

# CONFERENCE COMMITTEE ON THE APPLICATION OF STANDARDS

EXTRACTS FROM THE  
RECORD OF PROCEEDINGS



# INTERNATIONAL LABOUR CONFERENCE

NINETY-NINTH SESSION  
GENEVA, 2010

## COMMITTEE ON THE APPLICATION OF STANDARDS AT THE CONFERENCE

### 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)
- SUBMISSION, DISCUSSION AND APPROVAL

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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. In 2008, 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. This year, the report containing the discussions in the plenary of the Conference Committee on the Application of Standards has also been added. This provides a complete picture of the work of the Conference Committee on the Application of Conventions and Recommendations for that year. It is to be hoped that this new format will continue to translate into a wider dissemination of the work of this key body of the international labour standards supervisory system.



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REPORT OF THE COMMITTEE ON THE  
APPLICATION OF STANDARDS

GENERAL REPORT





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

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

#### **PART ONE**

#### **GENERAL REPORT**

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## 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 220 members (107 Government members, 20 Employer members and 93 Worker members). It also included 15 Government deputy members, 76 Employer deputy members, and 147 Worker deputy members. In addition, 25 international non-governmental organizations were represented by observers.<sup>1</sup>

2. The Committee elected its Officers as follows:

*Chairperson:* Mr Sérgio Paixão Pardo (Government member, Brazil)

*Vice-Chairpersons:* Mr Edward E. Potter (Employer member, United States) and Mr Luc Cortebeeck (Worker member, Belgium)

*Reporter:* Mr Christiaan Horn (Government member, Namibia)

3. The Committee held 17 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 Employment Policy Convention, 1964 (No. 122), the Human Resources Development Convention, 1975 (No. 142), the Employment Service Convention, 1948 (No. 88), the Private Employment Agencies Convention, 1997 (No. 181), the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189) and the Promotion of Cooperatives Recommendation, 2002 (No. 193).<sup>2</sup> 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.<sup>3</sup>

## Work of the Committee

5. 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

<sup>1</sup> For changes in the composition of the Committee, refer to reports of the Selection Committee, *Provisional Records* Nos 4 to 4(h). For the list of international non-governmental organizations, see *Provisional Record* No. 3.

<sup>2</sup> Report III to the International Labour Conference – Part 1AI: Report of the Committee of Experts on the Application of Conventions and Recommendations; Part 1AII: Information document on ratifications and standards-related activities; Part 1B: General Survey concerning employment instruments.

<sup>3</sup> ILC, 88th Session (2000), *Provisional Record* Nos 6-1 to 6-5.

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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.<sup>4</sup> 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.

6. The second part of the general discussion dealt with the General Survey concerning employment instruments carried out by the Committee of Experts. It is summarized in section C of Part One of this report. The final part of the general discussion considered the report on Teaching Personnel of the Joint ILO–UNESCO Committee of Experts. This discussion is set out in section D of this report.
7. 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 E of Part One of this report.
8. 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.
9. During its second week the Committee considered 25 individual cases relating to the application of various Conventions. 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 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.
10. With regard to the adoption of the list of individual cases to be discussed by the Committee in the second week, the Chairperson of the Committee announced that a provisional final list of individual cases, in relation to which the Committee of Experts had placed a double footnote, was now available.<sup>5</sup> He stressed that the Officers of the Committee expected to complement this list subsequently with additional cases. As in previous years, the Committee intended to examine the cases of 25 member States, in addition to the Special Sitting concerning Myanmar (Convention No. 29).

<sup>4</sup> Work of the Committee on the Application of Standards, ILC, 99th Session, C. App/D.1 (see Annex 1).

<sup>5</sup> ILC, 99th Session, Committee on the Application of Standards, C. App./D.4/Add.1.



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11. Following the adoption of the final list of individual cases<sup>6</sup> by the Committee, the Worker members emphasized that drawing up the list had been particularly difficult this year and everything suggested that that would be the case also in the years to come. Over the years there had been a growing tendency to engage in trade-off, a practice which they found unacceptable. It was unacceptable in the first place because of the Committee's mandate, which was to participate in the monitoring of the application of ratified Conventions. That meant that it must be in a position to examine serious shortcomings in the application of ILO Conventions calmly, without coming under any kind of purely ideological pressure. Its mission could not afford to be jeopardized, or else any hope of applying the ILO's standards – which were there for the benefit of the workers and in the interests of social progress – would be lost. Secondly, it was unacceptable because of the respect that the Committee owed to the Committee of Experts. The Worker members pointed out that the work of the Committee on the Application of Standards was based almost entirely on the reports of the Committee of Experts, which devoted a great deal of time to analysing and summarizing reports and documents dealing with instruments that were subject to the reporting requirement laid down by the ILO Constitution. If the Committee, purely for reasons of subjective convenience, were to start putting aside reports drawn up by the Experts, which contained carefully prepared legal conclusions, it would be sending the wrong kind of message to the Committee of Experts. The Committee examined in an intelligent and mature way violations of workers' rights that were both serious and flagrant. All the cases in the report of the Committee of Experts were serious, but some of them were more so than others and it was from among those that the individual cases for discussion had to be selected. The Committee could not simply accept without demur the Workers' or Employers' or Governments' argument that there were fewer violations of workers' rights in certain countries, and that therefore those countries should no longer be on the list of individual cases. Violations were still violations, whether they took place in the United Kingdom, in Colombia or in Cuba – all of which would not be on this year's list when in fact they should be. There were still far too many workers' representatives being killed in defence of freedom of association and of the more widespread application of workers' rights, and the Committee owed them its deepest respect for having risked their lives simply for doing their duty.
12. After a lengthy and difficult debate, Colombia had finally been taken off the list so as to break a deadlock. The same had happened in 2008, when although Colombia had come up for examination it was not listed as an individual case. The Worker members could not count the case of Colombia as warranting an expression of interest or satisfaction by the Committee, in spite of the explanations given by the Chairperson of the Committee of Experts. The observation itself referred to serious concerns, which it would not be possible to discuss. The United Kingdom would not be on the list of individual cases either, notwithstanding the fact that the Committee of Experts had carefully built up a case concerning the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), involving a Western European country that was a Member of the European Union (EU). Discussion of the case would have raised the important issue of the restrictions imposed on the right to strike of workers who were affiliated to a trade union which itself was facing a court action for damages that clearly threatened its financial survival. It was not a question of challenging the Court of Justice of the European Communities but about dealing with a major violation of freedom of association in a geographical context that was all the more interesting because it concerned the 27 Members along with the candidates for membership of the EU.

<sup>6</sup> ILC, 99th Session, Committee on the Application of Standards, C. App./D.4/Add.1(Rev.) (see Annex 2).

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13. In the same way, the Committee had had to leave out such important cases as Pakistan, with regard to the Abolition of Forced Labour Convention, 1957 (No. 105), and Algeria, concerning the effective exercise of freedom of association. The workers' movement in the latter country was clearly in danger, with the Government refusing to recognize the right of workers of all nationalities to form trade unions or to allow them to call a peaceful strike on the grounds that the country was in a state of emergency. On 12 May 2010, the headquarters of the coalition of independent trade unions representing more than 600,000 workers from the health and education sectors and from the local and national public service had been closed down.
  14. There would be no discussion, either, of the case of Romania, where demonstrations were currently being held in front of the Parliament in Bucharest to protest against salary cuts that also affected public servants, in violation of conditions of employment that were protected by the ILO. The Worker members were extremely regretful that the case of Japan, with regard to the Forced Labour Convention, 1930 (No. 29), had not been included. Was it ever going to be possible for a tripartite forum like the ILO to speak openly about the situation of "comfort women"? The Worker members had asked the same question in 2009, and it had still not been answered, and the Committee of Experts had not made any observation on the subject in 2010. The Worker members wondered when a solution could be found that might be conducive to reconciliation with the victims of this degrading situation, by offering them adequate compensation, in order to restore the dignity of these women who had been used as sex slaves.
  15. It was no easy matter to limit the choice to 25 cases, but the deadline had to be respected. All seven double footnotes cited by the Committee of Experts would be examined. It was, however, impossible for the Committee to take account of cases where progress had been made. In future, some way would have to be found to allow certain governments to highlight the efforts that they had made to comply with observations made by the Committee of Experts.
  16. The Employer members felt that they should put aside this year their usual practice of not commenting extensively on the final list of cases. The process of choosing 25 cases out of about 800 comments by the Committee of Experts was extremely difficult. Moreover, as the Chairperson of the Committee of Experts had pointed out, there were different ways of looking at an observation based on one's point of view. Even though the criteria for the selection of cases had been identified, there were naturally disagreements between the Worker and Employer members on the application of these criteria in practice and divisions of views on the final selection. This was true not only between the two groups but also within each group. For instance, feeling that the point of view of the Committee of Experts on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), by the United Kingdom was not correct, the speaker would have preferred to have this case discussed so that a political debate could take place and be communicated to the Committee of Experts; however, his point of view was not prevalent among the Employer members. It was important to give credence to the different points of view emanating from the debates within the Employers' group. It was also important to acknowledge the different context which existed in each country. Treating a country situation in the same way every year when substantial efforts were being made to make improvements, was rendering a disservice to the supervisory mechanism. Rather than continuing to make the same criticisms every year regardless of the efforts made, the Committee should give the Government room to make progress. Just like the Worker members, the Employer members felt that not all cases that they would have liked to see discussed were on the list. Moreover, with regard to the comments made by the Worker members which had been interpreted to mean "horse-trading" of cases, the perspective of the Employer members was that there was no such "horse-trading", each case being regarded on its own merits. The final list had been adopted through the same procedure as

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in the past. Of course, many other cases could have been chosen among the 800 comments made by the Committee of Experts but a difficult choice had to be made.

17. The Employer member of Costa Rica stated that last year the Committee had discussed the same case under the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and she expressed surprise that the case was on the list again because the Committee had urged the Government to adopt legislative measures in consultation with the social partners and the employers had promoted two draft laws which were first on the list for discussion by Parliament. Although these laws had not yet been adopted, that was because trade unions had obstructed the process. In addition, all governments needed time and in her country the Government had assumed office only one month earlier.
18. The Employer member of Georgia expressed surprise at the fact that his country had been selected for discussion at the Committee since pursuant to the discussion which had taken place two years ago, the Government had closely cooperated with the ILO in building robust social dialogue institutions. On behalf of the 1,500 members of his organization, he expressed his readiness to continue this positive relationship with the ILO and promote social dialogue in his country. He hoped that the discussion would not jeopardize the efforts to build a social partnership and emphasized that what was needed was advice and support from the ILO. The inclusion of his country in the list of cases was difficult to understand.
19. The Worker member of Colombia stated that the international labour Conventions and their ratification had helped to build a more fair, decent and human society and make the tripartite framework a reality. In the case of Colombia, there was absolutely no compliance with the recommendations adopted by the Committee on the Application of Standards. The situation was currently very difficult for the trade union movement in Colombia. By removing Colombia from the list, that situation was in a way being tolerated. This year, 28 trade union members had been murdered and during the mandate of this Government 557 union members had been murdered. Trade unionists had been treated as enemies. He declared that the widows and orphans of union members warranted discussion of that case.
20. Another Worker member of Colombia stated that there was disagreement and consternation because the case of Colombia was not being discussed. He reported that 64 per cent of the murders of trade unionists in the entire world occurred in Colombia. The most recent had taken place only two weeks after a strike in the palm oil sector. Moreover, workers had been dismissed because of their union membership, as was the case of workers of a textile company that were all dismissed within a period of one week of joining the union. He cited another case in which 139 workers at a banana plantation were dismissed and removed from their workplace by force after having joined a trade union. One worker died on this occasion. He stressed that it was extremely unfair that Colombia was not on the list.
21. Another Worker member of Colombia declared that the previous speakers had sufficient reasons to express their dissatisfaction. He also pointed out that it was not normal practice that there were objections after the adoption of the list. The list had become shorter over the years. Some time ago, the International Labour Conference would last for one month and 40 or 42 countries would be selected for the list. He declared that in that context, the General Confederation of Workers (CGT) of Colombia had submitted a document detailing all the anti-trade union activities that had occurred in Colombia.
22. Following the adoption of the final list of individual cases to be discussed by the Committee, the Employer and Worker spokespersons conducted an informal briefing for Government representatives.

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## Working methods of the Committee

23. 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. The Chairperson also called on the members of the Committee to make every effort so that sessions started on time and the working schedule was respected. Finally, the Chairperson recalled that all delegates were under the obligation to abide by parliamentary language. Interventions should be relevant to the subject under discussion and be within the boundaries of respect and decorum.
24. The Worker members recalled the changes that had taken place over the last year as a result of the observations made by the Conference Committee at its previous session, particularly with regard to time management and the lack of discipline shown by certain speakers, the number of double footnotes proposed by the Committee of Experts, and the fact that it had been impossible to discuss a case of progress because of lack of time. They expressed the firm hope that the strict measures proposed with regard to time management and the order in which governments were placed on the final list of individual cases would bear fruit in terms of the balance that should be sought between the right of constituents to present the situation regarding the application of Conventions in their countries, in law and in practice, and the right of all to be heard. The Worker members were committed to respecting the new rules in that regard without, however, excluding the possibility of working on the Saturday of the second week.
25. The Government member of Austria, speaking on behalf of the Government members of the Industrialized Market Economy Countries (IMEC), expressed full support for the changes in procedure outlined in the document on work of the Committee (C. App./D.1) with a view to improving time management. These included the proposed time limits and their strict enforcement by the Chair as well as the automatic slotting of individual cases in the second week. IMEC looked forward to applying these improved working methods without night sessions. The speaker also expressed support for the fact that the discussion had begun with the discussion of the General Survey given the short timeframe for discussing the General Survey and officially transmitting the content of that discussion to the Committee on the Strategic Objective of Employment (Employment Committee). Considering that the tight timetable did not leave room for tripartite negotiated outcomes, IMEC proposed to adopt a record of the Committee's discussions on the morning of Friday, 4 June, and officially transmit this record to the Employment Committee. The Chair of the Committee on the Application of Standards could also give a short introduction before the Employment Committee. In view of further improvements to be made to the working methods of the Committee, including a review of the impact of the introduced changes, IMEC fully supported the continuation of the Tripartite Working Group on the Working Methods of the Conference Committee to ensure ongoing open and transparent discussion of important issues and the most effective use of the limited time available to the Committee.
26. The Government member of Oman, also speaking on behalf of the Council of Ministers of Labour and Social Affairs of the Gulf Cooperation Council (GCC), comprising Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates and Yemen, noted that the Gulf countries had reviewed the proposed amendments to the Conference Committee's working methods, and commended the Tripartite Working Group on the Working Methods of the Conference Committee on the efforts deployed in this respect. He further highlighted the need for the Tripartite Working Group to continue its work in view of its contribution in developing the Conference Committee's work in a manner which met its increasing challenges and to take into account the obstacles that were detected by the Conference Committee, through practice, or those that were mentioned by member States. With respect

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to the Conference Committee's mandate in following-up on the application of member States' implementation of international labour Conventions, and the Conference Committee's working methods in this regard, he further stressed that: (1) there continued to be a need for an objective analysis of the list of individual cases through an early announcement to those member States that would be placed on this list, which would help meet the objective test specifically for this purpose and would enable the member States to inform the Conference Committee of new developments; (2) there continued to be a need for the participation of governments in reviewing the manner of selecting individual cases, and their participation as an observer in the Conference Committee set up for this purpose, whilst stressing the need for a balance in such a selection; and (3) there was importance for the participation in the Conference Committee of regional advisors specialized in international labour standards, with a special emphasis to be made on providing the Regional Office for Arab States with specialized Arab-speaking experts, with an expertise in the Arab region and its socio-economic conditions. He concluded with the hope that the Conference Committee would continue its work in providing assistance to member States to meet their obligations arising from international labour standards. Concurrently, he stressed that the countries of the GCC would endeavour to provide all of the help required by the Conference Committee, whenever it was needed.

## **B. General questions relating to international labour standards**

### **General aspects of the supervisory procedure**

27. First of all, the representative of the Secretary-General indicated that it was her privilege to report on developments since the last session of the Conference and to bring to the Committee's attention some important current and future standards-related topics. She emphasized that this year's Conference was particularly rich from the standards perspective with a first discussion concerning a Convention on decent work for domestic workers, a vast, virtually invisible form of employment in many countries. This year marked the second discussion for the adoption of a new international standard on HIV/AIDS and the world of work, which this Conference was expected to adopt as a Recommendation.
28. The speaker then pointed out that this Committee had the overall responsibility for considering the extent to which international labour standards were being implemented and reporting thereon to the Conference. This mandate was to be found in article 23 of the ILO Constitution, and was articulated in article 7 of the Standing Orders of the International Labour Conference. With this overall objective in mind, the Committee had adapted its methods of work over the years, 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 the result of this process.
29. Turning to the issue of the functioning of the supervisory system, the representative of the Secretary-General stressed that compliance with reporting obligations was of paramount importance for the efficient functioning of the supervisory system, as the quality of the examination by the supervisory bodies depended to a large extent on the quality of the information received. Over the last few years, she had referred to the decrease in the number of reports submitted under articles 19 and 22 of the ILO Constitution which had become a matter of great concern for both the Committee of Experts and this Committee. In 2008, 70.2 per cent of reports were received by the end of the meeting of the Committee of Experts; in 2009, 67.8 per cent were received by that time. She was pleased to report,

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however, the steady increase in the number of observations received from employers' and workers' organizations, which clearly demonstrated that the system was increasingly being used by constituents.

30. The speaker pointed out that this year's General Survey concerning employment instruments had taken a thematic and global approach articulated around four Conventions and two Recommendations. In this regard, she wished to focus on the Human Resources Development Convention, 1975 (No. 142). The key here was to reconcile the objectives of education and training. In the past and even now, young people were trained for a particular job, without *anticipating* future market needs. When jobs were lost, new ones would come open, but many would have different skill requirements than the old ones. In some respects when someone lost his or her job now, they needed to start all over. As periods of unemployment lengthened, skills eroded. The drama of youth unemployment extended far beyond the economic side of the question. Most students today were willing to work hard to succeed, but they were rightly unsure that educational institutions were equipped to guide them. The conclusion on skills for improved productivity, employment growth and development, adopted at the Conference in 2008, stressed that "education, vocational training and *lifelong learning* are central pillars of productivity and employability". Emphasis should be placed on lifelong learning. Difficult as it was, young people would have to accept that in the future "career" would have a different meaning, a different form and a different scope than was the model for their parents. Today, any meaningful approach to socio-economic development was necessarily an interrelated one and therefore it would be quite timely that some of these structures would certainly be examined in next year's General Survey on Social Security.
31. Returning to the issue of the General Survey, the speaker underlined that this year's General Survey represented the first follow-up to the 2008 Declaration on Social Justice for a Fair Globalization. Following the adoption of the Social Justice Declaration in 2008, the Governing Body decided that the General Survey and the recurrent item report would deal with the same strategic objective. This meant that this Conference had before it a General Survey concerning employment instruments and a report before the Recurrent Item Committee on Employment entitled *Employment policies for social justice and a fair globalization*. This was the first time that this Committee as well as the Recurrent Item Committee on Employment would be discussing the same subject but from two different perspectives. This Committee would focus on the report of the Committee of Experts which presented a global picture on law and practice of ILO member States whether or not they had ratified the relevant Conventions. The Recurrent Item Committee on Employment would have to consider conclusions that would be comprehensive. This Committee would therefore need to ensure that it was able to provide a relevant input that could be taken into account by the Recurrent Item Committee. This was a unique opportunity given to the tripartite constituents, through the Conference, to influence in a major way standard-setting policy as a cornerstone of ILO activities by enhancing its relevance to the world of work and to ensure the role of standards as a useful means of achieving the constitutional objectives of the Organization.<sup>7</sup> This Committee would be in a position to assess standards gaps, if any, to propose solutions as well as to provide guidance for the promotion of standards as it did last year in respect of the instruments that were the subject of the General Survey. She therefore invited the Committee to give serious consideration as to how it could best interact with the Recurrent Item Committee on Employment so as to ensure that relevant standards-related conclusions were drawn by the Conference for follow-up by the Governing Body. This clearly called for innovative ways of working and

<sup>7</sup> ILO Social Justice Declaration for a Fair Globalization, final preambular paragraph.

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the Office was available to assist in every way possible to make this first interaction with the Recurrent Item Committee a success.

32. The speaker then addressed the labour law challenges facing the world of work which had certainly been aggravated by the financial and economic crisis and included the following: (i) the weakening of the employment relationship with the increasing classification of workers as contractors or contract workers; and (ii) a growing shift of what was traditionally the responsibility of the employer to workers in these situations, for instance the provision of health insurance and social security contributions. Other challenges concerned labour standards and the supply chain and the informal economy. One response to these diverse challenges could be found in the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), highlighted by the Committee of Experts in its report. Indeed, freedom of association and collective bargaining were given special emphasis in the Global Jobs Pact as essential enabling tools to ensure that crisis responses were best adapted to the needs of the real economy and to strengthen participation in those choices and ease increased social tension. With regard to the informal economy, she informed the Committee that the Office had recently published a monograph entitled: *Extending the scope of application of labour laws to the informal economy: Digest of comments of the ILO's supervisory bodies related to the informal economy*. It was to be hoped that this would assist the tripartite constituents in designing strategies to help bridge the gap in the application of international labour standards and assist them in developing laws and strengthening institutions at the national level to extend protection to workers in the informal economy in order to facilitate the transition to formality. Another challenge was designing strategies in order to enhance the impact of international labour standards. In this regard, national courts could play a very important role in giving effect to the observations, recommendations and conclusions of the ILO supervisory bodies. A recently revised publication by the Standards Department and the ILO Turin Centre on *International labour law and domestic law: Training manual for judges, lawyers and legal educators* was a way of seeking to enhance the role of the courts in creating greater coherence between international labour standards and national labour laws, particularly where the countries concerned had ratified the relevant international labour standards.
33. Finally, the representative of the Secretary-General turned to the issue of the authoritative interpretation of ILO Conventions which was the subject matter of article 37 of the ILO Constitution. She pointed out that in November 2009, the Governing Body had asked the Office to start consultations on the issue of the interpretation of international labour Conventions. The referral procedure to the International Court of Justice, the only body at present competent to provide the authoritative interpretation set forth in article 37(1) of the ILO Constitution, had been used only once, in 1932. The standard practice today was that the Legal Adviser and the Standards Department on the basis of the Vienna Convention on the Law of Treaties, the *travaux préparatoires* concerning international labour standards and taking account of comments by the Committee of Experts, prepared a “reply” to requests for interpretation with a disclaimer citing the aforementioned constitutional provision. In a globalized world, however, ILO instruments did not remain wholly within the sphere of the ILO. It was for this reason that the question of the ILO providing the authoritative interpretation of ILO Conventions took on its importance: so that others did not provide discordant or ill-informed interpretations concerning labour standards, ultimately creating confusion and potentially weakening the supervisory system. The tribunal envisaged in article 37(2) of the ILO Constitution was for the time being the subject of informal tripartite consultations of Governing Body members. The objective was to see to what extent the implementation of this provision would enhance the impact of international labour standards by giving it the hallmark of ILO expertise and authority. Thus, it was the start of a process already provided for in the Constitution, and which would enhance the transparency, credibility, coherence and authority of the ILO's

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universal message, which was beautifully reiterated earlier that day by the President of the Swiss Confederation, Ms Doris Leuthard, when she addressed the Conference.

- 34.** In conclusion, the representative of the Secretary-General emphasized that, in form and in substance, standards were breaking new ground in terms of extending protection and working in ways that were more user-friendly. Much had been written and said about standards in times of crisis. The bottom line, however, was that while adaptation was ultimately the price of survival, social Darwinism had no place at the ILO. Labour standards did indeed cover the breadth of the human condition and this included embracing workers with HIV/AIDS and domestic workers, who may have no protection at all
- 35.** The Committee welcomed Professor Janice Bellace, former Chairperson of the Committee of Experts. She pointed out that 2009 marked the 60th anniversary of Convention No. 98, which was more relevant than ever to the needs of the labour market in a globalized environment. This Convention occupied a critical place in the fundamental principles and rights at work structure for it made operational elements of freedom of association, and recognized that the right to organize and the right to bargain collectively went hand in hand. Moreover, because collective agreements were the product of a process whereby employers' and workers' organizations negotiated to regulate jointly terms and conditions of employment, they often served to implement standards found in other ILO Conventions. Moreover, this year the ongoing global economic crisis prompted the Committee of Experts to comment briefly on the relevance of several wage-related Conventions.<sup>8</sup> Typically, the relevance of these Conventions was highlighted by a crisis in one country or region, or in one industry. The increasing globalization of the economy meant that a financial crisis that started in one part of the world quickly had an impact on other countries, and that the financial crisis became an economic and social crisis, with a resulting sharp spike in unemployment and failed businesses. As a result, the guarantees expressed in these wage protection Conventions took on renewed significance.
- 36.** The speaker then referred to the Subcommittee on Working Methods which met during the 2009 session of the Committee of Experts to discuss ways to make the General Report more useful to the Conference Committee on the Application of Standards. She pointed out the fact that the Experts had described the criteria they used in determining whether to insert special notes (traditionally referred to as "footnotes") at the end of an observation. The difference between cases where a member State was requested to submit an earlier report (often referred to as a "single footnote") compared to cases where the government was asked to provide detailed information to the Conference (a "double footnote") was a matter of degree. In applying the criteria, the Committee of Experts used its discretion, and had regard to the specific circumstances of the country and the length of the reporting cycle. In addition, the Committee of Experts was sensitive to the practical reality that the Conference Committee had limited time in which to consider these cases. This year the Committee of Experts had decided to limit the number of cases that were double footnoted. In selecting a very limited number of cases to double footnote, the Committee of Experts focused solely on legal compliance and practical application and selected only the most serious cases. The Committee of Experts preferred to give ample room to the Conference Committee to decide which cases it wished to discuss.
- 37.** Turning to the issue of terminology, the speaker underlined that the Committee of Experts had noted with satisfaction or interest that in a number of member States, longstanding comments on the application of ratified Conventions had been addressed. Responding to

<sup>8</sup> Protection of Wages Convention, 1949 (No. 95), Minimum Wage Fixing Convention, 1970 (No. 131), Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173).



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some confusion over the meaning of terms that had been used for some years, in the General Report of the Committee of Experts had considered some situations where these terms might be used. For example, a case of *progress* related to a specific issue arising out of the application of a Convention, and simply indicated that the member State had taken some measures with regard to that issue. Similarly, a case of *satisfaction* indicated solely that a government had taken measures, often through the adoption of new legislation or an amendment to existing legislation, to respond directly to a specific issue raised by the Committee of Experts. In expressing its satisfaction, the Committee of Experts was indicating to the government and the social partners that it considered the specific issue resolved. It did not, however, reflect any view on the member State's overall compliance with the Convention. A more recent term was cases of *good practice*. In its General Report, the Committee of Experts emphasized that the use of this term did not in any way involve an additional obligation for a member State. The Committee of Experts believed it would be helpful for governments and the social partners to learn of a new approach for achieving or improving compliance with a Convention, or of an innovative way of addressing difficulties that arose in the application of a Convention.

38. The speaker then addressed the issue of compliance by the member States with their reporting obligations. The Committee of Experts was disturbed by serious failures of certain member States to comply with their reporting obligations, mostly (although not all) due to insufficient infrastructure attributable to lack of human or financial resources. The Office was to be commended on its efforts to improve this situation, often through technical assistance, which was meeting with some success. The Committee of Experts endeavoured to engage in a fruitful dialogue with the member States regarding efforts to achieve compliance with a Convention. When reports were not submitted, or when the government, in responding to an observation or direct request, was not responsive to the comments of the Committee of Experts, the dialogue was constrained. Likewise, when the government's report was limited to legal provisions and did not supply information on practical application, the Committee of Experts found itself unable to determine whether effective application of the Convention had been secured in the member State. In this regard, she drew attention to the government's obligation to communicate its report to employers' and workers' organizations. If the government failed to do so, these organizations were denied their opportunity to comment and an essential element of tripartism was lost.
39. Turning to the General Survey, the speaker underlined that the Committee of Experts welcomed the opportunity to review, for the first time, national law and practice with regard to employment instruments, following a new thematic approach which flowed directly from the adoption of the Social Justice Declaration at the International Labour Conference in June 2008. The first strategic objective of this Declaration was "promoting employment by creating a sustainable institutional and economic environment", and the Governing Body selected this objective as the first recurrent item. Synchronizing the subject matter of the General Survey and the recurrent item report had the benefit of promoting greater coherence between the normative, economic and social policy work of the ILO. The challenge of reviewing the jurisprudence of the Committee of Experts regarding four Conventions and two Recommendations in one General Survey may at first have caused some apprehension for fear of not producing a comprehensive and thorough Survey. The benefits, however, of approaching this topic in a comprehensive fashion were soon apparent. In addition, the Committee of Experts, recognizing the different scope of this General Survey, utilized five members, rather than the usual three, on the working party. This was not only because of the additional work to be done, but also because mere geographic diversity was not sufficient; the level of economic development was an additional factor to consider.

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40. To some extent, the organization of the General Survey was traditional, in that the first part set forth and explained the requirements of instruments themselves, the second part reviewed what was happening in practice, and the third part looked at the continuing relevance of these instruments. However, the second part was quite different because the Committee of Experts, in this General Survey, made use of information submitted in the member States' reports and publicly available data as a basis for assessing the extent to which the member States complied with the relevant standards. This was not a strictly legal analysis but an assessment of whether the member States' performance was consistent with a commitment to the pursuit of an active policy designed to promote full, productive and freely chosen employment. The Committee of Experts realized that there were different stages of development and economic capacity, and thus sought to determine whether member States had made the best possible effort, in light of their stage of development, to achieve and maintain full and productive employment. The framework applied by the Committee of Experts in approaching this assessment was set out in the first four pages of Part B – Global overview. The Committee of Experts briefly described Keynesian economic theory, which was widely accepted in the period 1940–70, and the neo-liberal economic theory which began to dominate in the 1980s. The Committee of Experts took no position on the correctness of these theories which often dictated very different policy choices. However, the Committee of Experts did note that it must be aware of the tension that arose when economic analysis intersected with legal analysis, both of which could be affected by political, social and cultural conditions.
41. In undertaking an assessment of labour market performance, data needed to be used, and a period of time selected. For the most part, the Committee of Experts used data for the period 1998–2007; that was, going back two decades from the most recent complete data available. There were some concerns about the completeness of the data on which the Committee of Experts relied. Many member States reported that they had some data collection activity attached to their public employment service, but that it was unlikely that they conducted regular national labour force surveys and, as a result, they lacked the ability to monitor and report on overall employment trends. Nonetheless, the Committee of Experts found that the data revealed some important policy issues. For instance, standard economic theory assumed that unemployment was low in developing countries that did not have unemployment insurance. Yet, the data revealed that this was most definitely not the case. The Committee of Experts wished to highlight this unexplained phenomenon of high unemployment rates in developing countries and recommended an investigation of the causes of this phenomenon, as a basis for framing sound employment policy. In looking at data over the past 40 years, the Committee of Experts did discern that some efforts to lower unemployment, such as creating incentives for early retirement to open up places for others, may not have contributed to sustainable full employment over the long term, particularly with regard to older workers. Finally, in discussing the informal economy, the Committee of Experts was constrained in its analysis because there appeared to be different understandings of the concept in some developing countries, and because the data was lacking on which to make an assessment of the impact of governments' efforts. The Committee of Experts, however, wished to stress the need to examine more closely the ways in which workers could be more fully mainstreamed into the formal economy.
42. In conclusion, the Committee of Experts believed that the employment instruments studied remained relevant. No specific recommendation for standard setting was made, although two options were presented for discussion. One related to a gap; namely, that the current employment instruments spoke to governments pursuing policies limited to a national labour market. Another option might be the adoption of an instrument consolidating all the instruments relating to employment, designed to highlight the need for governments to take a comprehensive and coherent approach.

