balance with the humanitarian programmes currently in place. It is hoped that this support base will be maintained in the next biennium.

Geneva, 29 October 2007.

For debate and guidance.



FOR DEBATE AND GUIDANCE

EIGHTH ITEM ON THE AGENDA

Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)

Addendum

1. Document GB.300/8 has reported on the application of the Supplementary Understanding (SU) signed between the ILO and the Government of Myanmar on 26 February 2007 up to the end of September 2007. As this addendum reports on the period from 1 October 2007, it also covers the period following the civil unrest. In particular, it attempts to assess the impact of recent events on the application of the SU.
2. At the time of writing, the Secretary-General's Special Envoy to Myanmar, Mr Ibrahim Gambari, was still in the country addressing the issues raised by the international community. The Special Rapporteur on Human Rights in Myanmar, Mr Sergio Pinheiro, was due to arrive on 11 November 2007, following the Government of Myanmar's agreeing to receive a visit from him prior to the ASEAN summit.
3. As of 7 November 2007, 56 complaints had been recorded as received by the Liaison Officer. Four new cases have been received since the end of September. An updated copy of the register of cases will be made available to this session of the Governing Body.
4. During the period 20 September to 10 October (the civil protest period) no complaints were received. It is probable that persons who have been involved in transmitting complaints have been discouraged, or deterred, by the public protest activity and the measures taken by the Government to counter the protests.
5. The four new complaints that have been recently received are of a different nature than the previous general pattern. One is an allegation of forced labour directly resulting from the protest activities and concerns the authorities' requirement for ready access to bus transport to meet their potential need for rapid deployment of personnel. One relates to an alleged breach of article 9 of the SU through the detention and harassment of persons involved in the making and facilitation of forced labour complaints. Two allegations concern the forced military recruitment of minors. These complaints have been assessed by the Liaison Officer, in the manner foreseen by the SU, and referred to the responsible Government Working Group for investigation and appropriate action. Their receipt has been acknowledged, and responses are duly awaited. The Liaison Officer has also recently

received follow-up visits from or on behalf of complainants, providing additional information on previously lodged complaints.

6. In respect of the alleged breach of article 9 of the SU referred to above, three of four persons who had recently been detained have now been released. In so doing, the Government has stressed that all of the persons concerned were, in addition to their activities as forced labour facilitators, involved in the protest movement and that this was the cause of their detention. At a meeting on 6 November 2007, between the Liaison Officer and the Director-General of the Department of Labour, acting as the authorized representative of the Minister of Labour, the Government undertook to review the situation of the remaining detainee. The outcome of this review was at the time of writing not known.
7. Among the recent events, the following warrant bringing them to the attention of the Governing Body. Following the visit of the UN Secretary-General's Special Envoy to Myanmar in September 2007, the Government appointed the Deputy Labour Minister, U Aung Kyi, to liaise with Aung San Suu Kyi. On 8 October 2007, U Aung Kyi was appointed Labour Minister.
8. Following the issuance of a United Nations Country Team statement on the situation in the light of the civil unrest and its suppression, the Government on 1 November 2007 asked the UN Resident Representative, Mr Charles Petrie, to leave the country. Mr Petrie has been Resident Representative since 2003. In this capacity, his support to the ILO was particularly valuable when serious threats were made against the Liaison Officer in 2005 (see document GB.294/6/2). Mr Petrie has since 2006 also been Humanitarian Coordinator in Myanmar.
9. It is apparent that the situation is fluid and unstable. A meaningful review of the functioning of the SU and, indeed, of the role of the ILO in general cannot be made at this stage. Regarding the mechanism set up by the SU, it is not possible today to say to what extent it is fully functional after the civil unrest and its suppression, and thus to what extent experiences from it can be built upon. The first report (GB.300/8) already indicated some elements which could be developed further. The Government has reaffirmed that it remains committed to the mechanism, for which the one year trial period comes to an end on 26 February 2008. A more comprehensive report will be made to the Governing Body for its March 2008 session.
10. ILO activities to assist the Government in implementing the forced labour Convention do not take place in isolation. The general environment, and particularly attempts to overcome the current situation through dialogue, is of capital importance if ILO activities are to sustainably contribute to the elimination of forced labour and, through that, in general to improving the rights of all citizens of Myanmar. Consequently, decisions and processes at the national level in general are crucial also for the prospects of immediate and longer term ILO action in Myanmar.

Geneva, 9 November 2007.

Submitted for debate and guidance.

300th Session of the Governing Body of the International Labour Office

(November 2007)

EIGHTH ITEM ON THE AGENDA

GB.300/8(& Add.)