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43. The speaker concluded by noting that the members of the Committee of Experts were grateful that the Employer and Worker Vice-Chairpersons of the Conference Committee, Mr Potter and Mr Cortebeeck, were once again able to meet with the members of the Committee of Experts, to further the dialogue between the two committees. In encouraging member States to fully apply ratified Conventions, the two committees worked in tandem, with the Committee of Experts engaging in the technical legal analysis and the Conference Committee focusing on implementation. As such, the Committee of Experts found it most useful to increase its understanding of how this process could be made more efficient, in addition to ensuring the spirit of mutual respect and cooperation between the two committees.
44. 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.
45. Welcoming the synergy that existed between the Conference Committee and the Committee of Experts, the Worker members underlined the need to preserve and continue to strengthen contact between the two Committees. The Committee of Experts played a key role in the system of monitoring the application of standards which, together with tripartism, were the two essential ingredients that made the ILO's supervisory mechanism unique and irreplaceable.
46. The Worker members took note of the clarifications provided by the Committee of Experts on the distinction between cases of progress and cases of good practice, along with the details on cases in which the Committee had expressed "interest" or "satisfaction". In that regard, the proportion of cases of satisfaction (71 for 49 countries) and interest (276 for 114 countries) was surprising, above all when they concerned certain countries known for repeated failures in applying Conventions. Furthermore, the fact that an expression of "satisfaction" or "interest" could appear in the same comment as an expression of "profound regret" made it difficult for the workers of the country in question to demand that the government be called to address the Committee. In addition, certain improvements noted by the Committee of Experts did not correspond to the situation experienced in practice by workers or even employers. For instance, certain cases of progress were based solely on information provided by governments, either because trade union organizations were not involved in the process or because they were almost non-existent in the country. Certain information should therefore be noted with greater circumspection.
47. The Worker members were pleased that, against the backdrop of the global economic crisis, the Committee of Experts had highlighted the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and ILO standards on wages. Those instruments were crucial to sustaining recovery in job creation and guaranteeing that wages would be maintained at levels that would allow the economy to be rebuilt. It was also essential to keep minimum wages at decent levels and periodically adjust them, in consultation with the social partners, and to maintain adequate and effective labour inspection. In that regard, the importance of governance instruments should be recalled. Governments that ratified Conventions must make every effort to ensure their effective application, which required independent labour inspectors who were properly provided with human and financial resources.
48. Noting that the solutions that were being sought to escape from the crisis failed to take into account the increasing precariousness of workers, the Worker members drew attention to the words of the Secretary-General's representative, who stressed that the ILO was the social conscience of the United Nations. With regard to the issue of interpreting international labour Conventions that was before the Governing Body, the Worker members considered it to be an extremely delicate subject on which immediate consensus

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could be difficult to obtain. Consequently, more time, studies and exchanges of views would be necessary.

49. In conclusion, the Worker members thanked the members of the Committee of Experts whose mandate had expired after some years of service to the Committee, and congratulated the new members of the Committee, as well as its new Chairperson. Lastly, the Worker members paid tribute to the memory of Evgeny Sidorov and Apecides Alvis, great fighters for the cause of workers in their countries and on the international stage.
50. The Employer members referred, first, to the composition of the Committee of Experts, in particular the ongoing problem of having a full complement of 20 Experts in place. They encouraged the Director-General to propose to the Governing Body a number of diverse candidates for the vacancies so that they could be appointed without delay to ensure the effective and efficient operation of the Committee of Experts.
51. The Employer members then addressed the need for greater transparency and integration between the Committee of Experts, the Conference Committee on the Application of Standards, the Governing Body's LILS Committee, and the Governing Body itself. This was significant because the ultimate responsibility for ILO standards supervision lay with the ILO's tripartite constituency. Yet, the reality was that the Conference's tripartite constituents and the Governing Body had very little say in the day-to-day supervisory process. It was the Committee of Experts' report that was used by the Office as one of the tools to build country profiles that measured decent work, or was quoted to indicate the ILO's position on the state of compliance by individual countries with ratified Conventions. At present, the report of the Committee of Experts was submitted to the Governing Body for information but was never discussed in the LILS Committee or the Governing Body. On the other hand, the Conference Committee would only be able to address just 3 per cent of the more than 800 observations of the Committee of Experts this year. The Employer members considered that tripartite governance needed to be restored to the application of standards. They expressed the view that the Committee of Experts' report should become a document that had full tripartite ownership and reflected tripartite views. This document would give the possibility for tripartite constituents to set out their views on standards supervision-related issues and would strengthen the credibility and acceptance of ILO standards supervision.
52. With regard to cases of progress, the Employer members appreciated that the Committee of Experts responded to their suggestion that the utility and transparency of this designation would be enhanced if the elements of the conclusions directly relating to this designation were highlighted in the observations. However, because of the density of some of the observations, it was not always easy to find the "case of progress" designation. On an overall statistical basis, it would be useful to know overall cases of progress by Convention, and whether overall progress was increasing or decreasing by Convention. As far as cases of good practice were concerned, the Employer members recalled that they had questioned the utility of that designation for the last two years, considering that the designation of a case of progress was sufficient and urging the Committee of Experts to drop this designation because it was not useful to the ILO tripartite constituency.
53. Turning to questions concerning the application of certain Conventions, the Employer members again objected to "mini-surveys" or comments made outside the article 19 General Survey process and noted that isolated or unlinked observations could be easily overlooked by the ILO tripartite constituency, such as the general observations on wages and labour inspection in this year's Committee of Experts' report. They also recalled their concern about new reporting requirements that some general observations attempted to create. The fact that such reporting requirements were not cleared through the LILS Committee and the Governing Body gave the impression that there was a breakdown in the

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tripartite governance process. The Employer members expressed a set of objections with respect to the general observation on wages, especially the unilateral establishment by the Committee of Experts of new reporting requirements for four wage Conventions and the promotion of the Labour Clauses (Public Contracts) Convention, 1949 (No. 94), which did not take into account the concerns expressed during the tripartite debate on the 2008 General Survey on labour clauses in public contracts. These concerns focused on the discriminatory aspects of Convention No. 94, its negative impact on job creation and taxpayers, and its inconsistency with European Union law. The Employer members stated that, at a time of stress on sovereign debt, Convention No. 94 was the wrong solution at the wrong time, highlighting its substantive defects. Recalling the Governing Body's decision of November 1998 that the Convention be re-examined in due course, the Employer members called for a re-examination of the Convention by the LILS Committee as a matter of urgency, invited States parties to this Convention to consider denouncing it; the next denunciation was September 2012–13. They also requested the Office to stop promoting this Convention. Moreover, all General Surveys conducted since 1990 should contain an insert that included the tripartite discussion and debate on the General Survey.

54. With specific reference to the Indigenous and Tribal Peoples Convention, 1989 (No. 169), the Employer members referred to observations on certain countries made by the Committee of Experts, according to which certain governments were asked, pursuant to *Article 15(2)* of Convention No. 169, to suspend the implementation of existing projects, the exploitation or exploration of activities and implementation of infrastructure projects and the exploration and exploitation of natural resources. The Employer members pointed out that such requests did not have a basis in the Convention and had to be eliminated as soon as possible. The Committee of Experts was not a court of law and could not, in effect, request economic activity to stop.
55. Turning to the Termination of Employment Convention, 1982 (No. 158), the Employer members recalled that it was one of the most contentious ILO Conventions and expressed the view that this instrument was basically an obstacle to a dynamic labour market that facilitated the creation of productive employment. A tripartite meeting of Experts was planned for next year to consider what to do with this no longer relevant instrument. The eight observations made by the Committee of Experts on this Convention confirmed the existence of major flaws in the instrument, especially its detrimental effect on enterprises by tending to delay or make difficult and expensive necessary dismissals, thus endangering the viability of enterprises. Recalling that the Convention would again be open to denunciation in 2015–16, the Employer members called upon the Committee of Experts and the Office to provide objective and balanced information about the Convention, including ways to mitigate its rigidities as far as possible, and to refrain from promoting it.
56. In this context, the Employer members opposed the Experts' attempts to read provisions of Convention No. 158, into obligations under other Conventions, particularly when the Government had not ratified them. For example, in the observation on Belarus and Convention No. 122, the Experts called the Government's attention to certain provisions of Convention No. 158. First, it needed to be emphasized that the latter Convention had not been ratified by Belarus. Moreover, the Experts seemed to suggest that "short-term contracts", the use of which was restricted under Article 3(2) of Convention No. 158, was contrary to the promotion of "full and productive employment" in Convention No. 122, and that governments had to give some job guarantee "to satisfy the employment needs of the workers, whose short-term contract of employment had ended". The Employer members' firm view was that Convention No. 122, did not in any way limit the use of short-term contracts.

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- 57.** Finally, with respect to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Employer members recalled that the text and legislative history of both Convention No. 87 and Convention No. 98 made clear that Convention No. 87 did not expressly provide for a right to strike. Convention No. 87 at most contained a general right to strike which nonetheless could not be regulated in detail under the Convention. Yet, the Committee of Experts had continued a detailed critique of ratifying countries' strike policies, especially on "essential services", applying a "one size fits all approach" and failing to recognize differences in economic or industrial development and current economic circumstances. This was in sharp contrast to the Experts' 1953 General Survey on Conventions Nos 87 and 98, where the Experts stated: "The object of this Convention is to define as concisely as possible the principles governing freedom of association, whilst refraining from prescribing any code or model regulations." and it was not until its third General Survey on Conventions Nos 87 and 98 in 1959, that the right to strike was mentioned at all in a single paragraph and only with respect to the public sector – ten years after the Conventions were adopted. The Experts' views on the right to strike expanded to seven paragraphs in the 1973 General Survey, and included opinions on temporary and general prohibitions of strikes, strikes in the public sector and essential services, strike restrictions based on maintaining public order and economic development, and recourse to state dispute resolution procedures. This regulation of restrictions on the right to strike further grew to 25 paragraphs in the 1983 General Survey, and included further refinement of the 1973 General Survey as well as adding first time views on requisitioning and minimum service, restrictions related to the objectives of the strike, restrictions on the methods used, provisions imposing a waiting period on strikes, and sanctions against strikes. In the 1994 General Survey, this evolved into a separate chapter on the right to strike encompassing 44 paragraphs and numerous new subjects for detailed comment by the Experts. The Employer members considered that the Committee of Experts' approach undermined tripartism in standard-setting and supervision, particularly given the fact that whenever the right to strike was part of a Convention No. 87 case in the Conference Committee, it was impossible to reach a conclusion on that issue. They once again asked the Committee of Experts to reconsider their interpretation on the right to strike that had progressively expanded since 1959 and that had no basis in Conventions Nos 87 and 98.
- 58.** The Employer members acknowledged that the work of the Committee of Experts, especially its observations on compliance with ratified Conventions, was of utmost importance to the work of the Conference Committee, but expressed the view that the Committee of Experts had to show in the written materials that they took account of what was discussed in the Conference Committee. This would be in the interest of maintaining the integrity of the tripartite governance process mandated by article 23 of the ILO Constitution and article 7 of the Standing Orders of the Conference.
- 59.** The Government member of Austria, speaking on behalf of IMEC, highlighted that the ILO supervisory system was unique in the international framework of human rights procedures. The Conference Committee had the responsibility to help ensure that the capacity, visibility and impact of the ILO supervisory system continued to evolve positively, despite the inherent challenges. Noting that one of the main ILO activities since the last Conference was the promotion of the Global Jobs Pact, the speaker observed that the ILO's response to the employment and social policy consequences of the economic and financial crisis continued to be prominent on the Conference agenda. Quoting from the Global Jobs Pact, he stated that to prevent a downward spiral in labour conditions, the Conference Committee had to place special emphasis on fundamental principles and rights at work and their implementation through effective governance mechanisms. Not ensuring fundamental principles and rights at work at such a critical time would represent not only a moral failure to uphold universally recognized rights, but would also represent a failure of economic policy to ensure growth and recovery. This year, the Conference Committee was

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entering a new phase of the implementation process of the Social Justice Declaration, which led to synchronizing the instruments to be studied by the General Survey with the yearly recurrent item. IMEC appreciated the efforts of the Office in elaborating improved questionnaires which resulted in an increased response rate, and believed that this was the right way to maintain the authoritative value of General Surveys. Also this year, the Conference would start the cycle of recurrent discussions with the strategic objective of employment, which was the first time that the discussion of the General Survey by the Conference Committee would contribute to the recurrent discussion. IMEC hoped that the new approach would increase the synergy between standards and the other activities of the ILO and would therefore enhance the impact of the standards system.

60. IMEC welcomed the Committee of Experts' continuous efforts to enhance the quality of reporting and appreciated the improvements of the presentation in an accessible format, such as the country profiles. IMEC had always supported the discussion of significant cases of progress in the Conference Committee, as well as the efforts by the Committee of Experts to clarify the criteria for identification of cases of "good practices" in comparison with cases of "progress", which clarified that cases of good practice were always cases of progress but not necessarily vice-versa. IMEC attached great importance to the combination of the work of the supervisory bodies and the practical guidance given to member States through technical cooperation as one of the key dimensions of the ILO supervisory system. IMEC appreciated the heightened attention given to this complementarity by the Committee of Experts, which had led to an enhanced follow-up of cases of serious failure. This was also due to the Conference Committee's increasingly systematic references to technical assistance in its conclusions.
61. With reference to the 60th anniversary of Convention No. 98, IMEC reiterated its strong support for collective bargaining and social dialogue as essential tools to achieve the strategic objectives of the Organization. The speaker underlined that collective bargaining had an important role to play in the response to the crisis because it was a flexible and responsive tool that allowed for a balance of working conditions and new economic realities, while protecting the rights of workers. IMEC took note of the Committee of Experts' observations with respect to the relevance and application of the ILO wage-related Conventions in the context of the global financial crisis and its acknowledgment that the crisis had increasing impact on the wage incomes of millions of global workers. IMEC agreed that wage protection was particularly important in times of crisis and that the Global Jobs Pact offered a good set of options for supporting recovery and helping put the economy on a sustainable track, which included putting relevant wage-related standards at the centre of crisis responses.
62. Finally, the speaker highlighted IMEC's concern that, despite an ever-increasing workload, the Committee of Experts was still operating at less than full capacity, as it had been almost continually for the past decade. He was happy to note that new Experts had been appointed, but observed that there were still remaining vacancies. Therefore, he reiterated IMEC's appeal to the Director-General to fill all vacancies on the Committee and to ensure that the Committee was adequately resourced to complete its work effectively.
63. The Government member of the Bolivarian Republic of Venezuela, speaking on behalf of the Government members of the Group of Latin America and Caribbean Countries (GRULAC), reiterated his firm commitment to the ILO supervisory mechanisms but expressed his concern about the work and the report of the Committee of Experts. In relation to the working methods of the Committee of Experts, he drew attention to the fact that the mandate of the Committee of Experts did not include resolving controversies, issuing judgements on conflicting demands of interested parties, issuing injunction measures, resolutions, judgements, decrees or awards, and its opinions or comments were not mandatory. The Committee of Experts' function was to determine if the provisions of a

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specific Convention were complied with. He reaffirmed his deep concern that the Committee of Experts exceeded its mandate when it gave mandatory nature and form to its opinions. These excesses might be used as detrimental requests in dialogue processes and also constituted an obstacle to the good political will of governments in their efforts to generate permanent solutions. He expressed the view that within the Committee of Experts' observations and conclusions there were measures with an injunctive nature and that the Committee of Experts made its own assessment of the facts submitted to the Committee on Freedom of Association, which was contrary to the principle of *non bis in idem* and duplicated the work of the Committee when what was desirable was mutual respect and spirit of cooperation.

64. The speaker highlighted that the Committee of Experts tended to take into consideration the views of the social partners but did not give equal footing to the information presented in a timely manner by governments, which violated impartiality and objectivity. He also highlighted that the Committee of Experts no longer valued the need for reasonable timeframes that a State needed in order to initiate administrative, legislative and judicial measures, and for the Office to be able to react to requests for technical assistance. He also expressed the view that the Committee of Experts interpreted Conventions which was delegated to the International Court of Justice in the Constitution. He stressed the need to activate efforts to safeguard the principles of independence, objectivity and impartiality as well as transparency, which should guide the Committee of Experts in its tasks. He highlighted renovation as a way to provide the body with a critical spirit and to encourage revision, rectification and innovation in order to achieve the objectives for which the Committee was created. He strongly urged the Committee of Experts to ensure that the nature of the comments remained within the limits of its constitutional mandate. He trusted that the Committee of Experts' Subcommittee on the Working Methods would continue to examine such methods so that independence, objectivity and impartiality, which were essential for a supervisory body, were within the future work of the Committee. He trusted that in the near future the functioning of the Committee of Experts could be regulated so as to ensure procedures which were predictable, transparent and objective, since 84 years of existence had provided enough elements to guide its operation.
65. The Government member of Brazil pointed out the context of the international economic crisis that principally affected the most vulnerable groups, and stressed the importance of Convention No. 98 and wage protection as being particularly appropriate. The role of workers and their capacity to engage in collective bargaining should continue to be reinforced. Her Government supported ILO efforts aimed at preventing wage arrears and protecting workers' wage claims in the case of the employer's insolvency. Revitalizing the national economy through socially responsible public spending represented an equally important element. In this regard, she noted that Brazilian legislation granted preferential treatment to workers' wage claims and also recognized the control of public spending as a priority issue so as to avoid excessive public deficit. Her Government sought to promote economic development by investing in labour-intensive sectors which was expected to generate more and better quality jobs. In the same vein as the Committee of Experts, her Government recognized the importance of maintaining decent minimum wage levels. Adjusting the minimum wage, which had increased by 73 per cent since 2003, facilitated workers' protection during the crisis and maintained demand. Recalling her Government's commitment to international labour standards, she concluded by indicating that the instrument of ratification of the Labour Relations (Public Service) Convention, 1978 (No. 151), would be communicated to the Office in the coming days while the Workers with Workers with Family Responsibilities Convention, 1981 (No. 156), would be submitted to the Parliament in conformity with the Decent Work Country Programme.



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66. The Government member of Cuba recalled the remit of the Committee of Experts and the principles of independence, objectivity and impartiality that governed its work and stressed the importance of taking them into account when reviewing working methods. She pointed out that a reading of paragraph 58 of the Committee of Experts' report laid bare that the difference in cases of progress, when note was made with interest or note was made with satisfaction, was minimal and that in both cases subjective criteria were used and could lead to interpretations that deviated from the principles of objectivity and impartiality. She also recalled that paragraph 65 stipulated that the identification of a case of good practice in some way involved additional obligations for a member State with regard to the Conventions that it had ratified as provided for in sections (1) and (2) of that paragraph, which reflected greater flexibility of the Committee of Experts in studying the means of application, which in most cases depended on the specific conditions of certain countries for implementing the Convention's provisions, which could not necessarily be adopted as models for application in other economic and social contexts. Finally, she referred to the pertinence of the Conventions concerning wages in the context of the global economic crisis. She noted that during periods of economic stability and relatively satisfactory levels of employment, wage was one of the main instruments workers had to guarantee their subsistence and that of their family. Currently, at a time of global economic crisis affecting primarily workers, wage protection was even more important, along with measures against salary discrimination and how to strengthen decent work for maintaining economic recovery and ensuring a sustainable economy.
67. The Worker member of Greece expressed her appreciation regarding the scope, quality and innovative approach of the reports presented to the Conference Committee. In the follow-up on the Global Jobs Pact, this accomplished volume of work would hopefully contribute to safeguarding norms and standards that were crucial to the realization of the strategic objective of employment and the right to decent work. Nonetheless, she stated that neither the current social and economic considerations that shaped this work, nor a global overview of employment policies and instruments, would be complete without taking stock of the impact of the current phase of the financial crisis on ILO standards, in particular, the government bonds crisis. Measures implemented in a number of countries in Europe, including Greece, directly challenged the promotion of full, decent and productive employment in the quest for a fair globalization. Their scope and impact inevitably tested the continuing relevance of employment instruments. A new global landscape, regrettably shaped by unregulated financial markets and speculation, was being created very rapidly with serious repercussions for the world of work. Serious questions were raised by the emergency exit strategy imposed on Greece by the IMF, the ECB and the EC, that far from containing the crisis would only worsen it, because it severely curtailed any growth prospect. This particular policy mix, among others, froze economic activity, stifled investment and strangled domestic demand so that, instead of growth and employment, economic stagnation and unemployment were promoted with serious repercussions on social cohesion. However, a further grave concern, from the standard-setting point of view, was caused by measures that directly targeted core labour standards and ratified Conventions. Such measures were unnecessary and included the revision of the collective bargaining process, of sectoral collective agreements and the general collective agreement in the private sector, and the challenge to the negotiated minimum wage structure. The Greek trade unions recognized the country's grave fiscal and economic situation. They could not, however, understand nor accept structural adjustment that involved a totally unjustified reversal of core labour rights and standards in the private sector. Serious questions were raised whether the so-called rescue strategies killed employment and growth, and they expressly required the suppression of a normal, working labour relations system. The speaker concluded by supporting the ILO outlook on employment and growth, believing that realistic, well-balanced and socially acceptable plans were needed, negotiated with the trade unions through effective social dialogue. The strategic objective of employment could not be achieved by brutal exit strategies; it required a drastically

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different policy mix that would support investment, growth and employment, safeguard incomes, provide fair and effective taxation, and sustain social cohesion and the environment.

- 68.** The Government member of Panama expressed agreement with the statement made on behalf of GRULAC, particularly concerning the declaration of the Chairperson of the Committee of Experts. He stressed the need to determine the circumstances in which the scope of the opinions of the Committee of Experts might have a prejudicial impact so that these opinions did not become a negative element in the dialogue that was taking place within countries. He explained that his Government had studied the need to make legislative changes, but in specific cases employers and workers had objected to any change, for instance in the case of the reduction of the minimum number of workers required to form a trade union. In addition, the speaker stressed the need to establish mechanisms that were impartial and objective in evaluating information presented by governments and in dealing with the comments of social partners. He considered positive the possibility of granting longer deadlines to governments for making required legislative and administrative provisions.
- 69.** The Worker member of Pakistan stated that, in terms of the role of collective bargaining and wages in these difficult times, and the impact of the financial crisis, the IMF had been imposing measures on several countries, including his own, by asking for a reduction in the deficit, which would raise unemployment. With respect to the supervisory mechanisms, he observed that during the Cold War in the 1960s and 1970s, the Employer members had been helpful in protecting and highlighting the importance of the supervisory system. In this regard, however, he stated that he did not have the time to produce the historical statements of the Employer members, but requested that these comments be looked into. Hence, the yardstick could not be changed with the passage of time. If the supervisory mechanism was submitted to the tripartite process, then it would become a political process. Turning to worker rights, he further observed that governments had undertaken the obligation to freedom of association and, by ratifying the relevant Conventions, had undertaken to implement this freedom in law and in practice. The right to strike was a prerequisite to collective bargaining and, without it, workers would be in a state of forced labour, as they would be compelled to work against their will. He noted that, where there was a gap between a government's law and practice in this respect, the Office could provide technical assistance. This process would occur through a dialogue between governments and the Conference Committee, with the participation of the Office. In the new system, even the Chairs of the Employers' and Workers' groups and the Chairperson of the Conference Committee could have a dialogue. He urged that the Committee of Experts' independence and impartiality be protected, and concluded by asking member States to ratify the core Conventions and to fill in the gap between implementation with ratification.
- 70.** Another Government member of the Bolivarian Republic of Venezuela supported the GRULAC statement. He stressed that the Committee had access to information provided by governments in their reports to the Conference Committee, reports of other ILO supervisory bodies and observations made by employers' and workers' organizations. He expressed concern that various ILO bodies requested the same information and repeated in their reports the same alleged non-compliance of several countries. Those bodies made similar, and sometimes the same, observations on specific cases. He felt that there should be coordination that avoided an overlapping of efforts and maximization of government resources. He stated that a report of a supervisory body that reproduced the opinions of social partners, but which did not include the response of the government involved, did not respect the principle of tripartism. He expressed the opinion that fair and adequate consideration and evaluation of the information and data provided by governments was essential in order to prevent the Committee of Experts from dealing with ambiguities and

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half-truths that violated the credibility and right of defence of governments. He also expressed his concern, as stated by GRULAC, that the Committee of Experts was exceeding its mandate and pointed out that corrective measures should be adopted to give the Committee of Experts ways and means of strengthening its credibility and ensuring full respect for the reports it produced.

## **Fulfilment of standards-related obligations**

71. The Worker members welcomed the letters sent by the Office within the framework of following up cases of serious violations of standards obligations, particularly the fact that it had requested field offices to contact countries facing persistent difficulties, as a matter of priority, and offered them the necessary technical assistance. To that end, governments should indicate clearly the obstacles they encountered in fulfilling their obligations. That was also of prime importance for following up conclusions adopted by the Conference Committee in individual cases. Attention was drawn to the positive case of Argentina which, after discussion of the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), by the Conference Committee the previous year, had requested technical assistance to revise its legislation. It was hoped that that assistance would lead to the adoption of an act that complied with the Convention before the next session of the Conference.
72. With respect to serious failures to report, the Employer members considered that two root causes needed to be addressed: first, before ratifying Conventions, countries needed to assess their implementation and reporting capacities and understand that ratification required reporting and implementation; second, there needed to be ongoing streamlining and simplification of ILO Conventions with a focus on essential regulation. The Employer members had proposed a regular review mechanism for ILO standards in order to ensure that there was at all times an up to date body of ILO standards that corresponded to constituents' needs. The setting up of such a mechanism had now become urgent since the last review of the ILO Conventions by the Governing Body dated back to the period 1995–2002. Concerning the failure to reply to the comments of the Committee of Experts, the Employer members considered that simply sending the same comments to countries as part of a direct requests strategy might not be the most effective solution.
73. Concerning review of the forms in the reports as provided for in article 22, the Government member of Cuba pointed out that that process should include in its objectives the lightening of the workload, both for the national administrations and the International Labour Office and the Committee of Experts, allowing focus on general work on fundamental aspects of the application of Conventions, but in no way should it serve to weaken important aspects of application, which should be monitored by the Committee of Experts, or to avoid the due and required review of those Conventions considered to be fully or partially obsolete. The speaker emphasized that those issues should be discussed directly with the participation of all the members of the ILO, as provided for in the regulations and in the very ILO Constitution. Reiterating the importance of complying with the obligation of submitting reports and replies to comments of the Committee of Experts, she expressed the opinion that it was encouraging that the proposal to group Conventions by topics had been well received, which would facilitate the gathering of information at the national level and would provide a broader idea of the application of the Conventions in a specific field. She stated that the proposal to vary the cycle of presentation of reports on fundamental Conventions would provide new means for facilitating the work of complying with the required submission of reports. She recalled the importance of the comments of the organizations of employers and workers mentioned in paragraph 76 of the report, but insisted on carefully treating and submitting to an objective and impartial review those comments that deviated from the issues raised within the framework of a specific

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Convention and that dealt with unconfirmed situations, unrelated to objectives of compliance with the Conventions.

## Concluding remarks

74. The Worker members wished to respond to the comments of the Employer members and certain Governments regarding the right to strike and the impartiality of the members of the Committee of Experts. They felt that they could not leave unanswered the Employer members' attacks on the principles laid down by the ILO's supervisory bodies regarding the right to strike under Convention No. 87. For some years it had become the established practice for the representatives of the Workers and Employers to discuss matters of mutual interest with the Committee of Experts. The healthy and entirely transparent collaboration that had thus developed testified to the reliance of all sides on the intellectual rectitude and the impartiality of the members of the Committee of Experts. The Committee of Experts was a body of legal experts from all horizons and from all juridical cultures who were appointed by the Governing Body for a renewable mandate of three years. Did that mean that there was a crisis of confidence vis-à-vis the Governing Body, the Worker members wished to know? They recalled further that although the right to strike was not referred to explicitly in an ILO Convention, as was the case in many countries' legislation, that did not prevent the existence of such a right from being recognized on the basis of several international legal instruments that considered the right to strike as a corollary of freedom of association and the right to bargain collectively. In its Articles 3 and 10, Convention No. 87 asserted the right of workers' and employers' organizations "to organize their administration and activities and to formulate their programmes". Based on those provisions, the Committee on Freedom of Association (since 1952) and the Committee of Experts (since 1959) had on numerous occasions reaffirmed that the right to strike was a fundamental right of workers and of their organizations. Those supervisory bodies had defined the sphere of application of that right and had drawn up a set of principles setting out the scope of the Convention. It would appear that the Employer members, while not yet actually contesting the right to strike, did contest its scope. Yet the principles enunciated also respected the right of enterprises and did not condone wildcat, violent or political strike action. They were simply a well-defined tool that provided workers whose rights were flouted with a weapon of last resort. Since the Committee on Freedom of Association, too, was established by the Governing Body, the Worker members questioned once again whether there was a crisis of confidence vis-à-vis that institution.
75. The Employer members expressed appreciation of the comments made by the Government and Worker members during the general discussion, in particular the statement made by the Worker member of Pakistan. In response to the final remarks of the Worker members, the Employer members wished to clarify that they were only asking for the tripartite governance of the supervision of ILO standards to be restored in conformity with article 23 of the Constitution of the ILO and article 7 of the Standing Orders of the International Labour Conference. They emphasized that they were not questioning the valuable role of the Committee of Experts, but only certain of its interpretations. In particular, as was well-known, the Employer members had for many years been raising questions with regard to the detailed regulation of the right to strike, to which the Committee of Experts had never responded. The Employer members added that they were by no means questioning the right to strike itself, but merely the detailed regulation thereof by the supervisory bodies. The supervisory process had engaged in a progressive extension and detailed elaboration of the regulation of the right to strike. He recalled that the Committee of Experts had first referred to the right to strike in an observation in 1961 and that the legislative history of Conventions Nos 87 and 98 demonstrated that attempts to include explicit reference to the right to strike in their texts had been rejected. Reliance on the Committee on Freedom of Association was not necessarily appropriate in support of the examination of the

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application of ratified Conventions by the Committee of Experts. The Employer members reaffirmed their support for the work of the supervisory system and the important fact-finding, examination and conclusions of the Committee of Experts. However, it was not in accordance with the tripartite governance of the supervisory mechanism to silence one of the tripartite constituents when the latter raised valid concerns on a minority of the comments made by the Committee of Experts.

### **The reply of the Chairperson of the Committee of Experts**

76. The Chairperson of the Committee of Experts emphasized first of all that the Committee of Experts consciously endeavoured to be scrupulously impartial and to confine itself to the facts as presented in the file. The Committee of Experts did realize that the government and the social partners, acting in all good faith, naturally viewed an incident from their particular vantage point. As such, the Committee of Experts sought to separate advocacy, opinion and allegations from facts. Referring to the obligation of the government to communicate its report to employers' and workers' organizations to allow them the opportunity to comment, the speaker underlined that somewhat similarly, if the Committee of Experts received a comment from an employers' or workers' organization alleging noncompliance with a Convention, the Experts forwarded that complaint to the government and requested a reply. If a reply was received from the government, the Committee of Experts did take it into account in its observation or direct request.
77. With regard to the right to strike, the speaker emphasized that this right had been recognized by the Committee of Experts for over 50 years. The last General Survey on freedom of association was written in 1994, before any member of this year's Committee of Experts was appointed. In reviewing her 15 years on the Committee of Experts, she could not recall an instance where the Committee of Experts had extended its jurisprudence regarding the right to strike. To some extent, the Committee of Experts responded to issues that the parties had raised. It may be that the right to strike had appeared more frequently in observations on Convention No. 87, but that did not arise from any intention of the Committee of Experts to extend its jurisprudence in this area.
78. Finally, she underlined that the Committee of Experts was the highest impartial body charged with a supervisory function within the ILO. It was established to be a neutral, impartial body in an organization with a tripartite governance system. The Conference over the years had created ways in which the voices of the parts of this tripartite system could be heard, including ways in which their views on the Committee of Experts' report and the General Survey were heard, and published. The traditional separation of the Committee of Experts' report and General Survey from the views expressed by governments, employers and workers on the same issues had served the Organization well over the years. She urged the Committee to think most carefully before proposing a change, which might seem small, but which could change the delicate balance that had enabled this unique tripartite organization to move its valuable work forward for more than 90 years.

### **The reply of the representative of the Secretary-General**

79. At the very outset, the representative of the Secretary-General wished to thank all those who had participated in this discussion. The Chairperson of the Committee of Experts had already responded to certain matters raised concerning the report of the Committee of Experts and its General Survey. Turning to the matters falling within the Office's responsibility, she wished to confirm, in relation to the question raised by the Libyan Arab

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Jamahiriya, that all the comments of the CEACR were translated into Arabic. Concerning the point made by the Worker members on the question of the application of Convention No. 29 by Japan, this case would be examined by the Committee of Experts at its forthcoming session as the report of the Government was due this year. This examination would cover the Government's report but also the comments submitted by workers' organizations. With regard to the Employer members' request to the Office to stop promoting Convention No. 94, she referred to the Committee's discussion as it was reflected in paragraphs 73–139 of the Committee's 2008 general report. In her final remarks, she noted that "*with the exception of the Employer members and the Government representative of Canada, all speakers favoured promotional and awareness-raising activities*". The speaker pointed out that the Office was obliged to follow any existing or new tripartite decision taken as regards the promotion of ILO Conventions. As a general matter, the Office's mandate was to promote Conventions until such time as there was a tripartite decision that a certain ILO Convention was out of date and no longer met the objectives of the Organization.

80. The speaker then wished to address the Employers' view that greater visibility was given to the report of the Committee of Experts than this Committee's report, despite the improvements made in recent years. She emphasized that this Committee and the Committee of Experts were the two pillars of the ILO supervisory system. They acted in symbiosis and the dialogue between these two Committees was widely acknowledged as the hallmark of the ILO supervisory system. The secretariat would continue to examine ways in which greater visibility could be given to the work of this Committee as well as to the complementary relationship between the two Committees. By way of example, in the country profiles published in Part III of the Information document accompanying the report of the Committee of Experts, a new section had been included on cases discussed before the Conference Committee on the Application of Standards since 1985.
81. With respect to the comment made by the Worker members on the question of interpretation of Conventions, there was no question that this must be a constituent-driven process and ownership was critical to its progress. The matter was still subject to informal tripartite consultations that had been launched by the Governing Body in November 2009. A first round of informal consultations took place in March 2010. The tripartite constituents decided at that time to pursue informal consultations in November 2010. She wished to recall that since the 1930s, this was the first comprehensive examination of the question of interpretation that was undertaken by ILO constituents and that the ultimate and singular objective of these consultations was to enhance the impact of the ILO standards system.
82. 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 indicated that at the end of the last session of the Committee of Experts, there had been four vacancies. Since the beginning of the year, the Office had worked hard to be able to propose to the Officers of the Governing Body a suitable number of candidates with the required qualifications. She was hopeful that before the beginning of the next session of the Committee of Experts, at least two vacancies would be filled.
83. Concerning the submission of reports, as a number of speakers had noted, since the launch of the so-called individualized follow-up, some concrete progress had been made. It was true, as the Employer members noted, that there was no clear trend toward improvement. However, this was true if one looked solely at figures. She recalled in this respect that the approach adopted under the guidance of this Committee and the Committee of Experts had consisted in moving away from a purely automatic, administrative and quantitative logic and to adopting an approach that was pragmatic, proactive and sustainable.

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84. This Committee regularly pointed out that the seriousness of failures to meet the reporting obligations should be treated as the seriousness of failures to meet the obligations deriving from ratified Conventions. Equally, one could say that often the difficulties at the origin of the lack of reporting could be as complex as the difficulties in implementing ratified Conventions. If these difficulties were to be overcome in a sustainable manner, they required time and the articulation of several means and resources, both human and financial. That being said, it was not to be forgotten that this Committee and the Committee of Experts had succeeded in raising the importance of the submission of reports with the countries. Awareness raising was the first step to finding long-term solutions. This in turn had sparked-off a number of requests for technical assistance that had been met mainly by the ILO field offices with substantial financial support from the Standards Department. As a result, a number of serious and long-standing cases had been resolved in full or in part. She cited in this respect the case of Turkmenistan. This country, which became an ILO member in 1993 and ratified six fundamental Conventions in 1997, had until this year never submitted any reports on these Conventions. The Committee of Experts had made a general observation in this year's report, worded in pretty strong terms. The Office visited the country twice in 2007 and 2009. The Office had received all six reports due at the beginning of the year and her Department would receive a high-level delegation from the country for a technical visit the following week. The dialogue with the supervisory bodies could now begin.

85. In conclusion, the representative of the Secretary-General underlined that the year had been a turning point for the standards system. A leap had been made thanks to this Committee's long experience and tradition of dialogue and above all its sense of responsibility towards the ILO as a whole.

## **C. Reports requested under article 19 of the Constitution**

### **General Survey concerning employment instruments in the light of the 2008 Declaration on Social Justice for a Fair Globalization**

86. The Committee devoted part of its general discussion to the examination of the General Survey concerning employment instruments,<sup>9</sup> prepared in light of the fact that the first of the four strategic objectives highlighted in the Social Justice Declaration is the promotion of employment, an issue which has become even more urgent and relevant in the context of the current global economic crisis. Furthermore, since the Social Justice Declaration requires a more coherent, collaborative and coordinated approach by the ILO to achieve its strategic objectives, the Governing Body chose in November 2008 to focus on employment in the General Survey as it is also being considered as the first recurrent item at the present session of the Conference. The Selection Committee took a decision at its first sitting on 2 June (point 6) to authorize, in advance, the transmission to the Committee for the Recurrent Discussion on Employment of any outcome adopted by the Conference

<sup>9</sup> Six employment instruments were covered by the General Survey: the Employment Service Convention, 1948 (No. 88), the Employment Policy Convention, 1964 (No. 122), the Human Resources Development Convention, 1975 (No. 142), the Private Employment Agencies Convention, 1997 (No. 181), the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), and the Promotion of Cooperatives Recommendation, 2002 (No. 193).

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Committee on the Application of Standards upon its consideration of the General Survey. Following its adoption by the Committee on the morning of 4 June, a brief summary and conclusions of its discussion on the General Survey was presented that afternoon to the Committee for the Recurrent Discussion on Employment.

87. The General Survey took into account information in the reports communicated by 108 member States under article 19 of the ILO Constitution until December 2009. According to its usual practice, the Committee of Experts also made use of the available information in the reports submitted under articles 22 and 35 of the Constitution by those member States that had ratified the Conventions concerned. Observations and comments received from 44 employers' and workers' organizations were also reflected in the General Survey.

## Opening remarks

88. The Employer members welcomed the intention of the General Survey to better integrate the normative principles of employment policy with current social and economic considerations and looked forward to greater recognition by the Committee of Experts of changing social, economic and market circumstances as well as workplace realities. While acknowledging the value of adjusting the traditional format of general surveys to make a contribution to the recurrent discussion on employment, the Employer members considered that something very valuable had been lost in the substance of the examination of individual instruments. In view of the number of instruments covered by the General Survey, and the need to rationalize the questionnaire, governments had not provided as much detailed information as they would have if the General Survey had covered fewer instruments.
89. The Employer members noted that, even with the possibility of electronic submission, only 108 of the 183 member States had replied to the questionnaire. The Committee of Experts had therefore been more general in its observations and had not provided the more detailed remarks that were useful to the implementation of the instruments. It was also notable that the texts of the instruments under examination had not been included in the General Survey, making it difficult to reconcile the observations made with the texts of the respective instruments. Moreover, there was no critical analysis of the continuing relevance of the instruments considered and possible needs for revision. For example, Convention No. 88 had been adopted over 60 years ago and, despite its apparently useful contribution, the question of whether it should be improved or modernized had not been addressed.
90. The Employer members added that much of subject matter of Part B of the General Survey, "Global overview of employment policies", would be covered by the recurrent review. It was their belief that there was a need to retain General Surveys as tools for providing detailed explanations of the provisions of ILO standards, offering an overview of the application of standards in ratifying and non-ratifying countries and reviewing the relevance and possible need for revision of the selected standards. The Employer members expressed concern that the real value of General Surveys in helping constituents to gain a better understanding of ratified treaty obligations might be undermined by aligning them with the schedule of the recurrent reviews.
91. The Worker members recalled that this year the discussion of the General Survey was the first stage in a process that constituted a break with past practice. Although that was encouraging, it also raised concerns. It was encouraging in that the new format of the General Survey and the context in which it appeared made it a policy instrument. The conclusions that the Committee would reach on the General Survey would be referred to



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the Committee for the Recurrent Discussion on Employment in the hope of outlining a new approach for ILO action in this area. The Worker members reaffirmed that General Surveys were an essential part of the supervisory process, serving not only as strategic monitoring tools and instruments for the development of international practice, but also as means of exerting pressure to combat deregulation. Although the Social Justice Declaration and the Global Jobs Pact marked an era of transversal policy-making, that did not imply that all standard setting should be abandoned to be replaced by voluntary regulation or by a logic of corporate social responsibility left entirely to the discretion of enterprises.

92. The Worker members observed that, under the new format, the General Survey should facilitate ratification campaigns and confirm the relevance of ILO standard setting and supervisory activities. The Worker members trusted that it would be possible to send a constructive message to the Committee for the Recurrent Discussion on Employment that was in keeping with the commitments embodied in the Social Justice Declaration and the Global Jobs Pact. They recalled that labour standards were recognized by the Social Justice Declaration as playing a fundamental role and that the very idea of negotiating new standard-setting action was key to the vision embodied in the Declaration.
93. Several government members welcomed the innovative approach of synchronizing the subject of the General Survey with the discussion of the recurrent item report and hoped that a unified action plan on the important question of employment would be submitted to the Conference and the Governing Body. The Government member of Spain considered that joint consideration of the issue of employment in the Committee on the Application of Standards and the Committee for the Recurrent Discussion on Employment offered an opportunity to consider the best means of giving effect to the employment instruments in the current context of the global financial and economic crisis and its consequences on labour markets and employment. The Government member of Switzerland added that, while it was the role of the Committee of Experts to review the requirements arising out of the employment instruments and to undertake a critical assessment of existing instruments, it would be more appropriate to leave the evaluation of the employment policies adopted to the Governing Body Committee on Employment and Social Policy and the Conference Committee for the Recurrent Discussion on Employment.

## **Global overview of employment policies**

94. The Employer members recalled that over the six years since the 2004 General Survey, *Promoting employment*, the world had witnessed the expansion of the G8 to the G20, reflecting the increased pace of industrial development, employment and the growth of such countries as Brazil, China and India. The economic and financial crisis that had resulted in the adoption of the Global Jobs Pact in June 2009 was turning into a public debt crisis. Moreover, the global economic crisis was challenging existing dogmas and concepts about employment and was showing the complexity of the relationship between employment and other economic, tax and social policies. The coordination of policies was therefore critical and should focus on the creation of full and productive employment, rather than on job security. Government action should be concentrated on employment and employability, with the support of labour market policies that activated the labour force, made work pay and promoted labour market mobility.
95. The Employer members observed that the present General Survey highlighted the intersection and inter-relationship between economics and labour standards. Moreover, the current economic crisis demonstrated the importance of ensuring that coherence with ILO standards did not impair the achievement of full, productive and freely chosen employment. Productive and sustainable employment was the prerequisite for decent work,

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wealth creation and social justice, and should be the cornerstone of any ILO policy and action. Any discussion about improving working conditions and ILO standards was meaningless without employment. The focus of the General Survey on employment standards, which in reality amounted to economic frameworks for job creation and economic growth, provided an opportunity to examine more closely and place emphasis on the basic conditions for the creation and maintenance of jobs. The economic crisis, despite the high number of job losses worldwide, had shown that there were various possibilities for governments to influence the conditions for the creation and maintenance of productive jobs. However, the crisis had also demonstrated the financial limits faced by governments in subsidizing jobs if they were ultimately not productive and not sustainable.

96. The Worker members emphasized that the world economic crisis was far from over and recalled that, according to ILO estimates, unemployment stood at 212 million at the beginning of 2010, with a sharp rise in unemployment among young people. Many unemployed workers had given up hope of finding work, while others found themselves engaged in involuntary part-time work. Millions of people, especially in the developing world, were working in the informal and subsistence economy and the number of workers living in poverty everywhere had increased by 100 million since 2008.
97. The Worker members welcomed the excellent overview provided by the General Survey of the impact of the employment instruments in practice. However, although many member States had indicated in their replies that employment was a priority objective, there were grounds for believing that this might not be the case in practice. The statistics provided in Part B of the General Survey dated from 2007 and were therefore hardly up to date. As a result, there was little information in the General Survey on how member States had responded to the current global financial and economic crisis.
98. The Government member of India indicated that the ILO employment instruments were being given effect in his country through various laws and measures. Employment generation was an integral part of the growth process in India, where development strategies focused on accelerating the growth of employment and ensuring proper wages. The Eleventh Five-Year Plan had the objective of creating 58 million job opportunities, through the creation of productive employment more rapidly with a view to raising the income of the large number of rural workers and improving their living conditions. Employment opportunities were being created through such factors as the growth of GDP, investment in infrastructure and the expansion of exports. The Unorganized Workers' Social Security Act, 2008, envisaged the establishment of suitable welfare schemes to improve education and skills development for workers in the informal economy. The measures adopted included several major employment generation programmes, including the Prime Minister's Employment Generation Programme and the Mahatma Ghandi National Employment Guarantee Scheme. He noted that the Committee of Experts had expressed appreciation in the General Survey of the efforts made by his country for employment generation, and particularly the implementation of the National Rural Employment Guarantee Act (NREGA). It had also noted the measures that were being taken in the field of skills development and the apprenticeship system to make it demand driven. In India, the national employment services operated within the conceptual framework of Convention No. 88. The network of employment exchanges was expanding its role in the provision of employment market information, assistance for the self-employed and vocational guidance and counselling services. Information technology was being applied to identify existing skills and skill requirements at the national level, as well as a system for the placement and tracking of trainees. The cooperative sector in India was one of the largest in the world and was being granted greater functional autonomy under the Multi-State Cooperatives Act, 2002, while measures were also being taken for skills development in cooperatives. The draft national employment policy was very

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comprehensive and broadly covered the provisions of the ILO employment instruments with a view to providing a framework for the achievement of the objective of remunerative and decent employment for all. In conclusion, he reiterated the importance of social dialogue in his country and noted that the issue of the global economic crisis and its implications had been discussed at the recent session of the Indian Labour Conference, the highest tripartite body in his country.

- 99.** The Government member of Brazil reaffirmed his country's commitment to full, productive and freely chosen employment, as noted frequently in the General Survey and as demonstrated by its ratification of 80 international labour Conventions. He endorsed the strengthening of international labour standards on employment policy, vocational training, public and private employment services and protection against unemployment and referred to the various employment promotion initiatives implemented in his country, which focused on the most vulnerable groups in order to promote real equality in society. The current unemployment rate in Brazil (7 per cent) was one of the lowest on record, despite the international economic crisis. Government policies were discussed with the social partners in various tripartite committees and at major national conferences. The National Conference on Employment and Decent Work, to be held in 2012, demonstrated the importance that the Government attached to strengthening tripartite dialogue in the formulation of employment policies and the involvement of all stakeholders in discussing the measures to be adopted for the development of an environment that was conducive to the creation of enterprises which could provide more and better jobs. Alongside employment promotion, it was also essential to maintain the minimum wage at a decent level. The Government of Brazil had institutionalized a policy for the adjustment of the minimum wage, which had increased by 73 per cent in real terms since 2003. That increase in the value of the minimum wage, and the consequent rise in the contribution of income from work to the national economy, together with the effect of social benefits, had succeeded in protecting the domestic market during the worst months of the financial crisis and had contributed to the mitigation of its worst effects. The Government's policies had also resulted in millions of Brazilians rising above the poverty line and the recent reduction in the historical levels of social inequality in the country. The promotion of employment was a defining element for Brazil's public policy.
- 100.** The Government member of Oman, speaking on behalf of the governments of the Member States of the Gulf Cooperation Council, reaffirmed the call made in the Social Justice Declaration for the achievement of sustainable development at two levels: that of the workforce, in the sense of developing skills to meet labour market needs; and that of enterprises and entrepreneurs. The Member States of the Gulf Cooperation Council were engaged in close collaboration in their efforts to achieve the objectives of decent work and sustainable development.
- 101.** The Government member of Senegal emphasized the importance of the Social Justice Declaration and the Global Jobs Pact in providing guidance to countries in the adoption and implementation of new employment strategies. The problem of employment had become a major concern in her country, particularly in the current context of the global economic crisis. It was therefore a major national objective to establish and implement a proactive policy for the creation of employment and income-generating activities, inspired by international human rights and labour instruments, with a view to eliminating inequality in access to employment and facilitating access to credit and financial services, taking into account the specific situation of vulnerable categories of the population and modernizing working conditions. A decent work programme was currently being formulated with the involvement of the social partners and civil society and a Poverty Reduction Strategy Paper has been adopted for the period 2006–15 with a view to reducing poverty by half by the year 2015 and achieving the respective Millennium Development Goals. Important measures had been adopted to promote the employment of youth, women and persons with

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disabilities, together with the establishment of a promotional framework for the implementation of the national employment policy, focusing on the Higher Council for Employment, which was a tripartite body chaired by the Prime Minister.

- 102.** The Government member of the Syrian Arab Republic indicated that the new Labour Code in his country emphasized the importance of establishing an active labour policy to promote freely chosen employment. With a view to achieving the strategic objective of employment and combating unemployment, private employment agencies had been introduced, in consultation with the social partners, a central employment agency had been established and a financial mechanism created for small and medium-sized enterprises.
- 103.** The Government member of Angola indicated that his country already had an institutional and legal framework enabling it to develop active employment policies, especially for the most disadvantaged population groups, in order to reduce unemployment and improve living conditions. The ratification of Convention No. 88 had resulted in the creation of government institutions for the formulation and implementation of employment, training and vocational rehabilitation policies. The 1992 Employment Act, which took account of the provisions of Conventions Nos 88 and 122 and the respective Recommendations on employment services and policy, set out the principles and fundamental components of employment policy and made the State responsible for their implementation. A national employment system would be established under the terms of the Act, which would help to structure the labour market.
- 104.** The Government member of the Philippines indicated that her country was currently completing the consultation process for the ratification of Convention No. 181. She emphasized that any job sufficiency strategy required the Government and the private sector to focus on creating productive and secure jobs that provided adequate income, offered social protection and ensured respect for labour rights and democratic participation in the workplace. In view of the enormous challenge of job creation in the Philippines, a sustained high economic growth strategy was required to create decent jobs and reduce poverty, including a sound industrial policy that could attract more local and foreign investment. It would also be necessary to develop national financial markets, enhance competitiveness and productivity and improve the efficiency of the infrastructure in the power and transport sectors. To ensure greater coherence in all these areas, the Government needed to conduct meaningful social dialogue with the social partners and other stakeholders to craft sustained job-led growth with a strong human and labour rights and gender agenda covering, among others, trade and investment priorities, environmental protection, energy and agriculture, governance and political stability. It was in this context of identified national needs and priorities that the consultation process would be carried out to develop the national jobs pact in the context of the fourth cycle of the Decent Work Agenda.
- 105.** The Government member of Spain said that the employment instruments selected highlighted the need for a macroeconomic framework that promoted growth and employment, with the support of an education and vocational training policy that developed the skills required for new growth sectors. The instruments served to guide governments and the social partners in the formulation and application of employment promotion policies that protected the right to work as a human right. In the current highly complex global situation, it was important to adopt a more integrated approach encompassing economic, employment and social policy as an essential tool to address the current crisis.
- 106.** The Government member of France emphasized that the objective of full employment was clearly more difficult to achieve in the context of the current global crisis. With a view to ensuring a sustainable recovery and restoring growth in the long term, active employment

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policy and labour market measures needed to be implemented with the aim of increasing productivity and retaining workers in the labour market. They should be guided by the principle of integrating as many workers as possible into the labour market and facilitating a secure occupational trajectory through the provision of training, in cooperation with the social partners. At the end of 2008, France had implemented a major recovery plan to support economic activity and protect jobs. Considerable resources and exceptional measures to support employment had been implemented to limit the destruction of jobs and promote employment creation and vocational recycling. Although the current general context of budgetary constraint necessitated more restrictive macroeconomic policies, sufficient resources still needed to be allocated so as not to penalize employment. The employment measures adopted in recovery plans would need to be kept under review and, where necessary, withdrawn in a pragmatic manner and in the context of social dialogue. The structural measures adopted prior to the crisis, and particularly those relating to the activation of employment and vocational training policies, should be reinforced.

- 107.** The Worker member of Colombia agreed that it was essential for national employment policies to be based on the principle of the promotion of decent work, and for subcontracting policies to be abandoned. In that respect, he emphasized the need to ensure that the action taken to promote cooperatives did not serve to legitimize subcontracting, as had occurred in Costa Rica with solidarism. In Colombia, the establishment of “pseudo cooperatives” in the form of *cooperativas de trabajo asociado* had led to increased abusive subcontracting and a deterioration in working conditions.
- 108.** The Worker member of France emphasized that the human right of full, productive and freely chosen employment had yet to be fully implemented and that current theories of flexicurity resulted in practice in a great deal of flexibility and little security, as illustrated by the growing phenomenon of involuntary part-time work and the increasing precarity on the labour market. The economic and financial crisis had served as a pretext for greater selectivity in recruitment, a decline in job security and the restriction of the means available to labour inspectors. The public sector had been affected by stagnation, reductions in salaries and the failure to fill posts following the retirement of incumbents. The enormous public debt resulting from the aid provided to bail out speculative financial organizations would result in tax rises and strong cuts in social protection. In particular, unemployment benefit was seen by advocates of neoliberalism as being overly generous and discouraging people from returning to work. In the eyes of European governments, social security had become a luxury in the context of globalization and heightened international competition, in which multinational enterprises did their utmost to avoid protectionist legislation and reduce social costs, including on such long-term investments as vocational training. He recalled that, in addition to its immediate benefits, social security helped to maintain consumption levels, thereby contributing to sustainable recovery. Workers and retirees in European countries, with particular reference to Greece and Romania, who were experiencing cuts in social security regimes, had ended up as the victims of financial institutions that should have been better controlled in the first place. He therefore concluded that freedom of association and the right to bargain collectively were essential for the achievement of a balanced employment policy that was in compliance with fundamental rights and that social protection needed to be considered as an instrument for regulating the labour market.
- 109.** The Worker member of Senegal added that, although SMEs undoubtedly played a vital role in job creation and economic growth, it was necessary to place emphasis on the quality of the jobs created. Under pressure from employers, certain governments had focused their policy for SMEs on deregulation and the dismantling of protection. Moreover, in developing countries, the establishment of export processing zones sometimes excluded the workers concerned from social protection. It now appeared that there were two levels of social protection: one for workers in large firms and one for

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workers in SMEs. This was in clear contradiction to the provisions of Recommendation No. 189, which called on member States to ensure the non-discriminatory application of labour laws with a view to improving the quality of employment in SMEs. The debate on the role of SMEs also offered an opportunity to address the issues of the informal economy and microfinance, with the ultimate goal of transforming informal enterprises into formal companies, which would improve the protection of workers and improve the access of the enterprises concerned to microcredit, thereby helping them to generate decent work more effectively.

- 110.** The Worker member of Pakistan reaffirmed the importance of employment as a basic right of workers which was essential to human dignity, and without which poverty could not be meaningfully addressed. The recent global financial crisis had caused tremendous suffering and demonstrated the need for greater regulation and controls, both financial and otherwise. Action at the international and national levels was required to meet the employment challenge in such areas as: the provision of skills and life-long learning opportunities, particularly for women and young persons; the adoption of measures to formalize the informal economy; the reinforcement of labour inspection services; and the acceleration of technological advancement in developing countries. Greater cooperation was also required on migration policy between sending and receiving countries in order to address the related problems of labour exploitation. Job security was also an essential aspect of decent work. Without employment security, workers were vulnerable to exploitation and were less productive. Finally, he observed that vocational training was necessary, not only to promote employability, but also for the overall development of individuals, and therefore of society as a whole. Adequate occupational safety and health measures and the enjoyment of fundamental rights at work, and particularly freedom of association, were critical to employment promotion and the achievement of decent work.
- 111.** The Worker member of South Africa drew attention to the growing problem of unemployment among university graduates and young migrant workers in countries at all levels of development. An examination should be undertaken of why educational institutions appeared to be unable to provide skills that equipped graduates for the labour market. This problem, which had existed even before the economic crisis, resulted in a waste of resources and the demoralization of those concerned. A solution needed to be found through cooperation between educational institutions and employers.

## **The employment instruments**

- 112.** The Employer members recalled that, 46 years after the adoption of Convention No. 122 in 1964, the world and the considerations relating to achieving the objective of free, productive and freely chosen employment had changed a great deal and the pace was accelerating. The question of whether to define the right to work as meaning guaranteed employment had now become a political artefact of the Cold War. Already by 1996, the characteristics of today's world had taken over, as reflected in the general discussion on employment policies in a global context held at the Conference at its 83rd Session (June 1996). On that occasion, it was emphasized in the *Conclusions concerning the achievement of full employment in a global context: The responsibility of governments, employers and trade unions* that full employment could only be achieved in a stable political, economic and social environment, which required a number of enabling factors including "appropriate policies to achieve economic and financial stability" and "a legal and institutional framework that guarantees human rights, including freedom of association, secure property rights and the enforceability of contracts". It also required an environment that encouraged private-sector investment and the hiring of employees.

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- 113.** The Employer members indicated that the numerous references to the right to work in the General Survey could create confusion and misunderstanding and divert attention from the straightforward policy obligation set out in Article 1, paragraph 1, of Convention No. 122 that “each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment”. Article 1, paragraph 2, provided that the aim of this objective was to ensure that “there is work for all who are available and seeking work”, “such work is as productive as possible” and “there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and use his skills and endowments in a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin”. These were the principles that should be the focus of the present discussion.
- 114.** The Employer members indicated that paragraphs 33–55 of the General Survey, which addressed the three objectives of Convention No. 122, namely “full, productive and freely chosen employment”, fell short in clarifying “productive employment”, which was, however, fundamentally connected to the second phase of the economic crisis that the world was currently undergoing.
- 115.** The Employer members recalled that the Human Resources Development Convention, 1975 (No. 142), illustrated the central role of the State in developing vocational guidance and training that took into account employment needs, opportunities and obstacles. The Convention highlighted the need for the provision of training and development opportunities that produced the right skills at the right time to meet labour market needs and promoted full, productive and freely chosen employment. However, there were several comments in the General Survey that were peripheral to this main goal. For example, in paragraph 124, the Committee of Experts construed Article 1, paragraph 2(c), of Convention No. 142 as placing the emphasis of policies and programmes of vocational guidance and training on the overall development of the individual. It was the belief of the Employer members that the primary purpose of vocational training should be employability, rather than personal development, since ultimately workers needed to have the skills and competences required for the job. Training policies and programmes should therefore give priority to meeting the needs of enterprises.
- 116.** The Employer members added that Recommendation No. 189 highlighted the widely recognized importance of SMEs in the creation of employment and the need to promote SMEs in any policy aimed at full, productive and freely chosen employment. They emphasized that SMEs succeeded, not only because they had a great idea for a product and service, but because they were flexible and responsive. However, in paragraph 398 of the General Survey, while acknowledging that several ILO Conventions, including the Termination of Employment Convention, 1982 (No. 158), permitted exclusions of limited categories of workers after consultation with the social partners, the Committee of Experts apparently concluded that there should be no differentiation for SMEs. Such a view was counterproductive to employment promotion and there was no textual basis for the caveat introduced by the Committee of Experts that such exceptions should be adopted “under conditions that are socially adequate for all concerned”. The Employer members emphasized that sustainable jobs could not exist without sustainable enterprises. SMEs had been one of the biggest victims of the economic and jobs crisis. Yet without sustainable SMEs, there could be no jobs recovery in the current economic circumstances.
- 117.** The Employer members observed that the comments in the General Survey on the Employment Service Convention, 1948 (No. 88), and the Private Employment Agencies Convention, 1997 (No. 181), clearly showed the conflict between the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), which effectively prohibited private employment agencies and Convention No. 181, which permitted and encouraged

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them. The Employer members called upon governments to consider the ratification of Convention No. 181, or the denunciation of Convention No. 96.