Conclusions concerning Myanmar

1. The Governing Body considered all of the information before it including the comments and information provided by the Permanent Representative of Myanmar. It noted the progress reported in the operation of the Supplementary Understanding (SU) up to the time of public demonstrations and their suppression at the end of September 2007, including the educational activity that had been jointly undertaken by the Ministry of Labour and the ILO.
2. The Governing Body, however, expressed its serious concern at the Government's crackdown in response to the recent peaceful protests. In this respect, it noted with deep regret the imprisonment of persons exercising their fundamental right to freedom of association and the freedom of expression it entails, and called on the Government to comply fully with its responsibilities in accordance with Convention No. 87, which it has ratified. The long prison sentences given on 7 September 2007 to six activists should be reviewed and the persons concerned released. The Governing Body also noted with concern the detention of persons associated with the facilitation of forced labour complaints under the SU. This clearly contradicted the sense of the SU and the Governing Body called on the Government to immediately release those persons, in particular Daw Su Su Nway and U Min Aung.
3. The Governing Body expressed its full support for the United Nations Country Team in Myanmar and its leadership, expressing its deep regret at the Government's recent decision that the Resident Coordinator should leave the country.
4. The Governing Body recognized that the situation in Myanmar is unstable. It urged the Government to continue the dialogue process, in a balanced and results-orientated manner, towards domestic reconciliation and forward-looking solutions to the current difficulties. It was too early to fully assess what impact the recent civil unrest and its suppression has had on the current and future operational prospects of the SU. The Governing Body further agreed that, whilst the ILO activity for the eradication of forced labour was an important contribution to efforts to improve the rights and lives of citizens in Myanmar, it cannot be considered in isolation and is dependent on the general environment and the evolution of current dialogue initiatives.
5. The Governing Body therefore called on the Government of Myanmar to make at the highest level an unambiguous public statement that all forms of forced labour are prohibited throughout the country and will be duly punished. The Government should ensure that the mechanism provided by the SU remains fully functional with no further detention or harassment of complainants, facilitators or others, and that it fully applies to the military authorities. Full attention should be given to preventing the recruitment of child soldiers.
6. The Governing Body further called for the putting into place of an appropriate network towards ensuring the nationwide application of the SU, including in the combat zones, and

to ensure that forced labour victims are able to easily access the complaints mechanism. It is understood that the SU concluded on 26 February 2007 may be extended. It instructed the Office to undertake a full review of the operation of the SU for submission to the Governing Body at its March 2008 session together with recommendations for both the SU's future and the ILO's ongoing role in Myanmar.

7. Finally, the Governing Body again reminds that all these activities have to serve and strengthen the objective of ending forced labour in Myanmar through the full implementation of the recommendations of the 1998 Commission of Inquiry and all of the related decisions of the International Labour Conference and the Governing Body.

4. Documents before the Governing Body at its 301st Session (March 2008)



INTERNATIONAL LABOUR OFFICE

Governing Body

GB.301/6/1
301st Session

Geneva, March 2008

FOR INFORMATION

SIXTH ITEM ON THE AGENDA

Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)

1. The Supplementary Understanding between the Government of Myanmar and the ILO concerning the treatment of allegations on the use of forced labour was concluded on a 12-month trial basis on 26 February 2007.¹ It thus is scheduled to expire shortly before the March 2008 session of the Governing Body.
2. The Office has been engaged in discussions, both in Yangon and Geneva, with the Government of Myanmar on how this Understanding has functioned and the options for the future, including its possible extension and related questions. These discussions have also covered all the issues arising from the relevant conclusions of the Governing Body in November 2007.²
3. A mission from ILO headquarters is scheduled to visit Myanmar at the end of February for more in-depth discussions. The outcome will be reported to the members of the Governing Body as soon as possible, together with factual information on the functioning of the Supplementary Understanding. The report will also cover the activities of the ILO Liaison Officer since the November session of the Governing Body.

Geneva, 27 February 2008.

Submitted for information.

¹ GB.298/5/1, para. 6; GB.298/PV, para. 139.

² GB.300/8.



FOR DEBATE AND GUIDANCE

SIXTH ITEM ON THE AGENDA

Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)

Introduction

1. At its 300th Session (November 2007), the Governing Body called on the Government of Myanmar to consider a number of issues to demonstrate its commitment to the eradication of forced labour. In particular, the Governing Body:

... called on the Government of Myanmar to make at the highest level an unambiguous public statement that all forms of forced labour are prohibited throughout the country and will be duly punished. The Government should ensure that the mechanism provided by the [Supplementary Understanding of 26 February 2007] remains fully functional with no further detention or harassment of complainants, facilitators or others, and that it fully applies to the military authorities. Full attention should be given to preventing the recruitment of child soldiers.

The Governing Body further called for the putting into place of an appropriate network towards ensuring the nationwide application of the Supplementary Understanding, including in the combat zones, and to ensure that forced labour victims are able to easily access the complaints mechanism. It is understood that the Supplementary Understanding concluded on 26 February 2007 may be extended. It instructed the Office to undertake a full review of the operation of the Supplementary Understanding for submission to the Governing Body at its March 2008 session, together with recommendations for both the Supplementary Understanding's future and the ILO's ongoing role in Myanmar.

2. It will be recalled that the Supplementary Understanding signed on 26 February 2007 was for a 12-month trial period. Discussions on its functioning have taken place in particular between the ILO Liaison Officer in Yangon, Mr Steve Marshall, and the interministerial Working Group, which on the side of the Myanmar Government consists of high-level representatives of the Ministries of Labour, Foreign Affairs and Home Affairs, the Office of the Attorney-General and the Supreme Court. The Liaison Officer has continued to receive and process complaints. A list of the 78 cases received up to now is appended to this report.
3. Given both the imminent expiry of the Supplementary Understanding and the follow-up requirements of the conclusions of the November 2007 Governing Body, an ILO mission visited Myanmar from 25 to 28 February 2008. The mission consisted of Mr Kari Tapiola, Executive Director, accompanied by Mr Francis Maupain, Special Adviser to the Director-

General, and the ILO Liaison Officer in Yangon. The mission met with the Minister of Labour, U Aung Kyi, and the Working Group on forced labour in the capital Nay Pyi Taw on 26 February 2008. It met with the members of the Central Executive Committee of the National League for Democracy in Yangon on 27 February. It also met with a group of facilitators, who have been involved in the complaints under the Supplementary Understanding, and with the relatives of detained labour activists. The mission could however not meet with the activists themselves, as visits have been restricted to persons who are on the list of family members of prisoners. Finally, the mission also met with members of the Yangon-based diplomatic community as well as the UN country team.