- 118.** The Employer members further noted that Article 11 of Convention No. 181, which required ratifying countries to ensure that workers in temporary work agencies were “adequately protected” in relation to a series of issues, including freedom of association and collective bargaining, was interpreted in paragraph 310 of the General Survey as also covering the right to “engage in lawful industrial action”. The Employer members disagreed with that interpretation and emphasized that the right to industrial action was not covered by Article 11 of Convention No. 181, nor by Conventions Nos 87 and 98. In their view, Article 11 of Convention No. 181 could not therefore be seen as requiring the protection of workers in employment agencies if they engaged in lawful industrial action.
- 119.** The Employer members also referred to paragraph 313 of the General Survey, in which it was indicated that adequate protection in the areas covered by Article 11 was achieved when applied through other Conventions ratified by the States concerned. As not all the countries that had ratified Convention No. 181 had also ratified the Conventions listed in the table following paragraph 313, the Employer members indicated that there were other ways in which compliance could be achieved. They added that the “adequate protection” of workers in temporary work agencies did not necessarily have to be the same protection as that provided to other workers.
- 120.** The Employer members also raised the question of whether the prohibition set out in Article 7 of Convention No. 181 on the charging of fees or other costs to workers by private employment agencies might have become obsolete and whether measures to control and prevent abuse might be more appropriate.
- 121.** The Employer members indicated that in paragraph 351 of the General Survey, the Committee of Experts introduced the notion that the protections set out in Convention No. 181 had extraterritorial application, including in countries that had not ratified the relevant standards. The Employer members believed that this notion raised significant issues of interference in the sovereign right of countries to issue the laws that applied within their borders, especially where they had not ratified the relevant Conventions.
- 122.** The Employer members, in relation to the reference in paragraph 353 of the General Survey to the indication in Paragraph 6 of the Private Employment Agencies Recommendation, 1997 (No. 188), that private employment agencies should not make workers available to a user enterprise to replace workers of that enterprise who were on strike, they recalled that this was an optional provision in a non-binding instrument. This provision of Recommendation No. 188 was, moreover, questionable, as it called upon private employment agencies to position themselves in an ongoing industrial dispute in favour of the striking workers and to the disadvantage of the employer affected by the strike. In their view, ILO standards should be neutral and private employment agencies should be left to take their own decisions in such situations.
- 123.** With reference to the Promotion of Cooperatives Recommendation, 2002 (No. 193), the Employer members indicated that the call made in paragraph 501 of the General Survey for employers to promote cooperatives by providing certain support services was not in line with the guidance provided in Paragraph 15 of Recommendation No. 193, in accordance with which “Employers’ organizations should consider, where appropriate, the extension of membership to cooperatives wishing to join them and provide appropriate support services on the same terms and conditions applying to other members”.



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- 124.** The Worker members welcomed the identification in the General Survey of the elements covered by the employment instruments, namely: making a political commitment to achieve full employment, building appropriate institutions, making the best possible effort to that end and ensuring that the institutions were as effective as possible. There was an additional crucial element, which consisted of the need to mainstream the objective of full employment into other policy areas. The need for more than just measures in the fields of labour and training to achieve a real impact should be a guiding principle for the present Committee and the Committee for the Recurrent Discussion on Employment.
- 125.** With regard to Convention No. 122, the Worker members considered that the present total of 102 ratifications was broadly unsatisfactory considering the importance of the objective of full employment for the ILO and its members. They added that all too often, in practice full employment was considered less important than other policy objectives. For many countries, employment policy was not so much an objective in itself, as a derivative of macroeconomic policy, particularly in view of the aim of strengthening competitiveness and liberalization. The result was that the priorities of ministries of employment might be countermanded by other priorities, such as the need to stabilize budget and curb inflation, rather than promoting employment. This raised the question of the real influence of ministries of employment over economic, budgetary and financial policy. A similar issue faced the ILO, which had had to stand up to economic and financial institutions, with remarkable success. Even within the ILO, employment should not just be the concern of a single department, but needed to be mainstreamed throughout its work.
- 126.** The Worker members observed that few countries were able to set numerical objectives for full employment over a specific period. Convention No. 122 did not set a deadline for the attainment of full employment, although nothing prevented the establishment of intermediate objectives. The Worker members recognized that the financial and economic crisis had resulted in a major budgetary crisis, and that a large number of countries were faced with the need to stabilize their budgets. However, doing so too quickly could jeopardize the recovery of economic growth and employment. Moreover, several countries, particularly in Europe, under pressure from the financial markets, were not heeding the warnings made in that respect.
- 127.** The Workers recalled the view of the ILO that employment creation needed to go hand in hand with high-quality employment or decent work. In 2009, the Global Jobs Pact had invited countries to consider introducing a minimum wage, in accordance with the Minimum Wage Fixing Convention, 1970 (No. 131), but the question arose as to what progress had been made in this and other areas relating to the quality of employment. With a view to maintaining employment levels, many countries had chosen to sacrifice quality, for example by reducing protection against dismissal and against precarious contracts, under the pretext of the modernization of the labour market. These issues particularly affected young people, women, migrant workers and very poor workers. Precarious employment and involuntary part-time work were not freely chosen, and were therefore contrary to the Convention.
- 128.** Even though the challenge of the ageing of the population was imminent, the objective of full employment still appeared to raise difficulties for a series of economists and for certain employers who feared pressure for wage increases. Consequently, more and more measures appeared to focus on the supply side, such as raising the retirement age, cutting early retirement schemes, facilitating economic migration, the activation of the long-term unemployed and the disabled, and cutting back unemployment benefits. In a situation of already high unemployment, such policies were liable to increase unemployment even further, when priority quite simply needed to be given to the creation of decent jobs. Every country faced the problem of achieving full employment in a globalized economy, which limited its room for manoeuvre. States seeking full employment needed to make two

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commitments: to continue making every effort at the national level, with due regard for the international context; and to do everything possible to ensure that regional and international bodies joined the ILO in giving priority to full employment. Moreover, States could exercise little influence over the investment decisions of multinational corporations, many of which hardly seemed to take into account the disastrous consequences on employment of their strategic decisions. The financial crisis had set off another wave of restructuring programmes, which were seriously prejudicing labour markets and made it all the more important to heed the broad guidelines of the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. The Worker members therefore concluded that they did not share the optimism expressed in the General Survey with regard to Convention No. 122, in view of the broadening chasm between the formal recognition of the objective of full employment and the policies actually pursued at the national and international levels.

- 129.** With regard to Convention No. 142, the Worker members regretted that so few States had ratified the Convention, although 29 reported that they were envisaging doing so. They also regretted the lack of information on the impact of the Human Resources Development Recommendation, 2004 (No. 195), which dealt with important new issues, such as the recognition of previously acquired skills and the need to develop national qualifications frameworks. It was also unfortunate, particularly in view of the observation in the General Survey that human resources development policy should focus on the individual, that the Paid Educational Leave Convention, 1974 (No. 140) had not been included in the General Survey. But the major question remained the impact that the stabilization policies and programmes to be adopted in many countries following the crisis would have on education and training programmes.
- 130.** With reference to Conventions Nos 88 and 181, the Worker members emphasized that the role of private employment agencies was not a decisive factor in the pursuit of full and productive employment, and that the leading role played in this respect by public employment services should not be overlooked. The General Survey clearly showed that many countries had not yet succeeded in putting a stop to the abusive practices of certain private employment agencies, especially in the field of international migration, over which the public authorities had little influence. This was also linked to a more general phenomenon, namely the rise in many countries in precarious forms of employment, on which little information was provided.
- 131.** The Worker members also considered that the General Survey should have emphasized the links between the employment instruments and the Employment Relationship Recommendation, 2006 (No. 198), which endeavoured to prevent atypical employment relationships from depriving workers of the protection to which they were entitled. The Worker members noted the clash between the policies promoted by the ILO in this area and the trend towards the liberalization of services. Emphasis needed to be placed on the importance of national licensing and certification requirements as a means of ensuring the correct operation of private employment agencies and increasing transparency in the labour market, which was essential for an effective employment policy. However, in the context of the free movement of services that was being promoted throughout the world, national regulations, licensing systems and national certification requirements were seen as an obstacle. This was true in Europe with the new Services Directive, as well as in the context of the World Trade Organization.
- 132.** Finally, the Worker members broadly endorsed the suggestions made in the General Survey for a more effective employment policy. However, they expressed certain reservations concerning the suggestion that the instruments for achieving full employment were largely confined to training and retraining, on the one hand, and to the development of SMEs and cooperatives, on the other, when a much more ambitious programme was

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required for the creation of more and better quality jobs. They also questioned the priority accorded in the General Survey to unemployment among young university graduates, when it was mainly the less skilled who were affected by unemployment.

- 133.** The Government member of the United Kingdom, with reference to some of the concerns raised in the General Survey suggesting that temporary agency workers in his country failed to qualify for many trade union rights, indicated that agency workers were fully entitled to join a trade union. Nor did they have to tell their employer they were members of a union. They could choose to be accompanied by a union representative at any workplace disciplinary or grievance meeting and the employer was not allowed to discriminate against a worker for being a union member. With regard to the comments in the General Survey on the vulnerability of temporary agency workers suggesting that they lacked protection and suffered from exploitation, he indicated that surveys had regularly shown that the majority of such workers valued the flexibility that this type of employment offered and that it was their preferred route into work. His country had a strong framework of protection for workers. Government agencies were available to resolve workplace problems, provide impartial information and advice on workplace law and enforce basic employment rights. Additionally, individuals had recourse to employment tribunals to seek redress for breaches of employment law and a range of agencies enforced basic employment rights, including the right to the national minimum wage. He added that migrant workers legally entitled to work within the country enjoyed the same rights and protections as other workers.

### **Standard-setting proposals**

- 134.** The Employer members considered that neither of the two standard-setting options outlined in paragraphs 806 and 807 of the General Survey were necessary or justified. In the first place, there was no gap in the current framework, but rather problems at the national level that needed to be addressed independently of standard setting. Secondly, a consolidated employment Convention would create confusion and impede the promotion of the primary objective of full, productive and freely chosen employment set out in Convention No. 122. They emphasized in that respect that the best safety net was an economy that created jobs, and that productive jobs that were able to adapt to change remained the best protection against economic uncertainties. It was not a question of eliminating regulation, but rather of smarter and more effective regulation. As indicated in the Global Jobs Pact, it was a question of labour market reform that facilitated labour mobility and employability, generated greater flexibility balanced with fairness, ensured that labour regulation was up to date and did not create unnecessary barriers and disincentives to job creation.
- 135.** The Employer members added that one of the ongoing challenges facing employment policies and ILO standard setting was the achievement of an international and domestic employment policy environment which balanced the needs of business and workers. Businesses needed to have sufficient flexibility and entrepreneurial expertise to compete in global markets, while workers required certain essential social protections and the opportunity to acquire the necessary education and training so that they could become and remain economically secure. For full employment to be achievable, a number of economic, political and legal factors needed to be present, including: a stable economic, political, legal and social environment; low inflation; low interest rates; coherent macroeconomic policies; stable exchange rates; guarantees of human rights; secure property rights; enforceable contracts; open markets; stable commodity prices; low taxes; currency liberalization; and debt reduction. The considerations that related to the reform of domestic employment policies were equally applicable to both the revision of old and the adoption of new standards which, after being ratified, clearly had an impact at the domestic level.

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- 136.** The Employer members emphasized that existing ILO standards that no longer fitted the characteristics of the modern workplace, or new standards that sought to solve every labour market imperfection or unknowable consequence, would be counterproductive to the objective of full employment, especially as it related to the very basic issue of the ability of firms to create jobs, increase productivity and raise the standard of living of workers. As such, ratified Conventions that no longer fitted the needs of the twenty-first century workplace constituted a competitive disadvantage to the countries that ratified them.
- 137.** The Worker members also indicated that neither of the two standard-setting options proposed in the General Survey was a priority in their view. They considered that the existing employment instruments were still particularly relevant as a guide for national and international employment policy. It was much more important to promote the ratification of Conventions and strengthen the implementation of the employment instruments, particularly Convention No. 122. And it was even more important to achieve greater convergence between macroeconomic and social policy.
- 138.** The Worker members therefore considered it more urgent to develop a new instrument, such as a Recommendation, which could also give renewed impetus to Convention No. 122, within a context, as outlined by the ILO Director-General at the G20 Meeting of Ministers of Labour and Employment in Washington in April 2010, of greater convergence between macroeconomic policy and employment, labour market, skills and social protection policies.
- 139.** Several Government members indicated that the employment instruments had provided important guidance for the action taken at the national level. Some Government members expressed opposition to the proposal for a new instrument on action in times of crisis. The Government member of Mexico considered that the adoption of either of the two proposals would restrict the usefulness of the existing instruments. The Government member of the United Kingdom added that there were still lessons to be drawn from the crisis and that evidence of the long-term impact of the policies adopted was still insufficient for the development of a new instrument.
- 140.** The Government member of Norway, also speaking on behalf of the Government members of Denmark, Finland, Iceland and Sweden, believed that the current employment instruments were fully adequate and that there was no need to develop an instrument addressing past, present and future crises. Such an instrument would also create confusion in relation to the status of the Global Jobs Pact, which was a powerful stand-alone tool giving effect to the Decent Work Agenda in response to the crisis.
- 141.** The Government member of Switzerland emphasized the need to resist the temptation to reduce measures of prevention and action against crises to a series of common normative denominators, as the necessary measures were largely developed at the national level. Before embarking on such a path, a very serious study of the feasibility of new standards would need to be conducted.
- 142.** The Government member of Spain considered that the proposed instrument would be very complex, given the inherent nature of economic crises, which did not lend themselves to the establishment of basic principles or general preventive measures. A more integrated approach between economic, employment and social policies would be an important tool for managing the impact and effects of crises so as to promote sustainable recovery and, in that respect, the Global Jobs Pact represented a policy instrument that addressed the repercussions of the international financial and economic crisis in the social and employment spheres.

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143. The Government member of Germany, referring to the important role of tripartite consultations and social dialogue in times of crisis, expressed the belief that it would be interesting to discuss the possibility of adopting a new instrument in the form of a Recommendation setting forth policies that member States could use in a targeted manner to prevent crises in future. Such an instrument would fill a gap in the current framework of employment instruments.
144. Several Government members also opposed the proposal for the adoption of a consolidated employment instrument. The Government member of Norway, also speaking on behalf of the Government members of Denmark, Finland, Iceland and Sweden, considered that the process of formulating such an instrument would be difficult and time-consuming. Moreover, it could lead to the weakening of Convention No. 122. It was more important to ensure that existing employment instruments were fully observed and applied in an efficient manner, while being based on the diverse realities and needs of member States. Nevertheless, there was some merit to the idea of a consolidated instrument and more documentation was required before a definitive decision could be taken.
145. The Government member of Senegal considered it unnecessary to adopt a new consolidated instrument, although such an instrument could improve coherence and relieve the reporting burden on governments. The Government member of the United Kingdom indicated that, although the consolidation of the existing employment instruments could, in principle, enhance the promotion of valuable employment principles, including macroeconomic policy coherence and the development and review of active labour market policies, the same objective could be achieved through the sharing of information and expertise, as well as technical assistance from the Office. Moreover, consolidation might not lead to a stronger instrument and might instead diminish the impact of Convention No. 122. The Government members of the Philippines and the Syrian Arab Republic agreed that a new consolidated standard was unnecessary.
146. The Government member of Italy indicated that her Government was open to discussion of a consolidated instrument, which could contribute to the coherence and effectiveness of existing instruments. However, it would be of fundamental importance not to weaken the principles set forth in Convention No. 122.
147. The Government member of France, who agreed that the six employment instruments covered by the General Survey were of great relevance in assisting member States to cope more effectively with economic and financial crises, considered that the implementation and impact of the ILO's employment instruments needed to be strengthened. She called on the ILO to reflect on the possibility of a promotional instrument designed to strengthen the coherence between the social, economic and financial policies pursued by different international organizations, as well as within member States. The Government member of Portugal supported the proposal for a new instrument which strengthened Convention No. 122, taking into account the current problems faced by national labour markets.

## **Final remarks**

148. Following the discussion on the General Survey, the Worker members concluded that there was an enormous gap between the basic principles set out in the ILO instruments concerning employment and their application in practice. That was due not only to the current levels of unemployment and underemployment, but also to the fact that many member States were not fulfilling their commitments under the Social Justice Declaration, the Global Jobs Pact and the employment instruments. Three main problems were identified in this regard. First, employment was often considered to be a by-product of macroeconomic and general policies, without any effective mechanism for integrating

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employment as a cross-cutting policy issue. Second, in many countries, macroeconomic and budgetary choices were made at the expense of the goal of productive employment, freely chosen for all. The pressure exerted by financial markets and international institutions, such as the IMF and the OECD, to move more quickly than planned towards a strategy of premature budgetary solutions was putting at risk the resurgence in growth and employment, as observed in Europe over the past few months. However, the trend might spread to other regions as well. The Worker members had hoped that the financial markets would be regulated, but instead it was governments that were being punished for their action to stimulate and assist the financial sector. Finally, long before the financial crisis, employment policy had been narrowly focused on supply, overlooking the fact that it was first necessary to create demand and productive jobs to allow jobseekers, as well as inactive workers, to find employment.

- 149.** The Worker members concluded that substantial changes were required in national policies and in the actions of international economic and financial institutions. The ILO had a key role to play in changing the existing paradigm. The Worker members identified eight main challenges in this regard. The first was to promote the ratification of the employment Conventions, and particularly Convention No. 122, but also the Human Resources Development Convention, 1975 (No. 142), and the Private Employment Agencies Convention, 1997 (No. 181), as well as the Paid Educational Leave Convention, 1974 (No. 140), which had not been examined in the General Survey. Second, it was necessary to promote the implementation of Conventions and Recommendations at the national level, in cooperation with the social partners, not only as a specific objective for the employment sector, but also as a cross-cutting ILO objective. The Worker members welcomed the fact that the ILO and its Director-General had made an outstanding effort during the financial crisis to place the question of employment and decent work on the agenda of the G20 and other international institutions, and had influenced policies in many countries. But there remained much to do at the national level. Member States now faced policies dictated by the IMF and the OECD which conflicted with fundamental ILO principles, and particularly the importance of full and productive employment.
- 150.** The Worker members added that the ILO needed to assist member States to change their paradigm, which gave rise to numerous challenges. How could the goal of full productive employment be integrated into general strategies and macroeconomic and budgetary policies? What did full employment mean on today's labour markets, where there was increased tension between supply and demand, but also new means of communication between employers and jobseekers? How high should structural unemployment be and what intermediary goals could be proposed for achieving full employment? What did productive employment mean in practice? And what would the consequences be for national policies of the introduction of such measures as a decent minimum wage and respect for free wage negotiations, the promotion of stable labour relationships, action to reduce segmentation and precarious employment, as well as the transition of workers from the informal economy to the formal economy? What would the effect be of bringing to an end the neglect of the agricultural sector in national and international policies, which had caused food crises and poverty among farm workers? How could two-speed social policy be avoided, with one speed for large companies and another for SMEs? And how could a unilateral supply-oriented employment policy be transformed into a policy focused on demand with a view to creating decent jobs?
- 151.** The Worker members emphasized that the ILO had to play a more important role in the development of national policies, especially at times of crisis. The ILO had proven that it was capable of intervening quickly in international discussions, notably with the G20. But how could the ILO's capacity to intervene at the national level be improved with a view to preventing the widespread domination of the "business as usual" approach adopted by other international institutions, such as the IMF? The Worker members added that more

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information was also needed, in the form of reliable statistics, thorough studies of the labour market and reviews of national policies, to improve the effectiveness of policies and to monitor the application of labour standards. In addition to databases, for example on employment policy and training, this included the monitoring and systematic study of the consequences for productive employment of budgetary, monetary and economic policies, with particular reference to liberalization and privatization policies.

- 152.** The Worker members observed that the capacity of member States to influence decisions concerning localization and investment by multinational businesses was very limited. The Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), clearly indicated that “Members should, after consultation with the organisations of employers and workers, take effective measures to encourage multinational enterprises to undertake and promote in particular the employment policies set forth in the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, 1977, and to ensure that negative effects of the investments of multinational enterprises on employment are avoided and that positive effects are encouraged”. This required close monitoring by the ILO, but also in-depth discussion of the role that the ILO would have to play in future to promote, also through its standards policy, respect among multinational enterprises for employment and training standards. It was clear that a soft approach based on self-regulation was insufficient.
- 153.** The Worker members recalled that they were not in favour of a new instrument to consolidate the existing employment and training instruments, and that they were doubtful of the added value of a new instrument to prevent and manage crises. The Global Jobs Pact was already an adequate response to the crisis, but now needed to be implemented. It was now of greater importance to obtain further guarantees that, in addition to the goal of full and productive employment, the concept of decent work was really anchored and fully integrated horizontally into general policies, especially budgetary, monetary and economic policies. A new instrument could be envisaged to move national policies in that direction.
- 154.** The Worker members referred to the serious problem of precarious and segmented labour markets, which merited greater attention from the ILO and was related in part to difficulties in the implementation of ILO standards. The General Survey had highlighted the difficulties arising out of triangular employment relationships referred to in Convention No 181. In addition, the problem of the follow-up to the Employment Relationship Recommendation, 2006 (No. 198), needed to be addressed. They called for an in-depth examination of these trends and a discussion of the role of ILO standard setting in this field.
- 155.** Finally, in response to the comments made by the Employer members, the Worker members referred to paragraph 310 of the General Survey, in which the Committee of Experts emphasized that the right of freedom of association and the right to collective bargaining should be fully guaranteed to all workers placed by private agencies or employed by temporary work agencies, and that adequate protection needed to be ensured to employees of employment agencies if they engaged in lawful industrial action.
- 156.** The Employer members observed that the examination in the General Survey of employment standards and policy had provided the opportunity to focus on sustainable jobs. In the current phase of the financial crisis, this offered an opportunity to ensure that governments made use of the instruments to achieve a strong recovery. They emphasized the complexity of employment policy and the challenges involved, which meant that there was no single model that could be followed in every case. Without economic growth, there would be no possibility of employment creation, and particularly of the achievement of full, productive and freely chosen employment. The Employer members once again emphasized the need for stable economic policies in the current climate. With regard to job

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security, they indicated that, while such security was important, it remained one of the policy aspects that needed to be balanced with others, and was not always the most important aspect. They also emphasized the difficulties faced by SMEs in achieving market success and observed that real security for workers consisted of the capacity to find new employment if they lost their jobs. This was one of the reasons why it was so important to focus on skills training and development.

- 157.** With respect to standard setting, the Employer members noted that the Worker members were not in favour of a consolidated employment instrument. The Employer members reaffirmed the view that productive and sustainable jobs were the best means of mitigating economic uncertainties, which required smarter and more effective regulation, as well as labour market measures. They concluded that a balance was needed between the flexibility and expertise that business required to be able to compete, and the social protection needed by workers to remain economically secure. This was one of the key challenges of standard setting in the field of employment.

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- 158.** In her reply on the General Survey, the Chairperson of the Committee of Experts on the Application of Conventions and Recommendations indicated that the broad-ranging discussion had been most interesting, not only because of the specific points covered, but also because it had revealed the vital importance of the topic for the health of our societies and the possibility of attaining decent work for working men and women. She expressed the belief that the discussion had borne out her earlier comment that there were different views on how best to achieve the goal of full, productive and freely chosen employment, and that different approaches could be successful. Everyone agreed on the need to create sustainable employment, with the Employer and Worker members perhaps placing different emphasis on how to balance this goal with others, such as job security and flexibility for SMEs. She added that the discussion in the Committee of Experts on the two options for possible standard setting had anticipated many of the points made by the present Committee. As indicated by the Worker members, the priority should be to bolster the action taken by member States, where the challenge was to make full, productive and freely chosen employment a goal of macroeconomic policy. Moreover, as noted, only 102 member States had ratified Convention No. 122, even though it simply called on governments to declare and pursue an active labour market strategy with the aim of achieving full, productive and freely chosen employment. During the discussion, no Government member had referred to any major impediments to declaring and pursuing such a policy.

- 159.** The Chairperson of the Committee of Experts recalled that this type of General Survey presented certain difficulties, as it had to be decided how to review several instruments at once. There was a tendency to look for common themes or issues among the instruments, rather than spending time on particular issues relating to just one Convention or Recommendation. With a view to producing a readable, coherent document, rather than six documents patched together, the Committee of Experts had searched for a unifying theme. In the case of the six employment instruments, that had been easily done, as Convention No. 122 set out the overarching goal, and the other five instruments related to an aspect of what member States needed to do to achieve full, productive and freely chosen employment. The Employer members had rightly indicated that the present General Survey was less precise in its legal analysis than others, which was due to the fact that Convention No. 122 was a promotional instrument, with few provisions suitable for that type of legal analysis.



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- 160.** She added that the difficulties involved in a General Survey covering several instruments should not be underestimated. In the present case, it was fortunate that the instruments chosen were closely related and could be seen as forming part of a single process, namely that of achieving full, productive and freely chosen employment. That might not be the case in future years. If several instruments that were only loosely linked were selected for review at the same time, and if they were all of a more standard prescriptive nature, it would be difficult to produce a General Survey with the usual attention of the Committee of Experts to careful analysis of compliance with specific provisions, without resulting in a document hundreds of pages long. She noted in that respect that the 2007 General Survey on forced labour, focusing on only two Conventions, had been 135 pages in length.
- 161.** She explained that, even in the current General Survey, more time could have been spent on certain provisions of an instrument if a more traditional review had been undertaken. Each year in the report of the Committee of Experts, in the observations and direct requests on Convention No. 122, comments were normally made with regard to certain member States that it was not evident from the government's report how economic and social policies were coordinated, or how the social partners were consulted in the formulation and implementation of these policies. If the traditional approach had been used of reviewing compliance with each clause of a Convention, time would have been devoted to examining the application of Article 2(a) of Convention No. 122, which provides that "Each Member shall, by such methods and to such extent as may be appropriate under national conditions ... decide on and keep under review, within the framework of a co-ordinated economic and social policy, the measures to be adopted for attaining the objectives specified in Article 1". A review of that type could have produced useful information at a time when there were calls for greater convergence between macroeconomic and social policy.
- 162.** Finally, she noted that some of the comments made during the discussion related to points on which there had been data constraints, for example concerning the extent of underemployment. Similarly, the term "small and medium-sized enterprises" was not used in precisely the same way in different countries, thus making it difficult to consider what circumstances might justify a relaxation of particular international labour standards. Finally, she noted that it had been logical to include Convention No. 181 in the General Survey, even though it had only received 23 ratifications and had been adopted only 16 years ago. As a result, there had not been much jurisprudence for the Committee of Experts to review. She said that private employment agencies would no doubt play an increasingly important role in matching individuals to jobs and it was therefore to be hoped that more member States would seriously consider ratifying Convention No. 181.
- 163.** In her reply, the representative of the Secretary-General said that, through its interesting discussion and the swift adoption of a brief summary and conclusions to its debate, the Committee had made a decisive contribution to ensuring that standards played a useful role in the achievement of the Organization's constitutional objectives. As the tripartite voice of standards, deriving its voice from its central role in the supervisory system, the Committee had expressed itself and had been heard by the Organization as a whole. The Committee had done so at a time when unemployment was at the highest level ever recorded and when the Organization was seeking the right policy options to secure recovery and shape sustainable growth that generated decent work for all.
- 164.** The representative of the Secretary-General added that the discussion of the General Survey this year had been an innovation for the supervisory system and for the ILO as a whole, as the first instance of the institutional implementation of the integrated approach set forth in the Social Justice Declaration. It could therefore only be improved upon. The International Labour Standards Department would take into account the comments made during the discussion as it prepared the next General Survey on social security. The Office should also take into account the comments made in relation to the question of

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coordination between the contents of the General Survey and those of the recurrent item report, as well as between the work of the respective bodies.

- 165.** With reference to the comments made by the Employer members concerning the response rate to the questionnaire for the General Survey, the representative of the Secretary-General acknowledged that the rate had not been high over the past decade. However, the number of member States replying to the questionnaire for the present General Survey had reached its highest level since 2001, despite the number of instruments covered. Moreover, constituents had been given half the time normally allowed for responses. The decision to align the topic of the General Survey with that of the recurrent item had been taken by the Governing Body in November 2008. The questionnaire had been sent out at the end of December 2008, and replies had been requested by 31 May 2009. Member States had therefore only had five months to understand the new format and to reply. Under the circumstances, the response rate of 108 member States was exceptionally positive. Over the past decade, with the exception of 2005, the number of replies received had been lower than 100. She added that 109 countries had already replied to the questionnaire for the next General Survey on social security.

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- 166.** A brief summary and conclusions of its discussion on the General Survey on employment instruments was presented by the Officers of the Committee on the Application of Standards to the Committee for the Recurrent Discussion on Employment on the afternoon of 4 June 2010. The text of the brief summary and conclusions are set out below.

### **Brief summary and conclusions of the discussion by the Committee on the Application of Standards on the General Survey concerning employment instruments**

- 167.** The Committee on the Application of Standards held a discussion on the General Survey concerning employment instruments<sup>10</sup> prepared by the Committee of Experts on the Application of Conventions and Recommendations. During the course of the discussion, the following general points of view were expressed concerning the employment instruments. The detailed comments made concerning the General Survey are recorded in the Committee's report.
- 168.** The Employer members emphasized that the primary goal of employment policy should be to enhance the ability of firms to create jobs, increase productivity and raise the standard of living of workers. The best safety net was an economy that created productive jobs capable of adapting to change, which remained the best protection against economic uncertainties. What was at issue was not the elimination of regulation, but the need for smarter, more effective regulation. For full employment to be achievable, a number of economic, political and legal factors needed to be present, including a stable economic, political, legal and social environment.
- 169.** The Employer members expressed the belief that the central focus of the discussion should be on the fundamental promotional objective set out in Convention No. 122 of full, productive and freely chosen employment. In particular, the concept of "productive

<sup>10</sup> ILC, *General Survey concerning employment instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization*, Report III (Part 1B), 99th Session, Geneva, 2010.

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employment” was of vital importance during the second phase of the economic crisis that was being experienced in 2010.

170. In that respect, two essential areas were small and medium-sized enterprises (SMEs) and vocational guidance and training. In view of the critical role played by SMEs in generating employment opportunities and growth, special importance should be attached to the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), which highlighted the importance of SMEs in any policy aimed at full, productive and freely chosen employment. The instruments on vocational training and human resources development emphasized the central role of the State in the development of vocational guidance and training that took into account employment needs and opportunities. There was an urgent need for the provision of training that developed the right skills at the right time to meet labour market needs. With regard to employment agencies, the Employer members recalled that the Private Employment Agencies Convention, 1997 (No. 181), permitted and encouraged private employment agencies, in contrast with earlier instruments which prohibited them, and they therefore called on governments to ratify Convention No. 181. They added that Convention No. 88 should be revised.
171. With reference to the standard-setting options outlined in the General Survey, the Employer members did not consider that there was a gap in the current framework that needed to be filled. Moreover, they strongly believed that a consolidated employment Convention would create confusion and impede the primary objective of Convention No. 122 of full, productive and freely chosen employment. With respect to the revision of existing standards, they emphasized that standards that were no longer adapted to the realities of the modern workplace were liable to be counterproductive and to provide a competitive disadvantage to countries that ratified them.
172. The Worker members emphasized that the crisis was far from being over. The financial crisis and the economic crisis that had followed had given rise to a serious budgetary crisis. Budgetary measures would be needed in many countries, but it was clear that budget cuts that were too rapid and too deep would seriously endanger the recovery of employment growth. Moreover, they emphasized that a policy to promote employment needed to go hand-in-hand with a policy to improve the quality of employment, through the attainment of the objective of decent work. In 2009, the Global Jobs Pact had called on member States to consider the introduction of a minimum wage, but little progress had been made in this respect.
173. In view of the current situation, the Worker members outlined a number of priorities. The first was to promote the ratification of the four employment Conventions and to ensure their effective implementation, together with the Recommendations, in dialogue with the social partners as a horizontal policy effort. The ILO needed to help member States to achieve a paradigm change through the integration of the objective of full, productive and freely chosen employment into overall macroeconomic and budgetary policies. The ILO should also play a more important role in the development of national policies, particularly in times of crisis. The ILO had shown that it was capable of intervening rapidly in international debates, particularly at the level of the G20. It now had to improve its capacity to intervene at the national level.
174. The Worker members also emphasized the need for greater information, including reliable statistics, in-depth analyses of the labour market and assessments of national policies, which were a prerequisite both for policy effectiveness and to supervise the application of the employment instruments. Such information should include the systematic assessment of the consequences on productive employment of budgetary, monetary and economic policies, as well as liberalization and privatization policies. In view of the incapacity of member States to influence decisions on the relocation of production and investment by

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multinational enterprises, there should also be an in-depth debate on the role that the ILO could play in future, through its standards policy, among other means, to promote observance by multinational enterprises of employment and vocational training standards.

- 175.** The Worker members were not in favour of a new instrument to consolidate the current employment and vocational training instruments. They also expressed doubts concerning a new instrument on crisis prevention and management. The Global Jobs Pact was already an adequate response to the crisis and should be put into effect immediately. Greater guarantees were needed that the objective of full, productive and freely chosen employment, combined with the concept of decent work, was truly being integrated into overall policies, and particularly budgetary, monetary and economic policies.
- 176.** Finally, the Worker members drew attention to the serious problem of increasingly precarious and segmented labour markets. This issue, which affected the achievement of the objective of decent work, required greater attention from the ILO. In certain respects, it was also a problem of the application of international labour standards, such as the provisions of Convention No. 181 respecting triangular employment relationships and the Employment Relationship Recommendation, 2006 (No. 198). There was a need for a more in-depth assessment of these trends as a basis for a discussion of the role that ILO standards activities could play in this respect. The Worker members also called for examination of the possibility of adopting of a new instrument to achieve coherence between the social, economic and financial policies promoted by international organizations, as well as member States.
- 177.** Many of the Government members who took the floor emphasized the importance of the guidance provided by the Global Jobs Pact, which was a powerful tool to improve the employment situation in the context of the current crisis. Several Government members considered that the current employment instruments, if broadly ratified and effectively implemented, were fully adequate and that there was therefore no need for a new crisis response instrument. Several Government members expressed doubt about the value of a new consolidated instrument on employment, which might be complex and time consuming to draft, and might involve a risk of weakening Convention No. 122. However, a number of Government members expressed interest in the possibility of a consolidated standard on employment, although the matter would have to be studied carefully to ensure that it did not weaken the principles set forth in Convention No. 122 and took into account the diverse realities and needs of member States. A consolidated instrument would offer greater efficiency and coherence, address any gaps and allow flexibility in implementation, as well as reducing the reporting burden on governments. Some Government members also expressed interest in a possible new instrument to achieve coherence between the social, economic and financial policies pursued by international organizations, as well as member States.
- 178.** Several Government members added that the ILO's employment standards had provided important guidance for the action taken at the national level. Certain Government members from developing countries described the beneficial effects of such measures as the introduction and improvement of employment agencies, the strengthening of vocational guidance and training systems and the implementation of a minimum wage. Employment promotion measures and investment projects were vital in combating poverty. Certain Government members from developed countries recalled the need to promote and protect employment, even during the current period of budgetary constraints. All the Government members who spoke emphasized the need for broad consultations when adopting employment policy measures.

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## Conclusions

- 179.** This year, following the adoption of the Social Justice Declaration in 2008 and the Global Jobs Pact of 2009, the Conference Committee on the Application of Standards has before it a General Survey concerning employment instruments. The first strategic objective of the Social Justice Declaration is “promoting employment by creating a sustainable institutional and economic environment”. The Governing Body selected this objective as the first recurrent item for discussion at the International Labour Conference. Aligning the subject of the General Survey and the recurrent item report has the benefit of promoting greater coherence between the normative, economic and social policy work of the ILO. The Employer and Worker members, as well as many Government members, participated in a substantive discussion on the General Survey.

Considering that the Employment Policy Convention, 1964 (No. 122), is a governance instrument, promotional in nature, deals with economic policy issues and provides a promotional framework;

Taking into account the linkages between Convention No. 122 and the Human Resources Development Convention, 1975 (No. 142), the Employment Service Convention, 1948 (No. 88), the Private Employment Agencies Convention, 1997 (No. 181), as well as the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), and the Promotion of Cooperatives Recommendation, 2002 (No. 193);

The Committee on the Application of Standards invites member States that have not yet done so to ratify as a matter of priority Convention No. 122 and to consider ratifying Conventions Nos 142 and 181. They should take steps for their effective implementation with the full participation of the social partners.

The Committee on the Application of Standards invites member States and the International Labour Office to reinforce their efforts to share information and expertise on matters covered by the instruments. The ILO should provide technical assistance, including capacity building, to member States and the social partners with a view to the ratification and effective implementation of the instruments.

### **D. Report of the Joint ILO–UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART)**

- 180.** The Employer members noted the task of the CEART to examine reports on the application of the 1966 and 1997 Recommendations submitted by governments, by national organizations representing teachers and their employers, by the ILO and UNESCO and by relevant intergovernmental or non-governmental organizations, and to communicate its findings to the ILO and UNESCO for their appropriate action every three years. The Committee reviewed the report as an exceptional matter to the Standing Orders in view of the fundamental and increasing importance of the educational sector for improved productivity and labour standards generally. Without the best possible education and training, the future would be more than ever compromised.
- 181.** The Employer members shared most of the CEART’s observations. They believed in the critical importance of quality education systems and their decisive role in ensuring skills for individuals’ integration into labour markets, more than ever a central function of

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education. Workers' employability constituted the best guarantee of employment security, even more than legal protection. In a year when the relevance of the ILO's employment policy instruments was under discussion, especially to ensure sustainable economic recovery from the crisis, it was necessary to emphasize teaching quality and its close link to current and future skills as a linchpin of any successful employment policy.

**182.** In this context, the Employer members shared the objectives of developing a motivated teaching force with good working conditions, and emphasized several key points towards that end emerging from the CEART report:

- The necessity of an integrated approach to teacher education defined by a continual process of training, induction and professional development. Constant upgrading of teaching skills was indispensable, encompassing knowledge, skills, abilities and aptitudes, among these pedagogical capacity and communication. The commitment of teachers to successfully realizing these objectives as part of a shared responsibility was equally decisive.
- The concern over the deteriorating working environment of teachers in many countries. The climate of harassment and insecurity was not only unacceptable from a decent working perspective but reflected a loss of values that affected the whole of society, as well as enterprises. Actions needed to counteract this worrying trend surpassed the education sphere; nevertheless, effective and intelligent measures needed to be taken as quickly as possible so as to reinforce the role and authority of teachers.
- The need for governments in both developing and developed countries alike to improve education policies by investing sufficiently in education so as to avoid overcrowded classes and ensure appropriate teaching and learning conditions since the performance of teachers was so essential. The efforts employed to end the current economic crisis situation should give priority consideration to this aspect, given that the principal objective above all else was to ensure adequate education and training for all students.
- The importance for Employer members of ensuring quality education at each level of the system, in which the promotion of a culture of quality depended on teachers themselves. Deterioration in the education systems of many countries was of great concern and required fundamental change based on quality considerations, to be obtained through management efficiency and results.

**183.** The Employer members nevertheless did not fully agree with all of the CEART's observations, notably:

- While social dialogue and respect for collective bargaining were important in education, so was the need for social dialogue to be adapted to the public sector context and that of a society's general interests, as well as the labour relations context of each country. Social dialogue could take multiple forms, and not necessarily result in a collective bargaining agreement. The Employer members therefore did not share the criticisms about limitations in some countries on collective bargaining as these restrictions might reflect general interests and public welfare.
- While assigning great value to education as one of the most important public goods based on equal and non-discriminatory access to quality education, the Employer members disagreed strongly with the observations that private provision of education represented a negative "privatization" of this public good. In many countries where education was strongest and provided the greatest access, it was delivered by private entities competing fairly and providing quality teaching that benefited those most in

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need. It was surprising to see such biased observations in the CEART report, which did not reflect reality.

- Teaching quality was closely linked to achieving results, and remuneration no doubt constituted one of the many elements contributing to results-based outcomes. Any effective human resource policy had to take this element into account, and it was therefore surprising to see the CEART's observations that merit pay was incompatible with teamwork. This did not correspond to the reality of public or private service management, and teaching services undoubtedly needed such mechanisms to reinforce education system quality.
- The reference to ageing of the teaching force in many countries was not the relevant issue but rather the professional development and lack of qualified teachers.
- Part-time employment did not equate to precarious employment.

**184.** In conclusion, the Employer members stressed the pertinence of the 1966 and 1997 Recommendations, the relevance of the CEART reports and the need to continue regular tripartite discussions on this vital subject. In this context, emphasis should be placed on:

- greater account of the relationship between education and economic policies, notably links to quality training, skills development and the labour market;
- measures to protect teachers from violence in the interests of quality teaching and learning;
- the role of efficient educational management in ensuring quality teaching.

**185.** The Worker members concurred with the Employer members on the need for better teaching conditions and improved quality of education. Teachers were nation builders and therefore the State had a duty to provide them with a good working environment. While the impact of the global economic crisis had to be recognized, it was alarming to note the declining access of poor people to education, as the IMF and the World Bank had noted. Denying children access to education made them vulnerable to child labour. Therefore, greater allocation of countries' GDP to education was essential. Furthermore, as the CEART report pointed out, social dialogue in education needed to be strengthened, with governments respecting teachers' rights to freedom of association, to freely organize themselves and to collective bargaining as enshrined in ILO Conventions Nos 87 and 98, so as to enable improvements in their working environment.

**186.** The CEART report pointed to the shortage of primary teachers in developing countries especially, which resulted in overly large class sizes, overburdened teachers working in poor conditions and thus the inability in these countries to construct the foundations for human development. Teachers in public institutions also lacked job security, and received salaries that were both insufficient and lower than in comparable professions since certain benefits were not provided or the salaries not adjusted to inflation. This led to many leaving the profession for other jobs and these factors had led to an explosion of private education institutions. Although private education was not bad per se, these developments could lead to a stratified and unequal education system allowing only the rich access to high-class private institutions. At the same time, as the CEART report highlighted, the teaching staff, especially in private higher education institutions, faced similar problems as their public sector counterparts, with a consequent weakening of quality guarantees.

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- 187.** In concluding, the Worker members wanted the CEART report's recommendations to be distributed and promoted in all member States given the importance they attached to the recommendations concerning teaching personnel. Governments should follow and implement them, attributing additional resources to the education sector and ensuring social dialogue and freedom of association in decision-making. As regards the situation in Ethiopia pointed out in the CEART report, Education International (EI) and government representatives had met in Addis Ababa with a view to creating a climate of understanding and solving the outstanding problems.
- 188.** The representative of EI recalled that the Conference Committee examined the CEART report once every three years, a report that established a balance sheet on the application of the two international Recommendations concerning teachers. These texts constituted a very important reference base for the tens of millions of women and men teaching throughout the world, and were linked with the fundamental principles contained in ILO Conventions. The CEART was a unique body to which teachers attached great importance. Its tenth session was held at UNESCO in September–October 2009 in the context of a worsening financial and economic crisis in many countries. The CEART had focused its work on key themes relating to teaching and education as set out in the two international Recommendations: social dialogue; initial and continuing teacher education; employment, careers, remuneration and teaching–learning conditions; teacher shortages, academic freedom and employment conditions in higher education, with greater attention at the tenth session to the numerous reforms affecting higher education worldwide.
- 189.** Teachers supported the efforts deployed by CEART to ensure promotion and respect for the provisions of the 1966 and 1997 Recommendations and for its contributions to solve the problems raised in allegations made by teachers' organizations. In this respect, the Government of Japan should fully apply the recommendations made by CEART, as approved already by the ILO Governing Body, to promote a culture of social dialogue in the public administration through the establishment of consultative and negotiating structures at the national and prefecture levels. EI welcomed the progress that had been made so far.
- 190.** EI had participated in the work of CEART by submitting a report and by taking part in the special information session that permitted exchanges with representatives of international organizations; this opportunity should be expanded. A good number of EI's proposals were reflected in the recommendations of CEART, which EI supported, even though it was regrettable that their impact was limited due to ignorance of the international Recommendations.
- 191.** EI wished to stress three issues:
- The worldwide shortage of teachers could not be overlooked, especially during the current period of crisis, which had led to substantially reduced budgets in many sectors of education. Despite its crucial role, educational budgets had been decreasing almost everywhere in the world, dramatically affecting teachers' salaries, their employment and their very survival.
  - The growing precariousness of the teaching profession, with many teachers being hired on the basis of fixed- or part-time contracts, restricted their academic freedom and professional as well as institutional autonomy, especially in higher education. The increasing employment of low-cost contractual teachers in order to save on education expenditures had long-term negative effects on high-quality education.



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- An increase in violence and aggression against educational institutions, children and teachers that the CEART proposed as a high priority theme for its next session. Outrageous, unjustified and morally unacceptable violence had dramatic consequences on educational opportunities and on the psychological balance of children and teachers.
- 192.** Most governments and educational institutions continued to ignore the existence of the two Recommendations on teachers which, in turn, led to violations of the rights of teachers at all levels of education. The ILO and UNESCO had to take concrete steps to ensure their effective application both by governments and institutions. All education authorities had to assume their obligations within a framework of dialogue with teaching personnel and their representative organizations. The Employer members had confirmed the importance of education and training and the need to have teachers who were well-trained, respected and benefited from a working environment that allowed them to provide high-quality education. By applying the two Recommendations, governments recognized the fundamental importance of education in society for the training of future workers as informed and enlightened citizens, as well as defenders of a democratic society.
- 193.** The Worker member from Nicaragua emphasized that education was designed to support human development and not just that of markets. The reality in many Latin American countries was otherwise, and he underlined the importance for education policies not to be formulated on the basis of guidelines from the World Bank, whose priority was to reduce social spending. Rather, UNESCO should support governments more in their efforts to reform such policies. In Latin American countries there was an unfortunate tendency for non-governmental organizations or government-supported unions to take on an active role in training and in representing workers in education, thereby undermining the role of independent trade unions. The right to education was a human right, not a commodity to be bought and sold, and the quality of education should be measured by how well knowledge and schools equipped people to deal with life's realities. The CEART report was based on workers' rights derived from ILO standards and on UNESCO education policies and its recommendations should be supported by all. Governments, workers and employers needed to ensure that education was at the heart of national agendas for achieving sustainable human development.
- 194.** A representative of the World Federation of Trade Unions, representing the Ethiopian Teachers' Association (ETA) explained that ETA currently had 350,000 members teaching in public and private schools, and the organization was a member of many education networks in Ethiopia, as well as of different regional and international organizations, notably the WFTU. UNESCO had also commissioned ETA to do a study on education quality in 2005. The CEART's report had missed important facts prevailing in the country, for instance that there was only one legally registered teachers' organization in Ethiopia, the ETA, and that there was neither a "former ETA" nor a National Teachers Association. The leadership wrangles that had caused the emergence of factions struggling for control of leadership and ETA assets in the past had been solved by judicial decisions two years ago. Unfortunately, EI and the ITUC had been harassing the legally registered association for the last 15 years instead of supporting the ETA's effort to protect the rights and interests of teachers. In this regard, the CEART's report referred to the Government requiring teachers to perform duties unrelated to education, such as their participation in the population census, without consultation with teachers' organizations, yet the Government had consulted the ETA, which fully agreed with teachers' participation in the census. Although the CEART report stated that appropriate social dialogue was lacking on matters affecting teachers, regular discussions on teachers' rights and interests and the quality of education took place between teachers and government officials at various levels. The ETA met quarterly with the Ministry of Education and even met with the Prime Minister in 2009. Ignoring such facts only served to weaken teachers' unity. Although the

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CEART report stated that the case had been suspended until more information became available, this consideration was unfair, based on one-sided information and lacked the kind of analysis and research required under usual procedures. Despite the biased findings in the CEART's report, the ETA wished to continue its collaboration with the ILO, UNESCO, EI and the ITUC for the benefit and interest of Ethiopian teachers and the common benefit of all.

- 195.** The Government member of Ethiopia stated that Ethiopian laws guaranteed freedom of association and the right to organize, and provided the legal framework enabling citizens to exercise their rights freely and effectively. The multitude of associations formed all over the country testified to the effective exercise of these rights. The allegations by EI regarding the ETA were unfounded. The allegation involved a dispute between two groups, each claiming to be legitimate representatives of the ETA. At the core of the dispute was a group of former teachers supported by external actors and senior supporters of the former military regime who challenged the legal status of the ETA's new leadership following the change of Government in Ethiopia. After a long running legal battle through all levels of the judicial system, without any Government involvement in the legal process, the Federal Supreme Court had finally decided in February 2008 in favour of the ETA's new leadership, and as a result the ETA continued to operate freely throughout the country. Even if processes in the country were not perfect, the Ethiopian Government supported social dialogue, as was shown by the established systems for social dialogue with workers, employers, associations representing different interests and the general public, for example the tripartite labour advisory board, public-private partnership forums and public forums with different segments of society. The Ministry of Education regularly consulted with the ETA and would continue to do so, whereas the Prime Minister met with the ETA in 2009. Her Government strongly opposed the CEART's report, as it was not founded on facts and was biased, whereas for example she noted that teachers had participated in population censuses in full agreement with the ETA. There had been and there was only one legally registered ETA. In contrast to the CEART report, the Government had provided sufficient information to concerned bodies proving that the allegations made by EI had no foundation. The ILO and UNESCO played an important role in advancing labour administration and education systems in Ethiopia and these organizations should not compromise such work by giving credence to baseless allegations.

## **E. Compliance with specific obligations**

- 196.** The Employer members recalled that submission of reports by member States was the essence of the Committee's supervisory mechanism and that serious or systematic failure to fulfil reporting obligations was detrimental to the entire ILO supervisory system. Given the importance of reporting, the Committee had strengthened the follow-up procedure for cases of serious failure in order to identify causes and find appropriate solutions to rectify such situations. The Committee had instituted an evaluation system at the request of the Governing Body in 2009 and significant progress had been made since then, as indicated in the report of the Committee of Experts. Examples included the increase in reports received from Caribbean countries and the adoption of measures by almost all member States. The Employer members highlighted the fact that the root cause of failure by member States to fulfil obligations was institutional and related to infrastructure problems, which could be attributed to a lack of human and financial resources. However, some cases of apparent failure to report resulted from lack of coordination between different ministries or linguistic problems, which could easily be solved by technical assistance from the Office. In other instances, internal issues had been cited that were not clearly understood by the Employer members or by the Committee. The Employer members considered that the increase in the number of observations by employers' and workers' organizations accompanying reports reflected the importance of the Committee's activities, and he

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expressed the hope that they would continue to increase. The Employer members endorsed the need to intensify technical assistance activities for States with a view to identifying and eliminating difficulties in fulfilling reporting obligations. The Employers supported the idea of taking new measures to strengthen technical assistance to member States and turning them into wider technical cooperation programmes. The Employer members expressed support for efforts undertaken to reduce the burden of reporting. They considered that grouping reports by subject, based on the ILO's four objectives and the possibility of submitting reports electronically were important steps in terms of the quality of information that could be provided by member States.

- 197.** The Worker members welcomed the increase in the number of reports received in relation to the number requested. The Office's efforts had been successful in that they had helped to identify the difficulties underlying the failures, as well as solutions. Stronger monitoring had facilitated a considerable reduction in the number of cases of serious failure. Awareness of reporting had led almost all member States to take initiatives to overcome difficulties; however, efforts had to be continued and intensified. The Worker members deplored the slight decrease in the reporting rate this year compared to last year and were concerned with the number of late reports (paragraph 37 of the General Report). These delays hampered the work of the Committee of Experts and paralysed the supervisory system. While emphasizing that reporting obligations were the cornerstone of the ILO's supervisory system, the Worker members urged Governments to fully and seriously comply with their reporting obligations. The information contained in the reports had to be as detailed as possible for every case of serious failure. The Governments that had not fulfilled their reporting obligations were disadvantaged, since the absence of the reports made it impossible for the Committee of Experts to examine their national legislation and practice. The Committee and the Office had to insist that these member States take the necessary measures to respect their obligations in the future.
- 198.** 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.
- 199.** In applying those methods, the Committee decided to invite all governments concerned by the comments in paragraphs 33 (failure to supply reports for the past two years or more on the application of ratified Conventions), 38 (failure to supply first reports on the application of ratified Conventions), 42 (failure to supply information in reply to comments made by the Committee of Experts), 90 (failure to submit instruments to the competent authorities) and 99 (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.

## **Failure to submit**

- 200.** 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 89th Session in June 2001 to the 96th Session in June 2007). This timeframe 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.
- 201.** The Committee noted the regret expressed by many delegations at the delay in providing full information on the submission of the instruments adopted by the Conference to parliaments. Many governments had requested and obtained the assistance of the ILO to

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clarify how to proceed and to complete the process of submission to national parliaments in consultation with the social partners.

- 202.** The Committee expressed concern at the failure to respect the obligation to submit Conventions, Recommendations and Protocols to national parliaments. It also recalled that the Office could provide technical assistance to contribute to compliance with this constitutional obligation.
- 203.** The Committee noted that 42 countries were still concerned with this serious failure to submit the instruments adopted by the Conference to the competent authorities, that is: **Antigua and Barbuda, Bahrain, Bangladesh, Belize, Cambodia, Cape Verde, Central African Republic, Chile, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Georgia, Ghana, Guinea, Haiti, Ireland, Kenya, Kiribati, Lao People's Democratic Republic, Libyan Arab Jamahiriya, Mozambique, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Sierra Leone, Solomon Islands, Somalia, Sudan, Tajikistan, The former Yugoslav Republic of Macedonia, Turkmenistan, Uganda, Uzbekistan, Bolivarian Republic of Venezuela and Zambia.** 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**

- 204.** 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 2009 meeting of the Committee of Experts, the percentage of reports received was 67.8 per cent, compared with 70.2 per cent for the 2008 meeting. Since then, further reports had been received, bringing the figure to 77.4 per cent (as compared with 78 per cent in June 2009 and 73.2 per cent in June 2008).

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

- 205.** The Committee noted with regret that no reports on ratified Conventions had been supplied for the past two years or more by the following States: **Burundi, Guinea, Guinea-Bissau, Guyana, Sierra Leone, Somalia, United Republic of Tanzania** (Tanganyika and Zanzibar), **the United Kingdom** (British Virgin Islands and Falkland Islands (Malvinas)) and **Vanuatu**.
- 206.** The Committee also noted with regret that no first reports due on ratified Conventions had been supplied by the following countries:

### **Antigua and Barbuda**

- since 2004: Conventions Nos 161, 182;

### **Armenia**

- since 2008: Conventions Nos 97, 143;

### **Dominica**

- since 2006: Convention No. 147;

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**Equatorial Guinea**

- since 1998: Conventions Nos 68, 92;

**Kyrgyzstan**

- since 1994: Convention No. 111;
- since 2006: Conventions Nos 17, 184;

**Sao Tome and Principe**

- since 2007: Convention No. 184;

**Seychelles**

- since 2007: Conventions Nos 73, 144, 147, 152, 161, 180;

**Vanuatu**

- since 2008: Conventions Nos 29, 87, 98, 100, 105, 111, 182.

It stressed the special importance of first reports on which the Committee of Experts based its first evaluation of compliance with ratified Conventions.

- 207.** In this year's report, the Committee of Experts noted that 48 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 695 cases (compared with 519 cases in December 2008). The Committee was informed that, since the meeting of the Committee of Experts, 21 of the Governments concerned had sent replies, which would be examined by the Committee of Experts at its next session.
- 208.** 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 2009 from the following countries: **Armenia, Burundi, Congo, Czech Republic, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Ethiopia, France, Guinea, Guinea-Bissau, Guyana, Ireland, Kyrgyzstan, Libyan Arab Jamahiriya, Luxembourg, Nigeria, Sao Tome and Principe, Seychelles, Sierra Leone, Solomon Islands, United Republic of Tanzania (Tanganyika), The former Yugoslav Republic of Macedonia, Uganda, the United Kingdom (British Virgin Islands, Falkland Islands (Malvinas) and St. Helena), Uzbekistan and Zambia.**
- 209.** The Committee noted the explanations provided by the Governments of the following countries concerning difficulties encountered in discharging their obligations: **Central African Republic, Ghana, Kenya, Sudan, Uganda** and the **United Kingdom (British Virgin Islands, Falkland Islands (Malvinas), St. Helena).**

## **Supply of reports on unratified Conventions and Recommendations**

- 210.** The Committee noted that 460 of the 826 article 19 reports requested on employment instruments, had been received at the time of the Committee of Experts' meeting, and a further 16 since, making 57.6 per cent in all.
- 211.** 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: **Cape Verde, Democratic Republic of the Congo, Guinea, Guinea-Bissau, Kyrgyzstan, Russian Federation, Saint Kitts and Nevis, Sao**

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

- 212.** 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**

- 213.** 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 60 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 71 such cases, relating to 49 countries; 2,740 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.
- 214.** This year, the Committee of Experts listed in paragraph 63 of its report, cases in which measures ensuring better application of ratified Conventions had been noted with interest. It noted 276 such instances in 114 countries.
- 215.** 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**

- 216.** The Government members of **Bahrain, Cambodia, Chile, Congo, Central African Republic, Ethiopia, Ghana, Ireland, Kenya, Libyan Arab Jamahiriya, Luxembourg, Mozambique, Nigeria, Pakistan, Sudan, Togo, Uganda, United Republic of Tanzania** (Tanganyika and Zanzibar), the **United Kingdom** (British Virgin Islands, Falkland Islands (Malvinas), St. Helena)), **Uzbekistan** and **Zambia**, had promised to fulfil their reporting obligations as soon as possible.

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

- 217.** 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.

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## Special cases

218. 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.
219. As regards the application by the **Central African Republic of the Minimum Age Convention, 1973 (No. 138)**, the Committee expressed deep regret at the absence of the Government before the Committee. The Committee noted the information contained in the report of the Committee of Experts relating to discrepancies between national legislation and practice and Convention No. 138, in respect of the absence of a determination of hazardous types of work to be prohibited to persons under 18 years and the keeping of registers by employers, the absence of a national policy designed to ensure the effective abolition of child labour, the large number of children under the minimum age who were self-employed or who worked in the informal economy, the low school enrolment rates and high school drop-out rates, and the weak enforcement of the Convention. The Committee took note with serious concern of the information presented to it concerning the high number of children between the ages of 5–14 who worked in various sectors of the economy, including in gold and diamond worksites, agriculture, cotton and coffee plantations, fishing, as street vendors, restaurants and washing cars. It further noted with grave concern the information regarding the trafficking of children and their forced recruitment in armed conflict, as well as the deplorable conditions experienced by child soldiers, both boys and girls. Noting the legislative discrepancies between the Labour Code of 2009 and Convention No. 138, the Committee firmly hoped that the necessary provisions would soon be adopted to determine the types of hazardous work to be prohibited for children under 18 years of age and to ensure the keeping of registers by employers indicating the names and ages or dates of birth, of persons employed by them or working for them under 18 years of age. The Committee also noted with serious concern that, in practice, a high number of children under the age of 14 increasingly worked in the informal economy, often in hazardous work. It urged the Government to intensify its efforts to improve the situation, notably by developing a national policy to ensure the effective abolition of child labour and an action programme to combat child labour. It further requested the Government to ensure the effective implementation of the new Labour Code. In this regard, it called on the Government to strengthen the capacity and reach of the labour inspectorate and to ensure that regular visits, including unannounced visits, were carried out so that penalties were imposed on persons found to be in breach of the Convention. The Committee noted with concern that low school enrolment and high drop-out rates continued to prevail for a large number of children. Underlining the importance of free, universal and compulsory formal education to preventing and combating child labour, the Committee strongly urged the Government to develop and enhance the education system, including by taking the necessary measures, within the framework of the Plan of Action on Education for All, to ensure access to free basic education for all children under the minimum age, with special attention to the situation of girls. The Committee requested the Government to provide comprehensive information in its report when it is next due, on the manner in which the Convention was applied in practice, including, in particular, statistical data on the number of children working in the informal economy, their ages, gender, sectors of activity, extracts from the reports of inspection services, and information on the number and nature of contraventions reported and penalties applied. Finally, the Committee asked the Government to avail of ILO technical assistance with a view to giving effect to the Convention in law and in practice as a matter of urgency.
220. As regards the application by **Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**, the Committee took note of the statement made by the Government representative and the detailed discussion that

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followed. The Committee also recalled that it had discussed this serious case on numerous occasions over the last two decades and that its conclusions had been listed in a special paragraph for continuous failure to implement the Convention since 1996. The Committee observed that the Committee of Experts had for many years now deplored the gravity of the allegations of arrest, detention, long prison sentences, torture and denial of workers' basic civil liberties, as well as the long-standing absence of a legislative framework for the establishment of free and independent trade union organizations. The Committee took note of the statement made by the Government representative in which he stressed that, in accordance with its Road Map, Myanmar was committed to pursuing its transformation to a democratic society. Freedom of association rights, as well as other basic civil liberties, were provided for in the new Constitution and would set out the framework within which new trade union legislation would be developed. The Government representative added that no one had been or was apprehended in Myanmar for implicit or explicit exercise of the rights derived from the Convention. As regards requests for recognition of a certain organization, the Government representative reiterated that the Ministry of Home Affairs had declared the FTUB to be a terrorist organization and it could therefore not be recognized as a legitimate workers' organization. Recalling the long-standing and fundamental divergences between the national legislation and practice, on the one hand, and the Convention, on the other, and observing that the Government itself had admitted that there could be no legal trade unions in the country as yet, the Committee once again urged the Government in the strongest terms to adopt immediately the necessary measures and mechanisms to ensure all workers and employers the rights provided for under the Convention. It once again urged the Government to repeal Orders Nos 2/88 and 6/88, as well as the Unlawful Association Act. The Committee once again highlighted the intrinsic link between freedom of association and democracy and observed, with regret, that the Government had yet to ensure the freedom of association ground rules necessary for any credible transition to democracy. The Committee therefore called upon the Government to take concrete steps prior to the upcoming election process to ensure the full and genuine participation of all sectors of society, regardless of their political views, in the review of the legislative framework and practice so as to bring them fully into line with the Convention. It emphasized that it was crucial that the Government take all necessary measures to ensure a climate wherein workers and employers could immediately exercise their freedom of association rights without fear, intimidation, threat or violence. The Committee continued to observe, with extreme concern, that many people remained in prison for exercising their rights to freedom of expression and association, despite the calls for their release. The Committee was bound once again to call upon the Government to ensure the immediate release of: Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win and Myo Min, as well as all other persons detained for exercising their basic civil liberties and freedom of association rights. The Committee once again recalled the recommendations made by the Committee of Experts and the Committee on Freedom of Association for the recognition of trade union organizations, including the FTUB, and urged the Government immediately to put an end to the practice of persecuting workers or other persons for having contact with workers' organizations, including those operating in exile. The Committee recalled its previous conclusion that the persistence of forced labour could not be disassociated from the prevailing situation of a complete absence of freedom of association and the systematic persecution of those who tried to organize. It reiterated its previous request to the Government to accept an extension of the ILO presence to cover the matters relating to Convention No. 87 and to establish a complaints mechanism for violation of trade union rights. The Committee urged the Government to transmit any relevant draft laws as well as a detailed report on the concrete measures taken to ensure significant improvements in the application of the Convention both in law and in practice to the Committee of Experts at its meeting this year. In light of the assurances provided by the Government, the Committee expected that it would be in a position to observe significant progress on all the above matters at its next session.