Meetings with the Government

4. In Nay Pyi Taw on 26 February 2008, the mission first met with the Working Group chaired by the Deputy Minister of Labour, Brigadier General Tin Tung Aun. In his opening statement, the Deputy Minister stated that there was close cooperation with the Liaison Officer on the implementation of the Supplementary Understanding towards the achievement of the Government's objective of the elimination of forced labour. As a continuation of the policy for the elimination of forced labour, the Government was prepared to extend the Supplementary Understanding without any modifications for a further period of 12 months.
5. A large number of the complaints that had been lodged were related to what the Government considered minor community work, and most of the cases related to the military concerned the recruitment of minors. On these, action had been taken promptly. The Government's cooperation was further demonstrated by the opportunities given to the Liaison Officer to undertake internal travel and participate in awareness-raising, training and education activities as well as the recent agreement of the Government to accept the appointment of an international professional as Assistant to the Liaison Officer. The Government had issued Order No. 1/99 and a range of subsequent orders and instructions making forced labour illegal, which provided clear guidance to both civil and military authorities.
6. Regarding specific cases raised by the ILO, including those mentioned in the conclusions of the Governing Body, the Deputy Minister advised that Su Su Nway and U Min Aung, had been convicted for breaches of the national laws unrelated to their relationship with the ILO. As to the six labour activists imprisoned on 1 May and sentenced in September 2007, he indicated that their conviction was for breaches of national law unrelated to the Supplementary Understanding. The Government had responded to the complaint lodged on this matter to the Freedom of Association Committee. The Supreme Court had recently granted an application for an appeal on their convictions and a hearing would be held in the near future.
7. In response, Mr Tapiola indicated that the ILO could, subject to submission to the Governing Body, consider an extension of the trial period of the Supplementary Understanding for a further 12 months. He further indicated that this called for the clarification of a number of points however. The Supplementary Understanding was very clear on the matter of the harassment of complainants and facilitators. Also, given the 2004 Supreme Court case which recognized that it was not illegal for Myanmar citizens to communicate with the ILO, the recent case of detention of U Thet Wai must be resolved. He had been detained on 9 January 2007 in possession of material on the forced labour Conventions and the Supplementary Understanding, and the reason for his detention was clearly related to his connections with the ILO. Mr Tapiola also reiterated the strong concern expressed by the Governing Body regarding the cases of Su Su Nway and U Min Aung as well as the six labour activists who had received very long prison sentences for organizing activities.

8. Further, confirmation of government agreement to the text of a translation of the Supplementary Understanding was required so that it could be reproduced and more widely distributed. Similarly, government cooperation in the endorsement of information and educational material in Myanmar language was necessary. Mr Tapiola recalled in particular that the Governing Body sought the reconfirmation of the Government's commitment to the eradication of forced labour by way of a high-level public statement.
9. A proposed text for the extension of the trial period of the Supplementary Understanding was agreed. As a number of issues, including that of a public statement, should be addressed in a meeting with the Minister of Labour, the discussions continued with him prior to the signature of the extension. The Minister, U Aung Kyi, welcomed the mission as a confirmation of both parties' commitment to continue the policy for the elimination of forced labour. He advised that unfortunately the Prime Minister was unable to meet the delegation owing to prior diary commitments. However, he handed over a letter on behalf of the Prime Minister confirming Myanmar's commitment to the policy of eradication of forced labour.
10. The Minister confirmed that the provisions of the Supplementary Understanding should permit all citizens of Myanmar to use the mechanism without prosecution or other reprisals. The mission was also advised that the proposed Myanmar language translation of the Supplementary Understanding was in the Attorney-General's Office, and action on it would be taken as soon as possible. Regarding the requested high-level statement, a discussion took place on the significance of possible provisions of the proposed new Constitution which will be put to a referendum in May 2008. The principles for inclusion in the Constitution included wording on both forced labour and freedom of association. The Minister indicated that, if adopted, the new Constitution would provide both a basis for transition to full democracy and a legal basis from which existing national laws, orders and instructions could be reviewed. Such a move could address the request expressed both in the conclusions of the Commission of Inquiry and in repeated observations of the Committee of Experts that national legislation be brought into line with the Forced Labour Convention, 1930 (No. 29).
11. On the basis of the above considerations, an extension of the trial period of the Supplementary Understanding for a further period of 12 months from 26 February 2008 was signed (Appendix I). This was on the formal understanding that the parties would apply the Understanding in full and in a manner consistent with the intent as agreed at the time of initial agreement. The extension agreement would be submitted to the 301st Session of the Governing Body.
12. Following the signature of the 12-month extension of the trial period of the Supplementary Understanding, discussion continued informally over lunch. The Minister, the Deputy Minister and the members of the Working Group were joined by the Assistant Attorney-General. The case of U Thet Wai was further discussed following which an undertaking of early review was received. It should be noted here that one of the charges clearly based on his relationship with the ILO was formally withdrawn on 4 March 2008. On the same day he was released from detention on bail until the case on the remaining charges is held.
13. A letter received on 5 March 2008 from the Deputy Minister provided the wording of the proposed provisions of the draft Constitution related to the abolition of forced labour and the rights to assembly, association and the forming of trade unions (Appendix II).