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**221.** As regards the application by **Swaziland of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**, the Committee took note of the statement made by the Government representative and the discussion that took place thereafter. The Committee observed that the comments of the Committee of Experts had referred, for many years, to the need to amend the provisions of the legislation containing restrictions to the right to organize of prison staff and domestic workers, the right of workers' organizations to elect their officers freely and to organize their activities and programmes of action, as well as the need to repeal the 1973 Decree/State of Emergency Proclamation and its implementing regulations and to amend the 1963 Public Order Act, which could be used to repress lawful and peaceful strikes. The Committee noted the information provided by the Government representative that an Industrial Relations (Amendment) Bill, which amended a number of provisions objected to by the Committee of Experts, was now before Parliament under consideration by the relevant committee. He indicated that the tripartite National Steering Committee on Social Dialogue for Swaziland, had been established and a schedule of monthly meetings had been agreed. The Government representative added that a Commission on Human Rights and Public Administration had been appointed in September 2009 to further strengthen the protection of human rights, including workers' rights. Finally, the Government representative repeated its previous statements made on the 1973 Decree/State of Emergency Proclamation and its implementing regulations and on the 1963 Public Order Act. The Committee recalled that this case had been discussed on numerous occasions over the past ten years and that last year it had decided to include its conclusions in a special paragraph of its report. The Committee noted with concern the continuing allegations concerning acts of brutality from the security forces against peaceful demonstrations, threats of dismissal against trade unionists, and the repeated arrests of union leaders, and firmly recalled the importance it attached to the full respect of basic civil liberties such as freedom of expression, of assembly and of the press and the intrinsic link between these freedoms, freedom of association and democracy. The Committee once again stressed that it was the responsibility of governments to ensure respect for the principle according to which the trade union movement can only develop in a climate free from violence, threat or fear and called upon the Government to ensure the release of any persons being detained for having exercised their civil liberties. The Committee expressed the firm hope that the Industrial Relations (Amendment) Bill would be adopted in the very near future and that its provisions would be in full conformity with the Convention. Recalling that it was the Government's responsibility to ensure an environment of accountability, the Committee urged the Government to take concrete and definitive measures without delay to effectively repeal the 1973 Decree/State of Emergency Proclamation, and to ensure the amendment of the 1963 Public Order Act in order to fully comply with the requirements of Convention No. 87 so that it could no longer be used to prevent legitimate and peaceful trade union activities. The Committee urged the Government to accept a high-level tripartite mission in order to assist the Government in bringing the legislation into full conformity with Convention No. 87, to inquire into the May Day 2010 incident and to facilitate the promotion of meaningful and effective social dialogue in the country. The Committee expressed the firm hope that the National Steering Committee on Social Dialogue for Swaziland would be immediately convened in order to achieve meaningful and expedited progress with respect to the issues raised. The Committee requested the Government to transmit detailed information in its next report due to the Committee of Experts, including on the progress made in the adoption of the Industrial Relations (Amendment) Bill and the concrete steps taken on the pending issues. The Committee expressed the firm hope that it would be in a position to note tangible progress next year.

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## Continued failure to implement

222. 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 **Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**.
223. The Government of the country to which reference was made in paragraph 220 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

224. The Committee wished to express its gratitude to the 46 governments which had collaborated by providing information on the situation in their countries and participating in the discussion of their individual cases.
225. The Committee regretted that, despite the invitations, the governments of the following States failed to take part in the discussions concerning their countries and the fulfilment of their constitutional obligations to report: **Antigua and Barbuda, Armenia, Bangladesh, Belize, Burundi, Cape Verde, Comoros, Côte d'Ivoire, Czech Republic, Dominica, Equatorial Guinea, France, Georgia, Guinea, Guinea-Bissau, Guyana, Haiti, Kiribati, Kyrgyzstan, Lao People's Democratic Republic, Papua New Guinea, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sao Tome and Principe, Seychelles, Sierra Leone, Solomon Islands, Somalia, Tajikistan, The former Yugoslav Republic of Macedonia, Timor-Leste, Turkmenistan, Bolivarian Republic of Venezuela and Vanuatu**. Likewise, the Governments of the following States did not take part in these discussions while informing the Committee of the reasons for their non-participation: the **Democratic Republic of the Congo and Djibouti**. The Committee decided to mention the cases of all these States in the appropriate paragraphs of its report and to inform them in accordance with the usual practice.
226. The Committee noted with regret that the governments of the States which were not represented at the Conference, namely: **Antigua and Barbuda, Armenia, Belize, Dominica, Equatorial Guinea, Kyrgyzstan, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Sierra Leone, Solomon Islands, Tajikistan and Turkmenistan**, 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.

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## F. Adoption of the report and closing remarks

227. The Committee's report was adopted as amended.
228. The Worker member of the Bolivarian Republic of Venezuela referenced the existence of the trade union confederation (UNETE), established in accordance with the provisions of Convention No. 87. Collective agreements had been concluded in a variety of sectors, and

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a new model of development was being established to maintain employment and the supply of essential products for the Venezuelan people. She called on the Committee to recommend the holding of a seminar organized by the ILO on the experiences and innovations that were currently being undertaken to promote decent work.

- 229.** The Government member of Algeria expressed reservations concerning the content of paragraph 13 of the draft General Report of the Committee concerning the refusal to recognize the right to strike and to establish trade unions in his country. The situation as described in this paragraph did not reflect the real situation of the trade union movement in Algeria. The right to organize was a constitutional right and numerous strikes had been called in several economic sectors. What were prohibited were demonstrations on the public thoroughfare. With regard to the allegations contained in the same paragraph concerning the so-called closing down of the “headquarters of the coalition of independent trade unions”, he emphasized that they had only consisted of premises on a short-term lease, as the various trade union organizations each had their own headquarters. Moreover, the trade union confederation in question had no legal status. In view of the situation that prevailed in the country, and despite the improvement in terms of security, it was necessary to maintain vigilance. In that respect, meetings of organizations of all types, including trade union organizations, had to be held at their officially declared and recognized headquarters so as to ensure all the necessary security.
- 230.** The Chairperson recalled that the examination of this case had been concluded and explained that the discussion on matters of substance could not be re-opened. In addition, paragraph 13 referred to by the Government of Algeria related to a statement made by the Worker members. Therefore, modifications could only be requested by members of the Committee with respect to their own intervention and not that of another speaker.
- 231.** The Government member of the Bolivarian Republic of Venezuela expressed surprise at the fact that his Government was listed in paragraph 225 of the General Report as one of the governments that had failed to take part in the discussions concerning constitutional obligations to report, while the Committee of Experts, in its last report, had expressed gratitude to the Government for having provided all the reports due within the required deadline.
- 232.** The representative of the Secretary-General indicated that she would clarify the matter and make any corrections that might be necessary to the Committee’s General Report.
- 233.** The Worker members indicated that this year had been rather difficult, a matter they would come back to in the plenary discussion. With regard to the methods of work of the Committee, there had been several changes this year. For example, for the first time, the General Survey had been included in the framework of the follow-up to the ILO Declaration on Social Justice for a Fair Globalization of 2008. The 2008 Declaration provided for an evaluation of its impact by the Conference, which was called upon to determine the need for further evaluations or other appropriate forms of action and this should be followed up on.
- 234.** The Worker members emphasized that they had been forced to give up on the examination by the Committee of several cases that were of a certain interest to them in view of the refusal of the Employer members, even though the work of the Committee was based on seeking a balanced consensus. They referred in particular to the case of the application of Convention No. 87 by Colombia, even though the agreement of the Employer members to the sending of a high-level tripartite mission to the country in September 2010 appeared to indicate that they recognized the absence of progress in that respect.

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- 235.** The Worker members appealed for the adoption of the Committee's report in the plenary session of the Conference. They thanked the members of the Workers' group, who had collaborated closely in the framework of the coordination groups to facilitate the work of the Committee. They also thanked the Employer Vice-Chairperson for the balance and feeling for consensus that he had shown, as well as the Chairperson and the Reporter of the Committee, the Representative of the Secretary-General, the Secretariat and the interpreters.
- 236.** The Employer members stated that they would also address certain issues in the plenary sitting of the Conference. They considered that overall the Committee had worked much better this year and, once the list of cases had been adopted, was able to work on the scheduled basis of five cases a day. They thanked the Office for having taken the initiative to propose new working methods to the Tripartite Working Group on the Working Methods of the Conference Committee on the Application of Standards, and the Chairperson for the excellent and constructive handling the discussions of this Committee. Furthermore, the Employer members expressed special thanks to the Worker Vice-Chairperson for his pragmatic approach and willingness to find solutions. They also thanked the Worker members for their spirit of cooperation, which was fundamental to the work of this Committee, as well as the government members of the Committee whose interventions had, overall, been of a high quality. Lastly, they thanked the members of the Employers' group for their support, as well as the Reporter of the Committee, the Representative of the Secretary-General, the secretariat and the interpreters for their dedication and hard work.
- 237.** The Government member of the Bolivarian Republic of Venezuela expressed concern, as in previous years, at the fact that the conclusions bore no relation to the discussions that had been held. Despite the fact that the Committee had noted the Government's statements, it had shown a clear imbalance towards a previously determined position, assuming without any support that certain assessments were correct, with the inclusion of elements that were unrelated to Convention No. 87. Human rights were fully respected in the country including personal freedom, freedom of information and speech. The right to private property was subordinate to social interest and public utility, with a view to meeting the needs of the greatest numbers. He indicated that his Government would provide information in its next report on the aspects that were strictly related to Convention No. 87.
- 238.** The Government member of Sudan indicated that when his Government had wished to make an amendment to the conclusions on the case of Sudan with respect to the Forced Labour Convention, 1930 (No. 29), the Office had indicated that it could not accept such an amendment, but that the matter could be brought to the attention of the Committee. He pointed out that in its conclusions the Committee had noted the request by the Government of Sudan for ILO technical assistance and had invited the Office to provide this technical assistance, including as regards an independent verification of the situation in the country. He observed that the phrase "including as regards an independent verification of the situation in the country" had been added and not agreed upon. It had not been mentioned by the Employer members, the Worker members or any Government member. The Worker members had only requested the Government to accept technical assistance. The conclusions on the case did therefore not reflect the proposals made. Moreover, the conclusions had been adopted in the absence of the representative of the Government of Sudan. He objected to the conclusions and requested the deletion of the phrase "including as regards an independent verification of the situation in the country". Technical assistance would only be accepted by the Government of Sudan if this phrase was removed. Finally, there should be an investigation into the manner of the formulation of these conclusions, which had not ensued from the Committee's discussion of the case.

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239. In reply to the statement made by the Government member of Sudan, the Worker members indicated that if no Government representative was present when the conclusions were read out on a case that concerned it during the last of the Committee's sittings devoted to the examination of cases, the Committee had no choice but to read the conclusions. The Worker members expressed their acknowledgement to the Government of Sudan for having accepted ILO technical assistance and indicated that they did not wish to insist formally on the issue of the independent verification of the situation in the country.
240. The Government member of Austria speaking on behalf of the Government members of the member states of the Industrialized Market Economy Countries (IMEC), expressed support for the Committee and the ILO's supervisory system, given the important role they play. While recognizing that ILO supervisory bodies were not infallible, IMEC supported the independence, objectivity and impartiality of the Committee of Experts. The Committee of Experts was a critical element in a supervisory system that was uniquely equipped to promote the application of international labour standards in all countries, regardless of their economic, social and cultural conditions. Possible inaccuracies in the Committee of Experts' report demonstrated the need for adequate resources to enable the International Labour Standards Department to cope with an increased workload. The Director-General was called upon to ensure that the essential work of this Department was among his top priorities.
241. Turning to the working methods of the Committee, the speaker underlined that the new procedure for strict time management had brought notable progress in the management of discussions. All participants of the discussion had respected the established time limits. A short meeting for the finalization of conclusions had still been necessary on 13 June 2010, and it was hoped that such a session could be avoided in following years. Improvements regarding the decorum of meetings were also necessary. The established good practice of the distribution of a preliminary list of cases, in combination with the new system for the automatic scheduling of individual cases, helped countries to prepare in a timely manner for their cases. It would be helpful if the final list of cases could always be distributed on the Friday of the first week of the Conference. Many of the difficulties of the Committee involved the composition of the list of individual cases, which was a process that required significant compromise. Agreement on the list of cases was essential for the functioning of the Committee, and governments should not be involved in this process. Worker members and Employer members were urged to bridge their differences in this regard before the next session of the International Labour Conference, so as to facilitate the productive work of the Committee. IMEC was confident that the Worker members and Employer members were committed to the working methods of the Committee and that the list of cases would continue to be based on respectful consultations resulting in a balanced list consistently following the criteria of selection agreed to by the social partners.
242. The speaker further emphasized the importance of freedom of expression in all ILO bodies, which required that opinions be expressed in an atmosphere of respect and dignity. It was regrettable that decorum had not been maintained in the final sitting of the Committee. It would have been unfortunate if the Committee had to consider more drastic measures in this regard. The Tripartite Working Group on the working methods of the Conference Committee on the Application of Standards should continue to meet with a view to assessing any changes in the Committee's working methods and examining the possibility of further improvements, particularly with regard to time management and decorum in the Committee's sessions.
243. The Chairperson said that the Committee had achieved its objectives. The new rules on speaking time had been respected during the discussion and had led speakers to express what was essential as briefly as possible. The spirit of collaboration and participation had prevailed in the Committee and had produced positive results. In conclusion, he gave

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thanks to the Worker and Employer Vice-Chairpersons, as well as the Reporter of the Committee, for the work accomplished. He also expressed the thanks of the Committee as a whole to the Representative of the Secretary-General, the secretariat and the interpreters.

Geneva, 15 June 2010

*(Signed)* Mr Sérgio Paixão Pardo  
Chairperson

Mr Christiaan Horn  
Reporter

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## Annex 1

INTERNATIONAL LABOUR CONFERENCE

C. App./D.1

99th Session, Geneva, June 2010

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### Committee on the Application of Standards

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## Work of the Committee

### I. Introduction

This document briefly sets out the manner in which the work of the Committee on the Application of Standards is carried out and has evolved over recent years. Since 2002, ongoing discussions and informal consultations have taken place concerning the working methods of the Committee. In particular, following the adoption of a new strategic orientation for the ILO standards system by the Governing Body in November 2005,<sup>1</sup> new consultations were held in March 2006 regarding numerous aspects of the standards system,<sup>2</sup> starting with the question of the publication of the list of individual cases discussed by the Committee. A Working Group on the Working Methods of the Committee was set up in June 2006 and has met eight times since then. The last meeting took place on 20 March 2010. On the basis of these consultations and of the recommendations of the Working Group, the Committee has made certain adjustments to its working methods.

As a result, since 2006, an early communication to Governments (at least two weeks before the opening of the Conference) of a preliminary list of individual cases has been instituted. Since June 2007, following the adoption of the list of individual cases, an informal briefing session has been hosted by the Employer and Worker Vice-Chairpersons for Governments to explain the criteria used for the selection of cases. Changes have been made to the organization of work so that the discussion of cases could begin on the Monday morning of the second week. Improvements have been introduced in the preparation and adoption of the conclusions relating to cases. In addition, the Conference Committee's report has been published separately to increase its visibility. In June 2008, new measures were adopted for the cases in which Governments were registered and present at the Conference, but chose not to be present before the Committee; in particular, the Committee may now discuss the substance of such cases. Specific provisions have also been adopted concerning the respect of parliamentary rules of decorum.<sup>3</sup>

<sup>1</sup> See documents GB.294/LILS/4 and GB.294/9.

<sup>2</sup> See para. 22 of document GB.294/LILS/4.

<sup>3</sup> See below, Part V, D, footnote 12 and Part V, F.

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Concerning time management, arrangements adopted by the Conference Committee in June 2007<sup>4</sup> proved to be insufficient in view of the difficulties experienced last year. Therefore in November 2009 and March 2010, the Working Group discussed important measures for further improvements. These proposals are contained in Part V, B – Supply of information and automatic registration – and E.

During these last two meetings, the Working Group also discussed the modalities for the discussion of the forthcoming General Survey on employment in the light of the parallel discussion of the recurrent report on employment during the June 2010 International Labour Conference. The outcome of the discussion of the Working Group is reflected in Part V, A and proposals concerning the working schedule for the discussion of the General Survey are included in the document C. App/D.0.

## **II. Terms of reference of the Committee**

Under its terms of reference as defined in article 7 of the Standing Orders of the Conference, the Committee is called upon to consider:

- (a) the measures taken by Members to give effect to the provisions of Conventions to which they are parties and the information furnished by Members concerning the results of inspections;
- (b) the information and reports concerning Conventions and Recommendations communicated by Members in accordance with article 19 of the Constitution;
- (c) the measures taken by Members in accordance with article 35 of the Constitution.

## **III. Working documents**

### **A. Report of the Committee of Experts**

The basic working document of the Committee is the report of the Committee of Experts on the Application of Conventions and Recommendations (Report III (Parts 1A and B)), printed in two volumes.

Volume A of this report contains, in Part One, the General Report of the Committee of Experts (pages 5–40), and in Part Two, the observations of the Committee concerning the application of ratified Conventions and the submission of Conventions and Recommendations to the competent authorities in member States (pages 41–802). At the beginning of the report there is a list of Conventions by subject (pages v–x), an index of comments by Convention (pages xi–xix), and by country (pages xxi–xxx).

<sup>4</sup> Governments were invited to register as early as possible and in any event by the Friday of the first week at 6 p.m. at the latest and the Office was authorized to slot countries that had not registered by the deadline. Basic guidelines to improving the management of time in the Committee were adopted.



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It will be recalled that, as regards ratified Conventions, the work of the Committee of Experts is based on reports sent by the governments.<sup>5</sup>

Certain observations carry footnotes asking the government concerned to report in detail, or earlier than the year in which a report on the Convention in question would normally be due, and/or to supply full particulars to the Conference.<sup>6</sup> The Conference may also, in accordance with its usual practice, wish to receive information from governments on other observations that the Committee of Experts has made.

In addition to the observations contained in its report, the Committee of Experts has, as in previous years, made direct requests which are communicated to governments by the Office on the Committee's behalf.<sup>7</sup> A list of these direct requests can be found at the end of Volume A (see Appendix VII, pages 845–857).

In accordance with the decision taken in 2007, the Committee of Experts may decide to highlight cases of good practices to enable governments to emulate these in advancing social progress and to serve as a model for other countries to assist them in the implementation of ratified Conventions.<sup>8</sup> At its last session, the Committee of Experts has provided further explanations on the criteria to be followed in identifying cases of good practices by clarifying the distinction between these cases and cases of progress. However, no specific cases of good practices have been identified by the Committee of Experts this year.

Furthermore, the Committee of Experts has also continued to highlight the cases for which, in its view, technical assistance would be particularly useful in helping member States to address gaps in law and in practice in the implementation of ratified Conventions, following up on the practice established by the Conference Committee in this regard since 2005.<sup>9</sup>

Volume B of the report contains the General Survey by the Committee of Experts, which this year concerns employment instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization, including the Employment Policy Convention, 1964 (No. 122), the Human Resources Development Convention, 1975 (No. 142), the Employment Service Convention, 1948 (No. 88), the Private Employment Agencies Convention, 1997 (No. 181), the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), and the Promotion of Cooperatives Recommendation, 2002 (No. 193).

## **B. Summaries of reports**

At its 267th Session (November 1996), the Governing Body approved new measures for rationalization and simplification of reporting. In this connection, it adopted changes along the following lines:

<sup>5</sup> See paras 23–26 of the Committee of Experts' General Report.

<sup>6</sup> See paras 51–53 of the Committee of Experts' General Report.

<sup>7</sup> See para. 45 of the Committee of Experts' General Report.

<sup>8</sup> See paras 64–65 of the Committee of Experts' General Report.

<sup>9</sup> See paras 66–67 of the Committee of Experts' General Report.

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- (i) information concerning reports supplied by governments on ratified Conventions (articles 22 and 35 of the Constitution), which now appears in simplified form in two tables annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A) (Appendices I and II, pages 805–820);
  - (ii) information concerning reports supplied by governments as concerns General Surveys under article 19 of the Constitution (this year concerning employment instruments) appears in simplified form in a table annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B) (Annex B, pages 195–198);
  - (iii) summary of information supplied by governments on the submission to the competent authorities of Conventions and Recommendations adopted by the Conference (article 19 of the Constitution), which now appears as Appendices IV, V and VI to the report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A) (pages 830–844).

Requests for consultation or copies of reports may be addressed to the secretariat of the Committee on the Application of Standards.

## **C. Other information**

In addition, as and when relevant information is received by the secretariat, documents are prepared and distributed containing the substance of:

- (i) supplementary reports and information which reached the International Labour Office between the meetings of the Committee of Experts and the Conference Committee;
- (ii) written information supplied by governments to the Conference Committee in reply to the observations made by the Committee of Experts.

## **IV. Composition of the Committee, right to participate in its work and voting procedure**

These questions are regulated by the Standing Orders concerning committees of the Conference, which may be found in section H of Part II of the Standing Orders of the International Labour Conference.

Each year, the Committee elects its Chairperson and Vice-Chairpersons as well as its Reporter.

## **V. Schedule of work**

### **A. General discussion**

1. *General Survey.* In accordance with its usual practice, the Committee will discuss the General Survey of the Committee of Experts, Report III (Part 1B). This year, for the first time, the subject of the General Survey has been aligned with the strategic objective that will be discussed in the context of the recurrent report under the follow-up to the 2008

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Social Justice Declaration. As a result, the General Survey concerns employment instruments and will be discussed by the Committee on the Application of Standards, while the recurrent report on employment will be discussed by the Committee on the Strategic Objective of Employment. In order to ensure the best interaction between the two discussions, including how the output of the Committee on the Application of Standards can best be taken into account by the Committee on the Strategic Objective of Employment, adjustments are proposed in the working schedule for the discussion of the General Survey – they are reflected in the document C. App/D.0 – and the Selection Committee is expected to take a decision to allow the official transmission of the possible outcome of the Committee on the Application of Standards to the Committee on the Strategic Objective of Employment as a contribution to its work. In addition, the Officers of the Committee on the Application of Standards could present information on the discussion to the Committee on the Strategic Objective of Employment.

2. *General questions.* In addition, the Committee will hold a brief general discussion which is primarily based on the General Report of the Committee of Experts, Report III (Part 1A) (pages 5–40).

## **B. Discussion of observations**

In Part Two of its report, the Committee of Experts makes observations on the manner in which various governments are fulfilling their obligations. The Conference Committee then discusses some of these observations with the governments concerned.

### ***Cases of serious failure by member States to respect their reporting and other standards-related obligations***<sup>10</sup>

Governments are invited to supply information on cases of serious failure to respect reporting or other standards-related obligations for stated periods. These cases are considered in a single sitting. Governments may remove themselves from this list by submitting the required information before the sitting concerned. Information received both before and after this sitting will be reflected in the report of the Conference Committee.

### ***Individual cases***

A draft list of observations (individual cases) regarding which Government delegates will be invited to supply information to the Committee is established by the Committee's Officers. The draft list of individual cases is then submitted to the Committee for approval. In the establishment of this list, a need for balance among different categories of Conventions as well as geographical balance is considered. In addition to the abovementioned considerations on balance, criteria for selection have traditionally included the following elements:

- the nature of the comments of the Committee of Experts, in particular the existence of a footnote (see Appendix I);

<sup>10</sup> Formerly “automatic” cases (see *Provisional Record* No. 22, International Labour Conference, 93rd Session, June 2005).

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- the quality and scope of responses provided by the government or the absence of a response on its part;
  - the seriousness and persistence of shortcomings in the application of the Convention;
  - the urgency of a specific situation;
  - comments received by employers' and workers' organizations;
  - the nature of a specific situation (if it raises a hitherto undiscussed question, or if the case presents an interesting approach to solving questions of application);
  - the discussions and conclusions of the Conference Committee of previous sessions and, in particular, the existence of a special paragraph;
  - the likelihood that discussing the case would have a tangible impact.

Moreover, there is also the possibility of examining one case of progress as was done in 2006, 2007 and 2008.

### ***Supply of information <sup>11</sup> and automatic registration***

1. *Oral replies* – The governments which are invited to provide information to the Conference Committee are requested to take note of a preliminary list and prepare for the eventuality that they may be called upon to appear before the Conference Committee. Cases included in the final list will be automatically registered and evenly distributed over the second week by the Office, on the basis of a rotating alphabetical system, following the French alphabetical order. This year, the registration will begin with countries with the letter “A”.

Cases will be divided in two groups: the first group of countries to be registered following the above alphabetical order will consist of those cases in which a double footnote was inserted by the Committee of Experts and are found in paragraph 52 of that Committee's report. The second group of countries will constitute all of the other cases on the final list and they will be registered by the Office also following the abovementioned alphabetical order. Representatives of governments *which are not members* of the Committee are kept informed of the agenda of the Committee and of the date on which they may be heard:

- (a) through the *Daily Bulletin*;
- (b) by means of letters sent to them individually by the Chairperson of the Committee.

2. *Written replies*. The written replies of governments – which are submitted to the Office prior and in addition to oral replies – are summarized and reproduced in the documents which are distributed to the Committee (see Part III, C, and Part V, E). These written replies should not exceed five pages.

<sup>11</sup> See also section E below on time management.

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## **Adoption of conclusions**

The conclusions regarding individual cases are proposed by the Chairperson of the Committee, who should have sufficient time for reflection to draft the conclusions and to hold consultations with the Reporter and the Vice-Chairpersons before proposing the conclusions to the Committee. The conclusions should take due account of the elements raised in the discussion and information provided by the government in writing. The conclusions should be adopted within a reasonable time limit after the discussion of the case and should be succinct.

### **C. Minutes of the sittings**

No minutes are published for the general discussion and the discussion of the General Survey. Minutes of sittings at which governments are invited to respond to the comments of the Committee of Experts will be produced by the secretariat in English, French and Spanish. It is the Committee's practice to accept corrections to the minutes of previous sittings prior to their approval by the Committee, which should take place 36 hours at the most after the minutes become available. In order to avoid delays in the preparation of the report of the Committee, no corrections may be accepted once the minutes have been approved.

The minutes are a summary of the discussions and are not intended to be a verbatim record. Speakers are therefore requested to restrict corrections to the elimination of errors in the report of their own statements, and not to ask to insert long additional passages. It would be helpful to the secretariat in ensuring the accuracy of the minutes if, wherever possible, delegates would hand in a written copy of their statements to the secretariat.

### **D. Special problems and cases**

For cases in which governments appear to encounter serious difficulties in discharging their obligations, the Committee decided at the 66th Session of the Conference (1980) to proceed in the following manner:

1. *Failure to supply reports and information.* The various forms of failure to supply information will be expressed in narrative form in separate paragraphs at the end of the appropriate sections of the report, and indications will be included concerning any explanations of difficulties provided by the governments concerned. The following criteria were retained by the Committee for deciding which cases were to be included:

- none of the reports on ratified Conventions have been supplied during the past two years or more;
- first reports on ratified Conventions have not been supplied for at least two years;
- none of the reports on unratified Conventions and Recommendations requested under article 19, paragraphs 5, 6 and 7, of the Constitution have been supplied during the past five years;

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- no indication is available on whether steps have been taken to submit the Conventions and Recommendations adopted during the last seven sessions of the Conference<sup>12</sup> to the competent authorities, in accordance with article 19 of the Constitution;
  - no information has been received as regards all or most of the observations and direct requests of the Committee of Experts to which a reply was requested for the period under consideration;
  - 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, paragraph 2, of the Constitution, copies of reports and information supplied to the Office under articles 19 and 22 have been communicated;
  - The government has failed, despite repeated invitations by the Conference Committee, to take part in the discussion concerning its country.<sup>13</sup>

2. *Application of ratified Conventions.* The report will contain a section entitled “Application of ratified Conventions”, in which the Committee draws the attention of the Conference to:

- cases of progress (see Appendix II), where governments have introduced changes in their law and practice in order to eliminate divergences previously discussed by the Committee;

<sup>12</sup> This year the sessions involved would be the 89th–95th Sessions (2001–07).

<sup>13</sup> In conformity with the decision taken by the Committee at the 73rd Session of the Conference (1987), as amended at the 97th Session of the Conference (2008), for the implementation of this criterion, the following measures will be applied:

- In accordance with the usual practice, after having established the list of cases regarding which Government delegates might be invited to supply information to the Committee, the Committee shall invite the governments of the countries concerned in writing, and the *Daily Bulletin* shall regularly mention these countries.
- Three days before the end of the discussion of individual cases, the Chairperson of the Committee shall request the Clerk of the Conference to announce every day the names of the countries whose representatives have not yet responded to the Committee’s invitation, urging them to do so as soon as possible.
- On the last day of the discussion of individual cases, the Committee shall deal with the cases in which governments have 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 is a significant obstacle to the attainment of the core objectives of the International Labour Organization. For this reason, the Committee may discuss the substance of the cases concerning governments which are registered and present at the Conference, but which have chosen not to be present before the Committee. The debate which ensues in such cases will be reflected in the appropriate part of the report, concerning both individual cases and participation in the work of the Committee. In the case of governments that are not present at the Conference, the Committee will not discuss the substance of the case, but will bring out in the report the importance of the questions raised. In both situations, a particular emphasis will be put on steps to be taken to resume the dialogue.