Meeting with the NLD

14. The mission met with members of the Central Executive Committee of the NLD in Yangon on 27 February 2008. They expressed their appreciation of the extension of the Supplementary Understanding and summarized their position in writing as follows:
- (1) The continued existence of the Liaison Office of the International Labour Organization (ILO) in Burma is essential to take care of the various labour problems in the future.
 - (2) In accordance with the additional agreement (Supplementary Understanding) made between the ILO and the State Peace and Development Council (SPDC) in respect of the forced labour problems:
 - (a) Effective actions should be taken against the already initiated complaints regarding forced labour issues.
 - (b) Effective measures shall be taken to restrain the persecution of the complainants, their representatives and other related persons giving various pretexts.
 - (3) The ILO should prevail upon the authorities to permit the formation of free and independent trade unions.
 - (4) The ILO should take initiatives for mass education of the people to make them aware that the local authorities have no right to force the public to give involuntary labour and that they have the right to make complaint in case of forced labour.
 - (5) The mass media such as radio, TV, newspaper, journals should be used for such education works.

Activities of the Liaison Officer since the November 2007 Governing Body

15. The Liaison Officer received a further 21 complaints since the previous session of the Governing Body. Of these, ten were assessed and submitted to the Working Group for inquiry, six did not fall within the mandate (two of these concerned issues of freedom of association), and five were under assessment at time of writing. An updated record of cases is attached in Appendix III.
16. The Working Group, supported by the Ministry of Labour, continues to respond to complaints lodged. This is most notable in cases related to complaints against civil authorities, with complaints against the military obviously being more difficult for the Working Group to manage. However, since the last Governing Body, 11 young persons who had been the subject of underage recruitment complaints were discharged and returned to their families.
17. One mission has been undertaken by the Liaison Officer to Magway Division with three forced labour complaints being assessed. As a result, two of those complaints were formally submitted for inquiry, and the Liaison Officer awaits confirmation of a mediated understanding in respect of the third.
18. A number of further initiatives have been taken:
- On 18 February the Liaison Officer gave a lecture to 60 deputy township judges (46 women and 14 men) covering international Conventions and national laws on forced labour, the rights and responsibilities of Myanmar citizens under those laws and the Supplementary Understanding, and the operation of the complaints mechanism.

- The Liaison Officer has been invited by the Ministerial Working Group on Trafficking to join a task force so as to provide input on the forced labour aspects of its work.
- The Assistant to the Liaison Officer has been appointed lead consultant in a joint Government, UNICEF, ICRC and ILO team charged with developing and delivering a training for trainers' course to military recruiting staff on the law and practice concerning underage recruitment.

The operation of the Supplementary Understanding over the first trial period

19. A table of statistics covering the full 12 months of the operation of the Supplementary Understanding is attached as Appendix IV. It shows that, while the number of cases is significant in terms of the number of people affected, the spread of types of forced labour and the geographic spread, the actual number of cases is not large. Thus, the data does not reflect the size of the forced labour problem in Myanmar. It is likely that it reflects more the lack of awareness of a large proportion of the population as to the existence of the mechanism set up by the Supplementary Understanding and their right to complain; the logistical difficulty for people to physically lodge a complaint; and the fear of reprisals notwithstanding the protection provisions in the Understanding. In respect of the receipt of complaints, there has been little change in terms of numbers received prior to September 2007 and since that time. There was a short period during which complaints were not received which can be put down directly to the public unrest. The structure of complaints has changed however. Prior to September, the majority of complaints received concerned public works under local administration with only a few military-related complaints and cases of underage recruitment. Since September that pattern has been reversed with the majority of complaints now being military-related and underage recruitment cases.
20. Awareness levels will only increase through education, promotion and publicity. This is why it is important to ensure the production and distribution of the Supplementary Understanding in the Myanmar language and brochures explaining the law, rights and responsibilities under the law and the procedure for accessing the complaints mechanism. These matters have been agreed to in principle by the Government but they have not yet led to concrete results. An information paper has been developed by the Government, with input from the Assistant to the Liaison Officer, for distribution to the various authorities, but this has not as yet been published in Myanmar language. The Government has undertaken a first round of educational seminars for civil administrative personnel. A proposal for a second round to be undertaken jointly by the Ministry of Labour and the ILO has been agreed in principle, but has become operational only on two occasions where joint missions were undertaken in response to specific complaints. A training of trainers' course for military recruitment officers is under development and the first course is scheduled for the last week of April 2008. There have been some reports of outcomes of cases in the official national media but this has not been sufficient to effectively raise the awareness of the broader population. The external media remain at this stage the channel through which a considerable amount of the information on the Supplementary Understanding mechanism is received, about which the Government obviously is not pleased.
21. The communication between the Working Group and the Liaison Officer has demonstrated an acceptable level of responsiveness. There continue to be differences of opinion as to the appropriate remedy for complaints and punishment for perpetrators. The Working Group established by the Government continues to express concern as to the political affiliations and motivations of complainants and facilitators. The Liaison Officer has consistently reminded that he has an obligation to be objective in his assessment of complaints,

concentrating on the substance of the complaint not the identity of the persons concerned. He is satisfied that the mechanism is not being abused in any way.

22. During the first trial period of the Supplementary Understanding, the Government has re-emphasized its previously released guidelines for international organizations covering in particular new rules on internal travel. As explained to the authorities, it must be clear that the provisions relating to the movement of the Liaison Officer agreed at the time of the 2002 Understanding and the specific provisions in this regard contained in the Supplementary Understanding are a necessary requirement inherent to the specific functions entrusted to him/her and are a key consideration in assessing the effective implementation of these Understandings. The agreement to extend the trial period of the Understanding without any wording change was based on that assumption, notwithstanding any other regulations.
23. There have been a number of cases of reported harassment of complainants, facilitators and other related persons. This covers such actions as the interrogation of persons distributing unofficial translations of the Supplementary Understanding; verbal abuse of complainants for embarrassing the authorities; threats if complaints are not retracted; and actions which are intended to detrimentally affect the livelihood of persons involved in complaints. There have also been cases of detention and/or placement on good behaviour reporting bonds, arrest and conviction on charges not related to forced labour complaints, and recently in the case of U Thet Wai, arrest for direct involvement with the ILO. As reported above, this case has now been partially resolved but it remains under close review in respect of the remaining charges against him. It should be recognized that a proportion of these difficulties stem from the divisional, township and village authority attitudes, which are not condoned by senior authorities. The Government has issued a number of supplementary instructions on such matters, but at this stage the message does not appear to have been received and fully understood by all.
24. The demonstrations in September 2007 and the Government's subsequent crackdown on public opposition have impacted both on the society and on the application of the Supplementary Understanding. The general public is now undoubtedly more politically aware and more openly questioning restrictions of their rights. The recently announced referendum to be held in May 2008 on a draft Constitution is being widely discussed even in the absence of a published draft at the time of writing. Similarly, the announcement of intended general elections in 2010 has been welcomed, although often with a large amount of scepticism.
25. The Government has recently reconfirmed its acceptance of the fact that the Liaison Officer needs an assistant. Although the caseload is relatively limited, each case generates a considerable amount of follow-up work. In the event of a growing workload as a result of increased public awareness, the existing professional staff resources would be inadequate.
26. Overall, the trial period has shown an improved working relationship between the Government and the ILO and a slight but still insufficient increase in awareness on the part of local authorities, the military and the general public as to rights and responsibilities under the Forced Labour Convention, 1930 (No. 29), national law and the Supplementary Understanding. The Supplementary Understanding is a valuable tool, albeit within existing limitations, and with the cooperation of all parties, it has the potential to be far more effective in supporting the objective of abolishing forced labour. Activities directed at the forced labour aspects of trafficking and underage recruitment are important for the total forced labour problem. Possible further extension of the scope of action to encompass the forced labour aspects of child labour could deserve future consideration.

Concluding remarks

27. As noted in the beginning of this report, the conclusions of the Governing Body mandated the Office to undertake a full review of the operation of the Supplementary Understanding and make recommendations for its future and the ILO's ongoing role in Myanmar. On the basis of what has been covered in this report, the following remarks would seem warranted.
28. The Office trusts that the Governing Body appreciates the circumstances in which the extension of the trial period of the Supplementary Understanding appeared to be the most viable solution. It is too early to make a definitive pronouncement on the mechanism, given the various questions which have been underlined by the developments recorded by the Liaison Officer and the discussions that the ILO mission held in Nay Pyi Taw and Yangon from 25 to 28 February 2008. Concrete measures are expected on the follow-up of specific cases, on translations and distribution of information material, educational activities and the ways to reach better the population in the country.
29. Forced labour in Myanmar continues to be a serious problem. While a mechanism such as the one introduced by the Supplementary Understanding will not be able on its own to have a major impact on the problem, it demonstrates how, given political will and the necessary legal and administrative safeguards, it can make a difference.
30. In this respect, whatever the shortcomings as regards the content and process for the adoption of a new Constitution, it has the potential of providing the authorities with an opportunity to bring legal clarity to the prohibition of forced labour. Although the Government has not yet made a high-level public statement of the kind that the Governing Body has called for in November 2007, following up a possible future constitutional commitment vigorously, genuinely and transparently would be a significant and concrete expression of the commitment of the authorities to abandoning the still prevalent use of forced labour throughout the country.

Geneva, 10 March 2008.

Submitted for debate and guidance.