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- discussions it had regarding certain cases, which are mentioned in special paragraphs of the report;
  - continued failure over several years to eliminate serious deficiencies in the application of ratified Conventions which it had previously discussed.

## **E. Time management**

- Every effort will be made so that sessions start on time and the schedule is respected.
- Maximum speaking time for speakers is as follows:
  - fifteen minutes for the spokespersons of the Workers' and the Employers' groups, as well as the Government whose case is being discussed;
  - ten minutes for the Employer and Worker members, respectively, from the country concerned to be divided between the different speakers of each group;
  - ten minutes for Government groups;
  - five minutes for the other members;
  - concluding remarks are limited to ten minutes for spokespersons of the Workers' and the Employers' groups, as well as the Government whose case is being discussed.
- However, the Chairperson, in consultation with the other Officers of the Committee, could decide on reduced time limits where the situation of a case would warrant it, for instance, where there was a very long list of speakers.
- These time limits will be announced by the Chairperson at the beginning of each sitting and will be strictly enforced.
- During interventions, a screen located behind the Chairperson and visible by all speakers will indicate the remaining time available to speakers. Once the maximum speaking time has been reached the speaker will be interrupted.
- In view of the above limits on speaking time, governments whose case is to be discussed are invited to complete the information provided, where appropriate, by a written document, not longer than five pages, to be submitted to the Office at least two days before the discussion of the case (see also section B above).
- Before the discussion of each case, the Chairperson will communicate the list of speakers already registered.
- In the eventuality that discussion on individual cases is not completed by the final Friday, there is a possibility of a Saturday sitting at the discretion of the Officers.

## **F. Respect of rules of decorum and role of the Chairperson**

All delegates have an obligation to the Conference to abide by parliamentary language and by the generally accepted procedure. Interventions should be relevant to the subject under discussion and should avoid references to extraneous matters.

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It is the role and task of the Chairperson to maintain order and to ensure that the Committee does not deviate from its fundamental purpose to provide an international tripartite forum for full and frank debate within the boundaries of respect and decorum essential to making effective progress towards the aims and objectives of the International Labour Organization.



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## Appendix I

### Criteria for footnotes

At its November–December 2005 session, in the context of examining its working methods, and in response to the requests coming from members of the Committee for clarification concerning the use of footnotes, the Committee of Experts adopted the following criteria (paragraphs 36 and 37):

The Committee wishes to describe its approach to the identification of cases for which it inserts special notes by highlighting the basic criteria below. In so doing, the Committee makes three general comments. First, these criteria are indicative. In exercising its discretion in the application of these criteria, the Committee may also have regard to the specific circumstances of the country and the length of the reporting cycle. Second, these criteria are applicable to cases in which an earlier report is requested, often referred to as a “single footnote”, as well as to cases in which the government is requested to provide detailed information to the Conference, often referred to as “double footnote”. The difference between these two categories is one of degree. The third comment is that a serious case otherwise justifying a special note to provide full particulars to the Conference (double footnote) might only be given a special note to provide an early report (single footnote) in cases where there has been a recent discussion of that case in the Conference Committee on the Application of Standards.

The criteria to which the Committee will have regard are the existence of one or more of the following matters:

- the seriousness of the problem; in this respect, the Committee emphasizes that an important consideration is the necessity to view the problem in the context of a particular Convention and to take into account matters involving fundamental rights, workers’ health, safety and well-being as well as any adverse impact, including at the international level, on workers and other categories of protected persons;
- the persistence of the problem;
- the urgency of the situation; the evaluation of such urgency is necessarily case-specific, according to standard human rights criteria, such as life-threatening situations or problems where irreversible harm is foreseeable; and
- the quality and scope of the government’s response in its reports or the absence of response to the issues raised by the Committee, including cases of clear and repeated refusal on the part of a State to comply with its obligations.

At its 76th Session, the Committee decided that the identification of cases in respect of which a special note (double footnote) is to be attributed will be a two-stage process: the expert initially responsible for a particular group of Conventions may recommend to the Committee the insertion of special notes; in light of all the recommendations made, the Committee will take a final, collegial decision on all the special notes to be inserted, once it has reviewed the application of all the Conventions.

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## Appendix II

### Criteria for identifying cases of progress

At its November–December 2005 session, the Committee of Experts defined criteria for identifying these cases in the following manner (paragraphs 42, 43 and 46):

... The Committee has developed a general approach concerning the identification of cases of progress. In describing the approach below, the Committee wishes to emphasize that an expression of progress can refer to many kinds of measures. In the final instance, the Committee will exercise its discretion in noting progress having regard in particular to the nature of the Convention as well as to the specific circumstances of the country.

Since first identifying cases of satisfaction in its report in 1964,<sup>1</sup> the Committee has continued to follow the same general criteria. The Committee expresses **satisfaction** in cases in which, following comments it has made on a specific issue, governments have taken measures through either the adoption of an amendment to the legislation or a significant change in the national policy or practice thus achieving fuller compliance with their obligations under the respective Conventions. The reason for identifying cases of satisfaction is twofold: to place on record the Committee's appreciation of the positive action taken by governments in response to its comments, and to provide an example to other governments and social partners which have to address similar issues. In expressing its satisfaction, the Committee indicates to governments and the social partners that it considers the specific matter resolved. In so doing, the Committee must emphasize that an expression of satisfaction is limited to the particular issue at hand and the nature of the measure taken by the government concerned. Therefore, in the same comment, the Committee may express satisfaction on a particular issue, while raising other important issues which in its view have not been satisfactorily addressed. Further, if the satisfaction relates to the adoption of legislation, the Committee may also consider appropriate follow-up on its practical application.

...

Within cases of progress, the distinction between cases of satisfaction and cases of interest was formalized in 1979.<sup>2</sup> In general, cases of **interest** cover measures that are sufficiently advanced to justify the expectation that further progress would be achieved in the future and regarding which the Committee would want to continue its dialogue with the government and the social partners. This may include: draft legislation before parliament, or other proposed legislative changes not yet forwarded or available to the Committee; consultations within the government and with the social partners; new policies; the development and implementation of activities within the framework of a technical cooperation project or following technical assistance or advice from the Office. Judicial decisions, according to the level of the court, the subject matter and the force of such decisions in a particular legal system would normally be considered as cases of interest unless there was a compelling reason to note a particular judicial decision as a case of satisfaction. The Committee may also note as cases of interest progress made by a State, province or territory in the framework of a federal system. The Committee's practice has developed to a certain extent, so that cases in which it expresses interest may now also encompass a variety of new or innovative measures which have not necessarily been requested by the Committee. The paramount consideration is that the measures contribute to the overall achievement of the objectives of a particular Convention.

<sup>1</sup> See para. 16 of the report of the Committee of Experts submitted to the 48th Session (1964) of the International Labour Conference.

<sup>2</sup> See para. 122 of the report of the Committee of Experts submitted to the 65th Session (1979) of the International Labour Conference.

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## **Annex 2**

INTERNATIONAL LABOUR CONFERENCE  
99th Session, Geneva, June 2010

C. App./D.4/Add.1(Rev.)

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### **Committee on the Application of Standards**

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#### **Final list**

#### **Cases regarding which governments are invited to supply information to the Committee**

The list of the individual cases on the application of ratified Conventions  
appears in the present addendum to document D.4.

The text of the corresponding observations concerning these cases  
can be found in document C. App./D.4/Add.2.

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## B

### **Index of observations regarding which governments are invited to supply information to the committee**

Report of the Committee of Experts  
(Report III (PART 1A), ILC, 99th Session, 2010)

<b>Country</b>	<b>Convention number</b> (The page numbers in parentheses refer to the English version of the report of the Committee of Experts)
Belarus	87 (page 69)
Burundi	182 (page 287)
Cambodia	87 (page 87)
Canada	87 (page 90)
Central African Republic	138 (page 289)
Costa Rica	98 (page 111)
Czech Republic	111 (page 412)
Egypt	87 (page 132)
Georgia	98 (page 145)
Guatemala	87 (page 149)
India	100 (page 422)
Islamic Republic of Iran	111 (page 426)
Mauritania	29 (page 248)
Mexico	155 (page 672)
Morocco	182 (page 327)
Myanmar	29 (page 252) – Special sitting 87 (page 175)
Peru	169 (page 781)
Russian Federation	111 (page 450)
Sudan	29 (page 267)
Swaziland	87 (page 199)
Thailand	122 (page 582)
Turkey	87 (page 204)
Ukraine	95 (page 622)
Uzbekistan	182 (page 388)
Bolivarian Republic of Venezuela	87 (page 210)

**99th Session of the International Labour Conference, June 2010**  
**Committee on the Application of Standards – Working schedule for the examination of Individual Cases**

<b>Monday</b> <b>7 June morning</b>	<b>Tuesday</b> <b>8 June morning</b>	<b>Wednesday</b> <b>9 June morning</b>	<b>Thursday</b> <b>10 June morning</b>	<b>Friday</b> <b>11 June morning</b>
<b><u>Cambodia:</u></b> Convention No. 87	<b><u>Czech Republic:</u></b> Convention No. 111	<b><u>Costa Rica:</u></b> Convention No. 98	<b><u>Islamic Republic of Iran:</u></b> Convention No. 111	<b><u>Sudan:</u></b> Convention No. 29
<b><u>Central African Republic:</u></b> Convention No. 138	<b><u>Ukraine:</u></b> Convention No. 95	<b><u>Egypt:</u></b> Convention No. 87	<b><u>Mauritania:</u></b> Convention No. 29	<b><u>Swaziland:</u></b> Convention No. 87
<b><u>Morocco:</u></b> Convention No. 182	<b><u>Belarus:</u></b> Convention No. 87	<b><u>Georgia:</u></b> Convention No. 98	<b><u>Mexico:</u></b> Convention No. 155	<b><u>Thailand:</u></b> Convention No. 122
<b>Monday</b> <b>7 June afternoon</b>	<b>Tuesday</b> <b>8 June afternoon</b>	<b>Wednesday</b> <b>9 June afternoon</b>	<b>Thursday</b> <b>10 June afternoon</b>	<b>Friday</b> <b>11 June afternoon</b>
<b><u>Uzbekistan:</u></b> Convention No. 182	<b><u>Burundi:</u></b> Convention No. 182	<b><u>Guatemala:</u></b> Convention No. 87	<b><u>Myanmar:</u></b> Convention No. 87	<b><u>Turkey:</u></b> Convention No. 87
<b><u>Russian Federation:</u></b> Convention No. 111	<b><u>Canada:</u></b> Convention No. 87	<b><u>India:</u></b> Convention No. 100	<b><u>Peru:</u></b> Convention No. 169	<b><u>Bolivarian Republic of Venezuela:</u></b> Convention No. 87



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INTERNATIONAL LABOUR CONFERENCE

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99th Session, Geneva, June 2010

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

**Individual cases**





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

### Mauritania

(*Ratification: 1961*)

*Articles 1, paragraph 1, and 2, paragraph 1, of the Convention. Slavery and slave-like practices.* In its previous comments, the Committee noted that the fact-finding mission which visited Mauritania in 2006, at the request of the Committee on the Application of Standards of the International Labour Conference, had noted a number of positive measures which illustrated the Government's commitment to combat slavery and its vestiges. It observed that the Government had undertaken to take into account the recommendations made by the fact-finding mission in the formulation of the national strategy to combat slave-like practices. In this respect, the Committee noted the adoption, on 9 August 2007, of Act No. 2007/48 criminalizing and penalizing slave-like practices. It requested the Government to take the necessary measures to ensure the effective application of the Act and the implementation of the national strategy to combat slave-like practices.

*Effective application of the legislation.* The Committee recalls that Act No. 2007/48 defines, criminalizes and penalizes slave-like practices and makes a distinction between the crime of slavery and offences of slavery. Such offences include "any person who appropriates the goods, products and earnings resulting from the labour of any person claimed to be a slave or who forcibly takes that person's monies who shall be punished by a sentence of imprisonment of from six months to two years and a fine of from 50,000 to 200,000 ouguiyas" (section 6). Offences of slavery also include prejudicing the physical integrity of a person claimed to be a slave and denying a child claimed to be a slave access to education (sections 5 and 7). Furthermore, the *Walis*, *Hakems*, local chiefs and officers of the criminal investigation police who do not follow up cases of slave-like practices that are brought to their knowledge shall be liable to a sentence of imprisonment and a fine (section 12). Finally, human rights associations are empowered to denounce violations of the Act and to assist victims, with the latter benefiting from free judicial proceedings (section 15).

The Committee considered that the adoption of the Act constituted an important first step in combating slavery and that the challenge would henceforth lie in the effective application of the legislation so that victims can assert their rights effectively and those responsible for the persistence of slavery are convicted and punished. It requested the Government to take steps to publicize the new Act among the forces of order and the judicial authorities, as well as the population at large, and to ensure that investigations are conducted rapidly and are effective and impartial when cases are brought to the knowledge of the authorities.

With regard to the first point, the Government indicates in its report that the Act criminalizing slavery and penalizing slave-like practices has been the subject of intense awareness-raising activity and that every measure has been taken to ensure that publicity is given to the provisions of the Act with a view to promoting an understanding of the criminal nature of slavery. The Committee notes this national awareness-raising campaign on the contents of the Act, which was carried out in February 2008. It notes that it was undertaken in many regions of the country. Missions to supervise the campaign at the regional level organized meetings and assemblies during which the provisions of the Act were explained to the population. These missions were generally composed of representatives of the Government, the local authorities, the religious authorities, the National Human Rights Commission and NGOs active in this field. The Committee observes that this campaign, which was carried out immediately following the entry into force of the Act, certainly provided an important signal to civil society as it benefited from the presence of members of the Government and of various authorities who were able to proclaim their will to combat slavery. ***The Committee hopes that the Government will take all the appropriate measures to continue carrying out awareness-raising activities on the Act and on the problem of slavery in general, targeting more particularly the most vulnerable groups and those who are in the first line of contact with victims.***

The Committee stresses the particular importance of following up and further enhancing the process of awareness raising since, according to the information available, it would not appear that victims are able to assert their rights effectively. The Committee notes that the Government has not provided any information on the complaints lodged by victims or the NGOs representing them, the investigations carried out or the commencement of judicial proceedings. The Committee is also ***concerned*** about the absence of information on the measures adopted by the Government to encourage and assist victims in their action. It had already expressed concern in the past about the fact that victims encountered difficulties in being heard and in asserting their rights, both with regard to the authorities responsible for the forces of order and the judicial authorities. In this respect, it considered that sections 12 and 15 of the Act (assistance to victims, the prosecution of authorities which do not follow up cases of slave-like practices that are brought to their knowledge) could contribute to removing the obstacles preventing access to justice.

The Committee recalls that, under the terms of *Article 25* of the Convention, States which ratify the Convention are under the obligation to ensure that the penalties imposed by law for the exaction of forced labour are really adequate and strictly enforced. It considers that the absence of court action by victims may reveal ignorance of the recourse procedures available, the fear of social reprobation or reprisals, or a lack of will by the authorities responsible for taking legal action. ***The Committee requests the Government to take the appropriate measures to ensure that victims are effectively in a position to turn to the police and the judicial authorities with a view to asserting their rights and that investigations are conducted in a rapid, effective and impartial manner. The Committee requests the Government to provide information in its next report on the number of cases of slavery reported to the authorities, the number of cases in which an investigation has been conducted and the number of cases which have resulted in judicial action. Please indicate whether prosecutions have been initiated as a result of action by the victim or the Office of the Attorney-General and provide copies of any judgements handed down.***

The Committee notes that a technical assistance mission visited Mauritania in February 2008, in the course of which the follow-up to the recommendations of the fact-finding mission was discussed. The Committee notes that the mission was informed that the National Human Rights Commission (CNDH) which has as its mandate to examine situations of the violation of human rights that are reported or brought to its knowledge and to take all appropriate action, has received allegations of slavery. In such cases, the CNDH sends one of its members to the scene and, following investigation, sends a report with recommendations to the President of the Republic. ***The Committee requests the Government to provide information on the cases referred to the CNDH, the recommendations made and the action taken as a result of these recommendations.***

*National strategy to combat the vestiges of slavery.* Recalling that in 2006 the Council of Ministers adopted the principle of formulating a national

strategy to combat the vestiges of slavery and that an inter-ministerial committee was established for that purpose, the Committee previously requested the Government to indicate whether such strategy had effectively been adopted and to provide detailed information on the measures taken in this context.

In its report, the Government indicates that the national strategy to combat slave-like practices has not been adopted. However, the Commissariat for Human Rights, Humanitarian Action and Relations with Civil Society has established a national plan to combat the vestiges of slavery, with a budget of 1 billion ouguiyas, covering the fields of education, health and income-generating activities in the area known as “the triangle of poverty”. The Government adds that it has still not reached agreement with the United Nations Development Programme (UNDP) and the European Union (EU) concerning the terms of reference for the study on slavery that these institutions were proposing to finance.

The Committee notes the budgetary allocation for the national plan to combat the vestiges of slavery and observes that the plan, by focusing on education and income-generating activities, is designed to act on poverty in the region identified by the Government as being the “geographical zone concerned”. The Committee nevertheless observes that the Government still does not have at its disposal reliable data enabling it to evaluate the extent of the phenomenon of slavery and to identify its characteristics (social, geographical, etc.). Consequently, certain victims or populations at risk could be excluded from the measures envisaged in the context of the national plan. ***The Committee requests the Government to provide a copy of the national plan to combat slavery and to supply further information on the practical action adopted in the context of the plan. The Committee also draws the Government’s attention to the importance of a global strategy to combat slavery. By addressing poverty, the national plan covers one of the aspects of the action required to combat slavery, although it should also encompass other measures, such as those outlined above, namely raising the awareness of society, the police and the judicial authorities, and measures to combat the impunity of those responsible for these practices. In this context, the Committee requests the Government to indicate the measures adopted or envisaged with a view to the adoption of a global strategy to combat slavery and to indicate whether it intends, to that effect, to carry out a quantitative and qualitative study of the issue of slavery in Mauritania.***

The Committee also considers that, once they have been identified, it is important to envisage measures to support and reintegrate victims. It is necessary to provide material and financial support to victims so that they can lodge complaints, on the one hand, and to avoid them reverting to a situation of vulnerability in which their labour would once again be exploited. The objective is for the victims to be in a position to reconstruct their lives outside the household of their masters. ***The Committee requests the Government to indicate whether the national plan of action envisages the creation of structures intended to facilitate the social and economic reintegration of victims. The Committee asks the Government to indicate whether victims have access to compensation procedures for the personal and material damages suffered.***

## Myanmar

(Ratification: 1955)

### Historical background

1. In its previous comments the Committee has discussed in detail the history of this extremely serious case, which has involved gross, methodical and pervasive breaches of the Convention enduring for many years, and which is also manifested by the long-standing failure of the Government to implement the recommendations of the Commission of Inquiry, appointed by the Governing Body in March 1997 under article 26 of the Constitution.

2. The Committee recalls that the Commission of Inquiry concluded that the obligation under the Convention to suppress the use of forced or compulsory labour was being violated in Myanmar in national law as well as in actual practice in a widespread and systematic manner. In its recommendations (paragraph 539(a) of the Commission’s report of 2 July 1998), the Commission urged the Government to take the necessary steps to ensure:

- that the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Convention;
- that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military, an outcome which required concrete action to be taken immediately for each and every of the many fields of forced labour and to be accomplished through public acts of the Executive, promulgated and made known to all levels of the military and to the whole population; and
- 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, which required thorough investigation, prosecution and adequate punishment of those found guilty.

### Developments since the Committee’s previous observation

3. There have been numerous discussions and conclusions reached by ILO bodies, as well as further documentation received by the ILO, which have been considered by the Committee. These include the following:

- the report of the ILO Liaison Officer (ILC, 98th Session, *Provisional Record* No. 16, Part Three, Doc. D.5.C) submitted to the Conference Committee on the Application of Standards during the 98th Session of the International Labour Conference in June 2009, as well as the discussions and conclusions of that Committee (ILC, 98th Session, *Provisional Record* No. 16, Part Three, A and Doc. D.5.B);
- the documents submitted to the Governing Body at its 304th and 306th Sessions (March and November 2009), as well as the discussions and conclusions of the Governing Body during those sessions;
- the communication by the International Trade Union Confederation (ITUC) received in September 2009 which includes an appendix of 74 documents amounting to more than 1,000 pages, a copy of which was transmitted to the Government for comments on the matters raised therein;

- the Agreement of 26 February 2009 to extend the trial period of the Supplementary Understanding of 26 February 2007; and
- the reports of the Government of Myanmar received on 10 and 24 March, 1 and 4 June, 27 August, 6 and 21 October 2009.

4. *The Supplementary Understanding of 26 February 2007 – extension of the complaints mechanism.* The Committee notes that the trial period of the complaints mechanism under the Supplementary Understanding (SU) of 26 February 2007 between the Government and the ILO was extended on 26 February 2009 for one year, until 25 February 2010 (ILC, 98th Session, *Provisional Record* No. 16, Part Three, Doc. D.5.F., Appendix II). The SU supplements the Understanding of 19 March 2002 concerning the appointment of an ILO Liaison Officer in Myanmar and has as its object to “formally offer the possibility to victims of forced labour to channel their complaints of forced labour 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 Convention”. Information about the functioning of this important mechanism is discussed below in the sections on monitoring and enforcement.

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#### Assessment of the situation

9. Assessment of the information available on the situation of forced labour in Myanmar in 2009 and in relation to the implementation of the recommendations of the Commission of Inquiry and compliance with the Convention will be discussed in three parts, dealing with: (i) amendment of legislation; (ii) measures to stop the exaction of forced or compulsory labour in practice; and (iii) enforcement of penalties prescribed under the Penal Code and other relevant provisions of law.

#### I. Amendment of legislation

10. With regard to the Village Act and the Towns Act, referred to in paragraph 2, the Committee notes the statement of the Government in its report received on 27 August 2009 that these laws “have been put into dormant [sic] effectively and legally” by Order No. 1/99 (Order Directing Not to Exercise Powers Under Certain Provisions of the Town Act, 1907, and the Village Act, 1907) as supplemented by the Order of 27 October 2000. In its previous comments, the Committee has observed that the latter orders have yet to be given bona fide effect and do not dispense with the separate need to eliminate the legislative basis for the exaction of forced labour. **Noting the indication of the Government representative, during the discussion in the Governing Body at its 306th Session in November 2009, that these Acts were under review by the Ministry of Home Affairs, the Committee urges the Government to take the long overdue steps to amend or repeal them and thereby to bring its law into conformity with the Convention. The Committee hopes that in its next report the Government will provide information confirming that such steps have been taken.**

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## II. Measures to stop the exaction of forced or compulsory labour in practice

12. *Information available on current practice.* The Committee notes from the ITUC's communication referred to above, the well-documented allegations that forced and compulsory labour continued to be exacted from local villagers in 2009 by military and civil authorities and to have occurred in all but one of the country's states and divisions. The information in the appendices refers to specific dates, locations and circumstances of the occurrences, and to specific civil bodies, military units and individual officials responsible for them. According to these reports, forced labour has been requisitioned both by military personnel and civil authorities such as village heads, and has taken a wide variety of forms and involved a variety of tasks, including: construction of bridges and roads; forced portering for military personnel; prison labour, construction and maintenance of army camps; confiscation of food supplies and extortion of money; forced recruitment of child soldiers; forced sentry duty; and human minesweeping. The appendices also include translated copies of more than 100 Order documents and Order "letters" for the requisition of forced (and uncompensated) labour issued between December 2008 and June 2009 to villagers and village heads in Chin, Karen, Mon, and Rakhaing States and in Irrawaddy, Pegu, and Tenasserim Divisions. The tasks and services demanded by these call-up orders involved, inter alia, portering for the military; road repair and other infrastructure projects, and on paddy plantations; production and delivery of thatch shingles and bamboo poles; recruitment of children as soldiers; attendance at meetings; provision of money and alcohol; provision of information on individuals and households; registration of villagers in State-controlled NGOs; and restrictions on travel and use of muskets. **Noting the conspicuous absence of any comment from the Government on such Order letters forwarded by the ITUC in previous years, the Committee requests that in its next report the Government respond in detail to the entirety of the September 2009 communication of the ITUC, and in particular to the Order letters referred to above which constitute conclusive evidence of the continued systematic imposition of forced labour by military and civil authorities throughout the country in 2009.**

13. The Committee notes the observations of the ILO Liaison Officer that the SU mechanism continues to function, yet "the overall forced labour situation remains serious in the country". (GB.304/5/1(Rev.), paragraph 2). Victims of under-age military recruitment with substantiated complaints are regularly discharged from the military, yet the "continued and repeated illegal recruitment of children by military personnel" is also confirmed (GB.306/6, paragraphs 5 and 7). In terms of the experience with the SU complaints mechanism, the Liaison Officer refers to action taken by the authorities "to ensure that the practice of forced labour does not continue and further complaints are not received from that area" from which they originate (GB.306/6, paragraph 10). However, he also refers to the behaviour of local authorities, both civil and military, as well as judicial, who refuse to accept the validity of settlement agreements reached under the SU process, continue traditional forced labour practices, and harass those who attempt to exercise their rights under the law (GB.306/6, paragraph 15).

14. In its previous observations the Committee, recalling the Commission's recommendation that concrete action needed to be taken immediately for each and every of the many fields of forced labour, identified four types of "concrete action" the Government needed to take, without which an end to imposition of forced labour in practice could not be achieved: issuing specific and concrete instructions on forced labour and on its prohibitions to civilian and military authorities; giving wide publicity to the prohibitions on forced labour; making adequate budgetary provisions for replacing forced labour with free wage labour; and monitoring the practice of forced labour and efforts to enforce its prohibitions.

15. *Issuing specific and concrete instructions.* In its previous observations the Committee has emphasized that specific, effectively conveyed instructions to civil and military authorities, and to the population at large, are required which identify each and every field of forced labour, and which explain concretely for each field the means and manner by which the tasks or services involved are to be carried out without recourse to forced labour. The Committee has noted that, with one exception (namely, the "Additional Instruction" issued by the Department of General Administration of the Ministry of Home Affairs, No. 200/108/Oo, dated 2 June 2005 and noted by the Committee in its 2005 observation), the series of instructions and letters issued by Government authorities in 2000, 2004 and 2005, which were intended to secure compliance with the prohibition of forced labour under Order No. 1/99 and its supplementing Order of 27 October 2000, were not shown to have met these criteria.

16. The Committee notes that in its report received on 1 June 2009 the Government states only that "the various levels of administrative authority are well aware of the orders and instructions related to forced labour prohibition issued by the higher levels". The document submitted to the Governing Body in March 2009 (GB.304/5/1(Rev.)) includes an indication, without a date specified, that the General Administration Department had issued instructions through the state and divisional administrative structures reconfirming the prohibition of forced labour; and that this instruction had been transmitted to township and village tract levels (paragraph 6). The Government indicates in its report received on 27 August 2009 that all instructions and directives "contain the details [sic] necessary measures for the implementation of the Orders". The Committee also notes the observation of the ILO Liaison Officer that a number of forced labour complaints, particularly involving confiscation of farmers' croplands, result from the improper application of economic and agricultural policies not directly concerned with the practice of forced labour, yet the Government has not agreed to consider policy-application training designed to stop the application of such policies in a way that leads to the imposition of forced labour (Report to the Conference Committee, paragraph 14; GB.304/5/1(Rev.), paragraph 9). The Committee notes that once again the information provided by the Government is grossly deficient. It reiterates the need for concrete instructions to be issued to all levels of the military and to the whole population, which identify all fields and practices of forced labour and provide concrete guidance as to the means and manner by which tasks or services in each field are to be carried out, and by which any other relevant government policies are to be implemented, without recourse to forced labour or forced contributions from the population, and for steps taken to ensure that such instructions are fully publicized and effectively supervised. **The Committee requests the Government to provide in its next report information about the measures of this nature it is taking, including a translated and dated copy of the text of the instructions it states have been issued reconfirming the prohibition of forced labour and of the "necessary details" it states are contained in its directives and instructions.**

17. *Making adequate budgetary provisions for the replacement of forced and unpaid labour.* The Committee recalls that in its recommendations the Commission of Inquiry drew attention to the need to make adequate budgetary provisions to hire free wage labour for the public activities which are today based on forced and unpaid labour. In its report received on 27 August 2009, the Government has reiterated previous indications in stating that it "provides the budget allotment including labour costs for all Ministries to implement their respective projects". In previous observations the Committee, noting the information available on actual practice which shows that forced labour continues to be imposed in many parts of the country, particularly in those areas with a heavy military presence, has considered it obvious that any budgetary allocations that are specifically designated for the recruitment of free wage labour have not been adequate or adequately utilized. **The Committee once again urges the Government to use state budget allotments to provide civil and military authorities at all levels the financial means for utilizing voluntary paid labour for needed tasks and**

**services, and which are adequate enough to eliminate the material incentives for recourse to forced and unpaid labour, and that it report in detail on the steps taken to that end and on the effect of such measures in actual practice.**

18. *Giving publicity to and raising awareness about forced labour and its prohibitions.* The Committee notes from the Government's reports and the documents submitted to the Governing Body and to the Conference Committee, the indications that a number of activities to give publicity to and raise awareness about the forced labour situation, the legal prohibitions of forced labour and existing avenues of recourse for victims were carried out in 2009. These included, inter alia, a joint ILO–MOL awareness-raising seminar for civil and military personnel held in Karen State and Northern Shan State in April and May of 2009; a joint seminar held in Rhakine State with participants representing both the civil and military authorities; and a joint presentation to a refresher training programme for senior township judges. A booklet comprised of the texts of the SU and related documents and translated into the Myanmar language, was prepared (GB.304/5/1(Rev.), paragraph 4) and distributed to civilian and military authorities nationwide, to civil society groups, and the general public for awareness-raising purposes (Report to the Conference Committee, paragraph 18). Some 16,000 copies had been circulated as of November 2009; however, the Government had yet to agree to the production of a simply-worded brochure, translated into local languages, which outlined the law against forced labour and the procedures available to victims to exercise rights under the law (GB.306/6, paragraph 10). The Government, in its reports received on 6 and 21 October 2009, refers to a number of activities carried out in May and August of 2009 by the Committee for the Prevention of Military Recruitment of Under-Age Children, including law lectures for officer trainees at military camps; supervision of training on recruitment procedures at military training schools and basic training units; and informational visits to numerous regiments and recruitment centres. A rural infrastructure project in the cyclone-affected area of the Irawaddy Delta implemented by the Office of the ILO Liaison Officer with cooperation from the MOL, a second phase of which was carried out through September of 2009 but with a further extension declined by the Government, included awareness-raising seminars (GB.306/6, paragraph 22) and was reported to have played a valuable role in raising awareness in the cyclone-affected area as to the rights and responsibilities in employment, in particular those relating to the prohibition of forced labour (GB.304/5/1(Rev.), paragraph 23). The Committee notes the indication of the Liaison Officer in November 2009 of an increase in new complaints filed under the SU complaints mechanism during the five-and-a-half-month period from mid-May through 28 October 2009, which he considered to be due to heightened awareness generally of citizens' rights, the maturing and expansion of the facilitators' network, and an increased readiness to present complaints. The Liaison Officer further observed, however, that awareness levels, particularly in rural areas, remained low (GB.306/6, paragraph 4). The Government had also yet to issue an authoritative public statement at the highest level, as called for by ILO supervisory organs, to clearly reconfirm its policy prohibiting all forms of forced labour throughout the country and its intention to prosecute perpetrators, both civilian and military (Report to the Conference Committee, paragraph 24, GB.306/6, Conclusions).