**301st Session of the Governing Body
of the International Labour Office
(March 2008)**

SIXTH ITEM ON THE AGENDA

GB.301/6

Conclusions concerning Myanmar

1. The Governing Body considered all the information before it including the Statement made by the Permanent Representative of the Union of Myanmar.
2. The Governing Body welcomed the extension of the trial period of the operation of the Supplementary Understanding (SU) for a further 12 months as of 26 February 2008. In so doing, it expressed its strong expectation that during this extension period the SU would be applied in full and according to the original intent. This includes, in particular: the freedom of complainants to access the complaints mechanism without fear of harassment or reprisal; the need to urgently reproduce the SU in the appropriate local languages and ensure its wide dissemination together with other awareness-raising materials; the freedom of movement of the Liaison Officer to carry out his responsibilities; and the requirement that penalties imposed on the perpetrators of all forms of forced labour are meaningful and enforced.
3. The Governing Body again called on the authorities of Myanmar at the highest level to make an unambiguous public statement – disseminated in the appropriate local languages – reconfirming the prohibition of any form of forced labour and their ongoing commitment to the enforcement of that policy, including through the application of the SU.
4. The Governing Body recognized that certain awareness-raising and educational activities have recently taken place. However, it expressed its serious concern at the lack of awareness of both relevant government policy and obligations under Convention No. 29 as evidenced by continuing reports of harassment of persons associated with supporting the operation of the SU. Of particular concern to the Governing Body is the case of U Thet Wai who whilst on bail still has two outstanding charges against him. The Governing Body expects that U Thet Wai and other persons who have been associated with activities against forced labour, in line with the objective of the SU, remain free and experience no further harassment. The Governing Body reaffirmed its call for the immediate release of Su Su Nway and U Min Aung, as well as the six labour activists whose cases are to be reviewed by the Supreme Court.
5. Concerning the comments made on freedom of association and the rights of all trade unions, the Governing Body underlines that this had been clearly addressed in the conclusions on Case No. 2591 of the Committee on Freedom of Association, the report of which was adopted at this session of the Governing Body.

6. The Governing Body draws once again the attention of the Government to its past conclusions and decisions as well as those of the International Labour Conference in the expectation that these matters be efficiently addressed. The Governing Body requested the Liaison Officer to provide an update of the situation to the Committee on the Application of Standards at the 97th International Labour Conference in connection with its special sitting on the application of Convention No. 29 in Myanmar.
7. The Governing Body called on the Government to strengthen its cooperation with the ILO, and in particular with the Liaison Officer, to ensure the effective operation of the SU and the implementation of the obligations under Convention No. 29 to prohibit the use of forced labour as well as the recruitment of minors into the military.

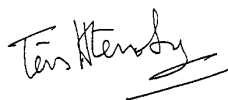
Appendix I

**An Agreement for Extension to the Supplementary Understanding and
its Minutes of the Meeting dated 26th February, 2007, done at
Geneva**

This Agreement is hereby concluded between the Government of the Union of Myanmar and the International Labour Organization represented by the undersigned authorized representatives. Noting Clause 10 of the Supplementary Understanding (hereinafter SU) and the Minutes of the Meeting dated 26th February, 2007, (hereinafter Minutes of the Meeting) it is herewith agreed as follows:-

1. Both parties agreed to extend, on the same trial basis, the SU and its Minutes of the Meeting being an integral part of the SU, for one year with the extension period commencing on 26th February, 2008, to the day one year thereafter being 25th February, 2009.
2. The spirit and letters of the SU and the Minutes of the Meeting remain *In toto* unchanged.
3. The SU and the Minutes of the Meeting shall continuously remain in legal effect upon signing by the authorized representatives of the parties mentioned below.
4. This agreement will be submitted to the Governing Body in accordance with its conclusions at its 300th Session.

This Agreement is done at Nay Pyi Taw, the Union of Myanmar on the 26th day of February, 2008.



(Brig-Gen. Tin Tun Aung)

Deputy Minister

Ministry of Labour

Government of the Union of Myanmar



(Mr. Kari Tapiola)

Executive Director

International Labour Office

Appendix II



THE GOVERNMENT OF THE UNION OF MYANMAR
MINISTRY OF LABOUR
OFFICE OF THE MINISTER

ED / NORM
- 5 MARS 2008

Ref: 81 - Aha La/Div (1)2008

Date: 5 March 2008

To

Mr. Kari Tapiola
Executive Director
International Labour Office
Geneva

Subject : The visit of Mr. Kari Tapiola, Executive Director and Party to Myanmar

The Minister for Labour received you and party in the morning of 26 February, 2008 in Nay Pyi Taw during your visit to Myanmar.

At the meeting, you and Mr. Francis Maupain discussed about the future cooperation between Myanmar and ILO including the implementation of SU, signing the agreement on extension of SU for another one year. In addition, you asked whether there are some provisions by which the government expresses its intention to undertake necessary measures concerning the application of Convention 29 and 87 in the State Constitution (draft).

With this regard, I would like to inform you that there are some provisions such as para (354) (a), (b), (c) and para (359) of Chapter VIII, Citizenship, Fundamental Rights and Duties of Citizen in the Draft Constitution of the Republic of the Union of Myanmar that obviously reflect the commitment to surely observe Convention 29 and 87 ratified by Myanmar, and those facts are herewith attached for your perusal and to be able to add in the 301st GB report.

With regards,

Yours Sincerely,

for Deputy Minister
Than Win, Head of Office

Cc: - Office Copy

BT-3D2008Mr. Kari Tapiola (301 GB)

Chapter VIII
Citizenship, Fundamental Rights and Duties of Citizens

x x x x x x x x x x x

354. There shall be liberty in the exercise of the following rights subject to the laws enacted for State security, prevalence of law and order, community peace and tranquility or public order and morality:

- (a) The right of the citizens to express freely their convictions and opinions;
- (b) The right of the citizens to assemble peacefully without arms;
- (c) The right of the citizens to form associations and unions;

x x x x x x x x x x x

359. The State prohibits any form of forced labour except hard labour as a punishment for crime duly convicted and duties assigned thereupon by the State in accord with the law in the interests of the people.

Appendix III

Summary review of caseload

This summary reflects the caseload situation for the application of the Supplementary Understanding on the elimination of forced labour (SU) agreed between the Government of Myanmar and the International Labour Organization for the 12-month trial period between 26 February 2007 and 25 February 2008.

Overall statistics

Number of complaints received and accepted for the register of cases	74
Number of complaints accepted for assessment as being within the mandate of the SU	53
Number of complaints submitted to the Working Group	37
Number of complaints not submitted owing to insufficient evidence or request for anonymity	10
Number of complaints still in assessment	5
Number of submitted cases satisfactorily closed	20
Number of submitted cases closed with inadequate Working Group response	3
Number of submitted cases for which government response awaited	10
Number of submitted cases with findings/decisions still in discussion/under consideration	4
Number of submitted cases outside of SU but within ILO mandate	1
Number of infrastructural/agricultural civil administration submitted cases	16
Number of military/police/prison administration submitted cases	5
Number of child soldier/forced recruitment cases	16
Number of child soldier/forced recruitment cases submitted	15
Number of child soldier/forced recruitment cases still in assessment	0

Outcome statistics

Number of perpetrators prosecuted	4
Number of civilian administration perpetrators dismissed	7
Number of cases for which compensation paid	3
Number of child soldiers discharged	11
Number of military perpetrators reprimanded	11
Number of cases resulting in new or reissue of instructions	5
Number of assessment missions undertaken	1
Number of joint awareness-raising missions undertaken	2
Number of joint presentations/symposia proposals agreed	2
Number of joint presentations/symposia proposals in discussion	2

Appendix IV

Register of cases

Case	Date received	Accepted	Intervention-date	Status	Comments
001	28-Feb-07	Yes	9-Mar-07	Closed	Prosecution- 2 x imprisonment 1x acquitted
002	28-Feb-07	Yes	29-May-07	Closed	Child Released, disciplinary action-formal reprimand
003	5-Mar-07	No		Closed	Not related to mandate (worker welfare issue).
004	13-Mar-07	Yes	20-Mar-07	Closed	Not forced recruitment-under age-discharged to parents
005	29-Mar-07	No		Closed	Not related to mandate (land issue).
006	6-Apr-07	No		Closed	Not related to mandate (pension issue).
007	6-Apr-07	No		Closed	Not related to mandate (pension issue).
008	6-Apr-07	Yes	16-May-07	Closed	Compensation paid. Instigator dismissed.
009	9-Apr-07	Yes	10-Apr-07	Closed	Civil Sanctions and reprimands
010	9-Apr-07	No	5-Mar-08	Closed	Insufficient basis to proceed at this stage.
011	19-Apr-07	Pending		Pending	Assessment in process.
012	19-Apr-07	No		Closed	Not related to mandate (employment dispute).
013	23-Apr-07	No		Closed	Complaints unwilling to be identified
014	23-Apr-07	No		Closed	Complaints unwilling to be identified
015	23-Apr-07	Yes	16-May-07	Open	Further verification in process
016	25-Apr-07	No		Closed	Not related to mandate (employment dispute).
017	26-Apr-07	Yes	22-Aug-07	Closed	Administrative instructions issued and educative activity undertaken .
018	9-May-07	Yes	22-May-07	Closed	Military Officer disciplined-joint training seminar proposal declined.
019	9-May-07	No		Closed	Not related to mandate (property dispute).
020	9-May-07	No		Closed	Insufficient basis to proceed.
021	9-May-07	Yes	10-May-07	Closed	Victim discharged to parents-disciplinary action as the result of Military Enquiry inadequate.
022	18-May-07	No		Closed	No evidence that the work constituted forced labour
023	18-May-07	Yes	23-May-07	Closed	Field Visit undertaken - Education activity undertaken
024	25-May-07	No		Closed	Insufficient information to proceed
025	22-Jun-07	Yes	14-Aug-07	Closed	4 officials dismissed, administrative instructions re-issued
026	26-Jun-07	Yes	13-Aug-07	Closed	Local Authorities instructional activity undertaken.
027	28-Jun-07	No		Closed	Not related to mandate-Pension/gratuity matter
028	7-Jun-07	No		Closed	Not related to mandate-Pensions matter
029	14-Jun-07	Yes	2-Aug-07	Closed	Village Chairman dismissed.
030	31-Jul-07	Yes	31-Jul-07	Closed	Child released-summary military trial-recruiting officer disciplined
031	25-Jun-07	No		Closed	Not related to mandate-Mass termination
032	29-Jun-07	No		Closed	Not related to mandate-land confiscation
033	6-Jul-07	Yes	9-Aug-07	Closed	Child Released, Training seminar proposed
034	12-Jul-07	No		Closed	Not related to mandate-hours of work/ Overtime issue
035	23-Jul-07	Yes	17-Aug-07	Closed	Gvt instructions issued, retrospective remuneration, Joint field trip for awareness education undertaken
036	24-Jul-07	No	5-Mar-08	Closed	Insufficient basis to proceed at this stage.
037	29-Jun-07	No		Closed	Not related to mandate-Migrant worker/payment of wages
038	25-Jul-07	No		Closed	Not related to mandate-termination of employment issue
039	12-Jun-07	No		Closed	Insufficient basis on which to proceed.
040	31-Jul-07	Pending		Pending	Assessment in process.
041	6-Aug-07	No		Closed	Not related to mandate-termination grievance
042	7-Aug-07	Yes	8-Aug-07	Closed	Not within mandate of forced labour SU-Issue of FOA remains.
043	15-Aug-07	Yes	16-Aug-07	Closed	Child Released, disciplinary action as the result of Military Enquiry inadequate.
044	16-Aug-07	No		Closed	Not related to mandate-wages/fees payment issue
045	20-Aug-07	Yes	10-Sep-07	Closed	Government Response received. New instructions issued.
046	24-Aug-07	No		Closed	Not related to mandate-commercial dispute
047	27-Aug-07	Yes	12-Sep-07	Open	Government Response under consideration
048	7-Sep-07	No		Closed	Insufficient evidence to proceed
049	7-Sep-07	Yes	19-Dec-07	Closed	Compensation package. One perpetrator demoted. Recommendation on policy review made.
050	14-Sep-07	Yes	20-Sep-07	Closed	Child released-Military enquiry resulted in disciplinary reprimand.
051	20-Sep-07	Yes	25-Feb-08	Open	Awaiting Government response
052	20-Sep-07	Yes	22-Feb-08	Open	Awaiting Government response
053	10-Oct-07	Yes	9-Nov-07	Open	Government Response under consideration
054	17-Oct-07	Yes	18-Oct-07	Open	Clause 9 breach-negotiation continues
055	19-Oct-07	Yes	31-Oct-07	Closed	Child released-Military enquiry resulted in disciplinary reprimand.

Case	Date received	Accepted	Intervention-date	Status	Comments
056	25-Oct-07	Yes	09-Nov-07	Closed	Child released-Military enquiry resulted in disciplinary reprimand.
057	7-Nov-07	No		Closed	Not related to mandate - cross-border trafficking & HIV and AIDS
058	15-Nov-07	Yes	23-Nov-07	Closed	Child released-summary military trial-recruiting officer disciplined
059	15-Nov-07	Yes	30-Nov-07	Open	Awaiting Government response re: translation
060	19-Nov-07	No		Closed	Not related to mandate - wages claim issue
061	17-Dec-07	Yes	19-Dec-07	Open	Awaiting Government response.
062	20-Dec-07	Yes	28-Dec-07	Closed	Victim discharged to custody of parents. Responsible recruiting officer officially reprimanded.
063	7-Dec-08	Yes	14-Jan-08	Open	Awaiting Government response
064	7-Dec-08	Yes	11-Feb-08	Open	Awaiting Government response
065	08-Jan-08	No		Closed	Not related to mandate-corruption allegation
066	14-Jan-08	Yes	22-Feb-08	Open	Awaiting Government response.
067	16-Jan-08	Pending		Pending	Assessment in process.
068	16-Jan-08	Yes	25-Feb-08	Pending	Awaiting Government response.
069	31-Jan-08	Yes	25-Feb-08	Pending	Submitted in association with Case 051
070	6-Feb-08	Yes	12-Feb-08	Open	Awaiting Government response
071	29-Jan-08	No		Closed	Not related to mandate - compensation for damaged crop
072	30-Jan-08	Pending		Pending	Assessment in process.
073	20-Feb-08	Pending		Pending	Assessment in process.
074	21-Feb-08	No		Closed	Insufficient basis to proceed.
075	03-Mar-08	Pending		Pending	Assessment in process.
076	03-Mar-08	Pending		Pending	Assessment in process.
077	5-Mar-08	No		No	Not within SU mandate -FOA issue subject to separate consideration
078	5-Mar-08	No		No	Not within SU mandate -FOA issue subject to separate consideration



FOR INFORMATION

SIXTH ITEM ON THE AGENDA

Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)

Under the present agenda item, document GB.301/6/2 contains, in Appendix IV, a register of cases. In accordance with most recent developments and information, the register of cases should now read as overleaf.

Geneva, 19 March 2008.

Submitted for information.

Register of cases

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001	28-Feb-07	Yes	9-Mar-07	Closed	Prosecution- 2 x imprisonment 1x acquitted
002	28-Feb-07	Yes	29-May-07	Closed	Child Released, disciplinary action-formal reprimand
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010	9-Apr-07	No	5-Mar-08	Closed	Insufficient basis to proceed at this stage.
011	19-Apr-07	Pending		Pending	Assessment in process.
012	19-Apr-07	No		Closed	Not related to mandate (employment dispute).
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053	10-Oct-07	Yes	9-Nov-07	Open	Government Response received - joint mission proposed
054	17-Oct-07	Yes	18-Oct-07	Open	Clause 9 breach-negotiation continues

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070	6-Feb-08	Yes	12-Feb-08	Open	Awaiting Government response
071	29-Jan-08	No		Closed	Not related to mandate - compensation for damaged crop
072	30-Jan-08	Yes	11-Mar-08	Open	Awaiting Government response.
073	20-Feb-08	Pending		Pending	Assessment in process.
074	21-Feb-08	No		Closed	Insufficient basis to proceed.
075	03-Mar-08	Yes	10-Mar-08	Open	Awaiting Government response.
076	03-Mar-08	Yes	11-Mar-08	Open	Awaiting Government response.
077	5-Mar-08	No		No	Not within SU mandate -FOA issue subject to separate consideration
078	5-Mar-08	No		No	Not within SU mandate -FOA issue subject to separate consideration