19. The Committee considers the publicity and awareness-raising activities noted above to represent a step forward, and the recent increase in new complaints received under the SU and partly attributed to such activities to be a positive sign; however, these measures continue to be largely ad hoc, partial and piecemeal in nature. The Committee reiterates the need for the Government to commit itself more fully to publicity and awareness-raising activities, to conceive and undertake them in a more coherent and systematic way, and with a view to the tangible effect they have on the observance in practice by civil and military authorities and personnel at all levels, and in all areas of the country, of their legal obligation not to exact forced labour, and on the efforts of victims of forced labour throughout the country to seek legal recourse. ***The Committee hopes that in its next report the Government will supply information on measures of this nature being taken or contemplated, including information about their practical effect, observed or anticipated.***

20. *Monitoring the situation of forced labour including efforts to enforce its prohibitions.* The Committee notes the important role in assisting the Government with monitoring and investigating the situation of forced labour in Myanmar, including enforcement of rights and obligations arising out of the prohibitions of forced labour, which has been accorded to the ILO Liaison Officer, both under the broad mandate of the Understanding of 2002 and in the framework of the SU complaints mechanism. The Committee notes that several ad hoc investigation missions and inspection tours were carried out by the Liaison Officer and the Ministry of Labour in late 2008 and early 2009, and that presentations were made to NGOs and civil society groupings, in part, to seek their support in forced labour observation and reporting (GB.304/5/1(Rev.), paragraphs 5 and 6). A small sub-unit of the Office of the Liaison Officer has been established for dealing with under-age recruitment complaints and for monitoring and reporting on the child soldier situation nationwide (GB.306/6, paragraph 21). The Committee considers these to be positive steps. At the same time, however, the reach of the SU mechanism in a country the size of Myanmar is still very limited (GB.304/5/1(Rev.), paragraph 10); the ILO Liaison Officer is based in Yangon and is provided meagre facilities and a small staff (paragraph 12); he does not have the authority to initiate complaints on the basis of his own observation or information (GB.306/6, paragraph 6) or his own investigations of under-age military recruitment (GB.304/5/1(Rev.), paragraph 7); and there are continuing practical impediments to the physical ability of victims of forced labour or their families to complain, such that a network of complaints facilitators remains a necessity (Report to the Conference Committee, paragraph 12). The complaints mechanism of the SU is being undermined (GB.306/6, paragraph 4) by the continued imprisonment of labour activists with a record of support in the facilitation of complaints under the SU (GB.306/6, paragraphs 14 and 16), by serious cases of apparent harassment and judicial retaliation against complaining victims, facilitators and other persons associated with complaints filed with the ILO (GB.306/6, paragraphs 11–14; Report to Conference Committee, paragraph 10), and by the refusal of local civil and military authorities, as well as local courts, to respect the terms of formal complaint settlements, notably the agreements in several land-confiscation cases that resulted from joint ILO–MOL investigative missions carried out in Magwe Division in December 2008 and March 2009 (GB.306/6, paragraphs 13 and 15). In this regard notations in the Register of cases under the SU mechanism indicate a number of cases, including Cases Nos 149, 150, 151, 204, 205 and 206, in which complainants chose not to pursue their claims out of fear of reprisals (GB.306/6, Appendix IV). A formal proposal of the ILO Liaison Officer to the Working Group for joint action to address these issues with a view to achieving lasting solutions has not been accepted by the Government (GB.306/6, paragraph 15). ***Noting the obligation of the Government under the 2002 Understanding and the 2007 SU to take appropriate steps to enable the ILO Liaison Officer to effectively discharge the work and responsibilities arising therein, including extending to his Office the requisite facilities and support, the Committee strongly urges the Government to take immediate steps to address the serious problems noted above, and it requests information from the Government in its next report on the progress of those steps. More generally, the Committee urges the Government to take necessary measures to ensure that a climate exists for a monitoring and investigation process that is effective, national in its reach and scope, and fully respected by all elements and all levels of society. It requests that in its next report the Government supply information on the progress of measures so taken or contemplated.***

### III. Enforcement of penalties

21. The Committee recalls that section 374 of the Penal Code provides for the punishment, by a term of imprisonment of up to one year, of anyone who unlawfully compels any person to labour against his or her will, and that Order No. 1/99 and its supplementing Order of 27 October 2000, as well as the series of instructions and letters, issued by Government authorities in 2000, 2004 and 2005 with a view to securing the enforcement of those orders, provide for persons “responsible” for forced labour, including members of the armed forces, to be referred for prosecution under section 374 of the Penal Code or other applicable provisions of law. The Committee notes that none of the complaints under the SU mechanism assessed and forwarded by the ILO Liaison Officer to the Working Group for investigation and appropriate action resulted, in 2009, in a decision to prosecute perpetrators of forced labour. The notations in the Register of cases under the SU mechanism (as of 23 October 2009) indicate that in at least 14 of the closed cases, the Liaison Officer considered the penalties or punishment imposed or disciplinary actions taken to be inadequate, and that the Working Group has routinely rejected recommendations made for more serious sanctions to be applied (GB.306/6, Appendix IV). Recent cases involving complaints of under-age military recruitment have resulted in the discharge of the child victims but with only administrative sanctions, if any, imposed on the perpetrators; there have been no prosecutions under criminal law (GB.304/5/1, paragraph 7). In Case No. 127 an explicit recommendation by the Liaison Officer for criminal prosecution was rejected. The Committee notes the observation of the Liaison Officer that the need for the imposition of meaningful penalties on perpetrators “continues to be a concern, particularly in respect of cases involving military personnel” (GB.306/6, paragraph 7), and that in the most serious cases of under-age military recruitment the penalties remained inadequate (Report to the Conference Committee, paragraph 15). **The Committee urges the Government once again to take measures to ensure that the penalties imposed by law for the illegal exaction of forced or compulsory labour are adequate and strictly enforced, as required by Article 25 of the Convention, and it requests the Government to supply information in its next report on the progress of measures taken to that end. The Committee hopes that fulfilment of the Government’s commitments as a party to the SU will be better reflected in the processing of cases forwarded to the Working Group by the ILO Liaison Officer, in terms of greater weight being accorded to the preliminary assessments of the Liaison Officer and a greater number of investigations leading to prosecutions, convictions and the imposition of criminal penalties rather than to case closures, and it requests information on progress being made in that vein.**

#### Concluding comments

22. In summary, the Committee observes that the Government has yet to implement the recommendations of the Commission of Inquiry; to wit: it has failed to amend or repeal the Towns Act and the Village Act; it has taken no concrete actions shown to have brought about in any significant and lasting way an end to the exaction of forced labour in practice; and it has failed to ensure that penalties for the exaction of forced labour under the Penal Code or other relevant provisions of law have been strictly enforced against civil and military authorities and personnel who are responsible for it. While the Office of the ILO Liaison Officer, by virtue of the broad mandate set forth under the Understanding of 19 March 2002, and the procedures and mechanisms provided for under the SU, has been accorded a critical role in assisting the Government in its efforts to bring about the elimination of forced labour, the robust and fully fledged cooperation of the Government that is vital to the fulfilment of that role, including the cooperation needed in extending the requisite facilities and support and in engendering full respect for, and trust in, these special organs by the society at large, leaves much room for improvement. **The Committee once again urges the Government to give credence to its expressed commitment to eliminate the use of forced labour in Myanmar and take the long overdue steps that are required to implement the recommendations of the Commission of Inquiry and achieve compliance with the Convention in law and in practice.**

#### Historical background

1. In its previous comments the Committee has discussed in detail the history of this extremely serious case, which has involved gross, methodical and pervasive breaches of the Convention enduring for many years, and which is also manifested by the long-standing failure of the Government to implement the recommendations of the Commission of Inquiry, appointed by the Governing Body in March 1997 under article 26 of the Constitution.

2. The Committee recalls that the Commission of Inquiry concluded that the obligation under the Convention to suppress the use of forced or compulsory labour was being violated in Myanmar in national law as well as in actual practice in a widespread and systematic manner. In its recommendations (paragraph 539(a) of the Commission’s report of 2 July 1998), the Commission urged the Government to take the necessary steps to ensure:

- that the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Convention;
- that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military, an outcome which required concrete action to be taken immediately for each and every of the many fields of forced labour and to be accomplished through public acts of the Executive, promulgated and made known to all levels of the military and to the whole population; and
- 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, which required thorough investigation, prosecution and adequate punishment of those found guilty.

#### Developments since the Committee’s previous observation

3. There have been numerous discussions and conclusions reached by ILO bodies, as well as further documentation received by the ILO, which have been considered by the Committee. These include the following:

- the report of the ILO Liaison Officer (ILC, 98th Session, *Provisional Record* No. 16, Part Three, Doc. D.5.C) submitted to the Conference Committee on the Application of Standards during the 98th Session of the International Labour Conference in June 2009, as well as the discussions and conclusions of that Committee (ILC, 98th Session, *Provisional Record* No. 16, Part Three, A and Doc. D.5.B);
- the documents submitted to the Governing Body at its 304th and 306th Sessions (March and November 2009), as well as the discussions and conclusions of the Governing Body during those sessions;
- the communication by the International Trade Union Confederation (ITUC) received in September 2009 which includes an appendix of 74

documents amounting to more than 1,000 pages, a copy of which was transmitted to the Government for comments on the matters raised therein;

- the Agreement of 26 February 2009 to extend the trial period of the Supplementary Understanding of 26 February 2007; and
- the reports of the Government of Myanmar received on 10 and 24 March, 1 and 4 June, 27 August, 6 and 21 October 2009.

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### II. Measures to stop the exaction of forced or compulsory labour in practice

12. *Information available on current practice.* The Committee notes from the ITUC's communication referred to above, the well-documented allegations that forced and compulsory labour continued to be exacted from local villagers in 2009 by military and civil authorities and to have occurred in all but one of the country's states and divisions. The information in the appendices refers to specific dates, locations and circumstances of the occurrences, and to specific civil bodies, military units and individual officials responsible for them. According to these reports, forced labour has been requisitioned both by military personnel and civil authorities such as village heads, and has taken a wide variety of forms and involved a variety of tasks, including: construction of bridges and roads; forced portering for military personnel; prison labour, construction and maintenance of army camps; confiscation of food supplies and extortion of money; forced recruitment of child soldiers; forced sentry duty; and human minesweeping. The appendices also include translated copies of more than 100 Order documents and Order "letters" for the requisition of forced (and uncompensated) labour issued between December 2008 and June 2009 to villagers and village heads in Chin, Karen, Mon, and Rakhaing States and in Irawaddy, Pegu, and Tenasserim Divisions. The tasks and services demanded by these call-up orders involved, inter alia, portering for the military; road repair and other infrastructure projects, and on paddy plantations; production and delivery of thatch shingles and bamboo poles; recruitment of children as soldiers; attendance at meetings; provision of money and alcohol; provision of information on individuals and households; registration of villagers in State-controlled NGOs; and restrictions on travel and use of muskets. **Noting the conspicuous absence of any comment from the Government on such Order letters forwarded by the ITUC in previous years, the Committee requests that in its next report the Government respond in detail to the entirety of the September 2009 communication of the ITUC, and in particular to the Order letters referred to above which constitute conclusive evidence of the continued systematic imposition of forced labour by military and civil authorities throughout the country in 2009.**

13. The Committee notes the observations of the ILO Liaison Officer that the SU mechanism continues to function, yet "the overall forced labour situation remains serious in the country". (GB.304/5/1(Rev.), paragraph 2). Victims of under-age military recruitment with substantiated complaints are regularly discharged from the military, yet the "continued and repeated illegal recruitment of children by military personnel" is also confirmed (GB.306/6, paragraphs 5 and 7). In terms of the experience with the SU complaints mechanism, the Liaison Officer refers to action taken by the authorities "to ensure that the practice of forced labour does not continue and further complaints are not received from that area" from which they originate (GB.306/6, paragraph 10). However, he also refers to the behaviour of local authorities, both civil and military, as well as judicial, who refuse to accept the validity of settlement agreements reached under the SU process, continue traditional forced labour practices, and harass those who attempt to exercise their rights under the law (GB.306/6, paragraph 15).

14. In its previous observations the Committee, recalling the Commission's recommendation that concrete action needed to be taken immediately for each and every of the many fields of forced labour, identified four types of "concrete action" the Government needed to take, without which an end to imposition of forced labour in practice could not be achieved: issuing specific and concrete instructions on forced labour and on its prohibitions to civilian and military authorities; giving wide publicity to the prohibitions on forced labour; making adequate budgetary provisions for replacing forced labour with free wage labour; and monitoring the practice of forced labour and efforts to enforce its prohibitions.

15. *Issuing specific and concrete instructions.* In its previous observations the Committee has emphasized that specific, effectively conveyed instructions to civil and military authorities, and to the population at large, are required which identify each and every field of forced labour, and which explain concretely for each field the means and manner by which the tasks or services involved are to be carried out without recourse to forced labour. The Committee has noted that, with one exception (namely, the "Additional Instruction" issued by the Department of General Administration of the Ministry of Home Affairs, No. 200/108/Oo, dated 2 June 2005 and noted by the Committee in its 2005 observation), the series of instructions and letters issued by Government authorities in 2000, 2004 and 2005, which were intended to secure compliance with the prohibition of forced labour under Order No. 1/99 and its supplementing Order of 27 October 2000, were not shown to have met these criteria.

16. The Committee notes that in its report received on 1 June 2009 the Government states only that "the various levels of administrative authority are well aware of the orders and instructions related to forced labour prohibition issued by the higher levels". The document submitted to the Governing Body in March 2009 (GB.304/5/1(Rev.)) includes an indication, without a date specified, that the General Administration Department had issued instructions through the state and divisional administrative structures reconfirming the prohibition of forced labour; and that this instruction had been transmitted to township and village tract levels (paragraph 6). The Government indicates in its report received on 27 August 2009 that all instructions and directives "contain the details [sic] necessary measures for the implementation of the Orders". The Committee also notes the observation of the ILO Liaison Officer that a number of forced labour complaints, particularly involving confiscation of farmers' croplands, result from the improper application of economic and agricultural policies not directly concerned with the practice of forced labour, yet the Government has not agreed to consider policy-application training designed to stop the application of such policies in a way that leads to the imposition of forced labour (Report to the Conference Committee, paragraph 14; GB.304/5/1(Rev.), paragraph 9). The Committee notes that once again the information provided by the Government is grossly deficient. It reiterates the need for concrete instructions to be issued to all levels of the military and to the whole population, which identify all fields and practices of forced labour and provide concrete guidance as to the means and manner by which tasks or services in each field are to be carried out, and by which any other relevant government policies are to be implemented, without recourse to forced labour or forced contributions from the population, and for steps taken to ensure that such instructions are fully publicized and effectively supervised. **The Committee requests the Government to provide in its next report information about the measures of this nature it is taking, including a translated and dated copy of the text of the instructions it states have been issued reconfirming the prohibition of forced labour and of the "necessary details" it states are contained in its directives and instructions.**

17. *Making adequate budgetary provisions for the replacement of forced and unpaid labour.* The Committee recalls that in its recommendations the Commission of Inquiry drew attention to the need to make adequate budgetary provisions to hire free wage labour for the public activities which are today based on forced and unpaid labour. In its report received on 27 August 2009, the Government has reiterated previous indications in stating that it "provides the budget allotment including labour costs for all Ministries to implement their respective projects". In previous observations the Committee, noting the information available on actual practice which shows that forced labour continues to be imposed in many parts of the country, particularly in those areas with a heavy military presence, has considered it obvious that any budgetary allocations that are specifically designated for the recruitment



of free wage labour have not been adequate or adequately utilized. ***The Committee once again urges the Government to use state budget allotments to provide civil and military authorities at all levels the financial means for utilizing voluntary paid labour for needed tasks and services, and which are adequate enough to eliminate the material incentives for recourse to forced and unpaid labour, and that it report in detail on the steps taken to that end and on the effect of such measures in actual practice.***

18. *Giving publicity to and raising awareness about forced labour and its prohibitions.* The Committee notes from the Government's reports and the documents submitted to the Governing Body and to the Conference Committee, the indications that a number of activities to give publicity to and raise awareness about the forced labour situation, the legal prohibitions of forced labour and existing avenues of recourse for victims were carried out in 2009. These included, inter alia, a joint ILO–MOL awareness-raising seminar for civil and military personnel held in Karen State and Northern Shan State in April and May of 2009; a joint seminar held in Rhakine State with participants representing both the civil and military authorities; and a joint presentation to a refresher training programme for senior township judges. A booklet comprised of the texts of the SU and related documents and translated into the Myanmar language, was prepared (GB.304/5/1(Rev.), paragraph 4) and distributed to civilian and military authorities nationwide, to civil society groups, and the general public for awareness-raising purposes (Report to the Conference Committee, paragraph 18). Some 16,000 copies had been circulated as of November 2009; however, the Government had yet to agree to the production of a simply-worded brochure, translated into local languages, which outlined the law against forced labour and the procedures available to victims to exercise rights under the law (GB.306/6, paragraph 10). The Government, in its reports received on 6 and 21 October 2009, refers to a number of activities carried out in May and August of 2009 by the Committee for the Prevention of Military Recruitment of Under-Age Children, including law lectures for officer trainees at military camps; supervision of training on recruitment procedures at military training schools and basic training units; and informational visits to numerous regiments and recruitment centres. A rural infrastructure project in the cyclone-affected area of the Irrawaddy Delta implemented by the Office of the ILO Liaison Officer with cooperation from the MOL, a second phase of which was carried out through September of 2009 but with a further extension declined by the Government, included awareness-raising seminars (GB.306/6, paragraph 22) and was reported to have played a valuable role in raising awareness in the cyclone-affected area as to the rights and responsibilities in employment, in particular those relating to the prohibition of forced labour (GB.304/5/1(Rev.), paragraph 23). The Committee notes the indication of the Liaison Officer in November 2009 of an increase in new complaints filed under the SU complaints mechanism during the five-and-a-half-month period from mid-May through 28 October 2009, which he considered to be due to heightened awareness generally of citizens' rights, the maturing and expansion of the facilitators' network, and an increased readiness to present complaints. The Liaison Officer further observed, however, that awareness levels, particularly in rural areas, remained low (GB.306/6, paragraph 4). The Government had also yet to issue an authoritative public statement at the highest level, as called for by ILO supervisory organs, to clearly reconfirm its policy prohibiting all forms of forced labour throughout the country and its intention to prosecute perpetrators, both civilian and military (Report to the Conference Committee, paragraph 24, GB.306/6, Conclusions).

19. The Committee considers the publicity and awareness-raising activities noted above to represent a step forward, and the recent increase in new complaints received under the SU and partly attributed to such activities to be a positive sign; however, these measures continue to be largely ad hoc, partial and piecemeal in nature. The Committee reiterates the need for the Government to commit itself more fully to publicity and awareness-raising activities, to conceive and undertake them in a more coherent and systematic way, and with a view to the tangible effect they have on the observance in practice by civil and military authorities and personnel at all levels, and in all areas of the country, of their legal obligation not to exact forced labour, and on the efforts of victims of forced labour throughout the country to seek legal recourse. ***The Committee hopes that in its next report the Government will supply information on measures of this nature being taken or contemplated, including information about their practical effect, observed or anticipated.***

20. *Monitoring the situation of forced labour including efforts to enforce its prohibitions.* The Committee notes the important role in assisting the Government with monitoring and investigating the situation of forced labour in Myanmar, including enforcement of rights and obligations arising out of the prohibitions of forced labour, which has been accorded to the ILO Liaison Officer, both under the broad mandate of the Understanding of 2002 and in the framework of the SU complaints mechanism. The Committee notes that several ad hoc investigation missions and inspection tours were carried out by the Liaison Officer and the Ministry of Labour in late 2008 and early 2009, and that presentations were made to NGOs and civil society groupings, in part, to seek their support in forced labour observation and reporting (GB.304/5/1(Rev.), paragraphs 5 and 6). A small sub-unit of the Office of the Liaison Officer has been established for dealing with under-age recruitment complaints and for monitoring and reporting on the child soldier situation nationwide (GB.306/6, paragraph 21). The Committee considers these to be positive steps. At the same time, however, the reach of the SU mechanism in a country the size of Myanmar is still very limited (GB.304/5/1(Rev.), paragraph 10); the ILO Liaison Officer is based in Yangon and is provided meagre facilities and a small staff (paragraph 12); he does not have the authority to initiate complaints on the basis of his own observation or information (GB.306/6, paragraph 6) or his own investigations of under-age military recruitment (GB.304/5/1(Rev.), paragraph 7); and there are continuing practical impediments to the physical ability of victims of forced labour or their families to complain, such that a network of complaints facilitators remains a necessity (Report to the Conference Committee, paragraph 12). The complaints mechanism of the SU is being undermined (GB.306/6, paragraph 4) by the continued imprisonment of labour activists with a record of support in the facilitation of complaints under the SU (GB.306/6, paragraphs 14 and 16), by serious cases of apparent harassment and judicial retaliation against complaining victims, facilitators and other persons associated with complaints filed with the ILO (GB.306/6, paragraphs 11–14; Report to Conference Committee, paragraph 10), and by the refusal of local civil and military authorities, as well as local courts, to respect the terms of formal complaint settlements, notably the agreements in several land-confiscation cases that resulted from joint ILO–MOL investigative missions carried out in Magwe Division in December 2008 and March 2009 (GB.306/6, paragraphs 13 and 15). In this regard notations in the Register of cases under the SU mechanism indicate a number of cases, including Cases Nos 149, 150, 151, 204, 205 and 206, in which complainants chose not to pursue their claims out of fear of reprisals (GB.306/6, Appendix IV). A formal proposal of the ILO Liaison Officer to the Working Group for joint action to address these issues with a view to achieving lasting solutions has not been accepted by the Government (GB.306/6, paragraph 15). ***Noting the obligation of the Government under the 2002 Understanding and the 2007 SU to take appropriate steps to enable the ILO Liaison Officer to effectively discharge the work and responsibilities arising therein, including extending to his Office the requisite facilities and support, the Committee strongly urges the Government to take immediate steps to address the serious problems noted above, and it requests information from the Government in its next report on the progress of those steps. More generally, the Committee urges the Government to take necessary measures to ensure that a climate exists for a monitoring and investigation process that is effective, national in its reach and scope, and fully respected by all elements and all levels of society. It requests that in its next report the Government supply information on the progress of measures so taken or contemplated.***

### III. Enforcement of penalties

21. The Committee recalls that section 374 of the Penal Code provides for the punishment, by a term of imprisonment of up to one year, of anyone who unlawfully compels any person to labour against his or her will, and that Order No. 1/99 and its supplementing Order of 27 October 2000, as well as the series of instructions and letters, issued by Government authorities in 2000, 2004 and 2005 with a view to securing the enforcement of those orders, provide for persons "responsible" for forced labour, including members of the armed forces, to be referred for prosecution under section 374 of the Penal Code or other applicable provisions of law. The Committee notes that none of the complaints under the SU mechanism assessed and forwarded by the ILO Liaison Officer to the Working Group for investigation and appropriate action resulted, in 2009, in a decision to prosecute perpetrators of forced labour. The notations in the Register of cases under the SU mechanism (as of 23 October 2009) indicate that in at least 14 of the closed cases, the Liaison Officer considered the penalties or punishment imposed or disciplinary actions taken to be inadequate, and that the Working Group has routinely rejected recommendations made for more serious sanctions to be applied (GB.306/6, Appendix IV). Recent cases involving complaints of under-age military recruitment have resulted in the discharge of the child victims but with only administrative sanctions, if any, imposed on the perpetrators; there have been no prosecutions under criminal law (GB.304/5/1, paragraph 7). In Case No. 127 an explicit recommendation by the Liaison Officer for criminal prosecution was rejected. The Committee notes the observation of the Liaison Officer that the need for the imposition of meaningful penalties on perpetrators "continues to be a concern, particularly in respect of cases involving military personnel" (GB.306/6, paragraph 7), and that in the most serious cases of under-age military recruitment the penalties remained inadequate (Report to the Conference Committee, paragraph 15). ***The Committee urges the Government once again to take measures to ensure that the penalties imposed by law for the illegal exaction of forced or compulsory labour are adequate and strictly enforced, as required by Article 25 of the Convention, and it requests the Government to supply information in its next report on the progress of measures taken to that end. The Committee hopes that fulfilment of the Government's commitments as a party to the SU will be better reflected in the processing of cases forwarded to the Working Group by the ILO Liaison Officer, in terms of greater weight being accorded to the preliminary assessments of the Liaison Officer and a greater number of investigations leading to prosecutions, convictions and the imposition of criminal penalties rather than to case closures, and it requests information on progress being made in that vein.***

#### Concluding comments

22. In summary, the Committee observes that the Government has yet to implement the recommendations of the Commission of Inquiry; to wit: it has failed to amend or repeal the Towns Act and the Village Act; it has taken no concrete actions shown to have brought about in any significant and lasting way an end to the exaction of forced labour in practice; and it has failed to ensure that penalties for the exaction of forced labour under the Penal Code or other relevant provisions of law have been strictly enforced against civil and military authorities and personnel who are responsible for it. While the Office of the ILO Liaison Officer, by virtue of the broad mandate set forth under the Understanding of 19 March 2002, and the procedures and mechanisms provided for under the SU, has been accorded a critical role in assisting the Government in its efforts to bring about the elimination of forced labour, the robust and fully fledged cooperation of the Government that is vital to the fulfilment of that role, including the cooperation needed in extending the requisite facilities and support and in engendering full respect for, and trust in, these special organs by the society at large, leaves much room for improvement. ***The Committee once again urges the Government to give credence to its expressed commitment to eliminate the use of forced labour in Myanmar and take the long overdue steps that are required to implement the recommendations of the Commission of Inquiry and achieve compliance with the Convention in law and in practice.***

## Sudan

***(Ratification: 1957)***

The Committee has noted the Government's report dated 27 April 2008, received in May 2008, and the report of activities of the Committee for the Eradication of Abduction of Women and Children (CEAWC) annexed to it, as well as the discussion that took place in the Conference Committee on the Application of Standards in June 2008. It has also noted the observations dated 29 August 2008 received from the International Trade Union Confederation (ITUC) concerning the application of the Convention by the Sudan, as well as the Government's reply to these observations dated 2 November 2008, which was sent to the Office by means of communications dated 12 and 20 November 2008 and copied once again in a communication dated 9 January 2009.

*Articles 1, paragraph 1, and 2, paragraph 1, of the Convention. Abolition of forced labour practices.* For many years, the Committee has been referring, in relation to the application of the Convention, to the continuing existence of the practices of abduction and forced labour exploitation, which affected thousands of women and children in the regions of the country where an armed conflict was under way. The Committee recalls that this case has been discussed repeatedly over the years in its own observations and on numerous occasions by the Conference Committee on the Application of Standards. The Committee has repeatedly pointed out that the situations concerned constitute gross violations of the Convention, since the victims are forced to perform work for which they have not offered themselves voluntarily, under extremely harsh conditions, and in combination with ill treatment which may include torture and death. The Committee has considered that the scope and gravity of the problem are such that it is necessary to take urgent action that is commensurate in scope and systematic. The Government has been 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.

*Conference Committee on the Application of Standards.* The Committee has noted that, in its conclusions adopted in June 2008, the Conference 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 human rights and international humanitarian law in certain regions of the country. The Conference 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, it 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 Conference Committee also noted with concern that there was a lack of accountability of perpetrators. It urged the Government to pursue its efforts with vigour and to take effective and urgent action, including through the CEAWC, to completely eradicate

the forced labour practices and to put an end to impunity by punishing perpetrators, particularly those unwilling to cooperate. The Conference Committee 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.

*United Nations bodies.* The Committee notes that, in the UN Security Council resolution 1881 (2009), the Security Council expressed concern at the continued seriousness of the security situation and deterioration of the humanitarian situation in Darfur and reiterated its condemnation of all violations of human rights and international humanitarian law in Darfur. The resolution emphasized the need to bring to justice the perpetrators of such crimes and urged the Government of Sudan to comply with its obligations in this respect. The Committee also notes a report of the Special Rapporteur on the situation of human rights in the Sudan (A/HRC/11/14, June 2009), in which it is observed that, despite some positive steps in the area of law reform, improvement of the human rights situation on the ground continues to remain a significant challenge. Thus, in Darfur, human rights violations and breaches of international humanitarian law continued to be committed by all parties; in southern Sudan, several hundred civilians were killed in tribal conflicts and attacks by the Lords Resistance Army (LRA) and a number of women and children were abducted. According to the report, impunity remains an ongoing and serious concern in all areas of Sudan, allegations of violations of human rights are not duly investigated, many perpetrators of serious crimes have not been brought to justice and reparations have not been provided to victims. The Special Rapporteur reiterated all previously unimplemented human rights recommendations contained in her reports, and in particular, a recommendation to ensure that all allegations of violations of human rights and international humanitarian law are duly investigated and that the perpetrators are promptly brought to justice (paragraph 92(d)).

*Comments from workers' organizations.* In the observations dated 29 August 2008 referred to above, the ITUC pointed out that, despite the Government's statement at the Conference Committee in 2008 that there had been no further cases of abductions and forced labour in the country, information from various sources provided evidence that abductions had continued in Darfur in the context of the current conflict there, and the human rights violations taking place in Darfur showed a marked similarity to those that took place in southern Sudan during the 1983–2005 civil war, including many documented cases of abductions for sexual exploitation and forced labour. The ITUC referred, in particular, to the November 2007 report on the situation of human rights in Darfur by the UN group of experts, to the March 2008 report of the UN Special Rapporteur on the situation of human rights in the Sudan and to the findings of the research conducted in 2006–07 by Anti-Slavery International. While welcoming the fact that the Government had finally recognized the scale of the problem and had successfully resolved 11,300 cases of abductions, the ITUC expressed concern about the release and reintegration process. It referred, in particular, to the findings by UNICEF, according to which some of those being rescued were not genuine former abductees, some returnees were not going voluntarily and some families were being split with children being moved on unaccompanied. The ITUC also noted that, although the Government described 11,300 of the 14,000 cases of abductions as "resolved", reunification with the family had only happened in 3,394 cases, which meant that less than one third of those involved had been reunited with their families. The ITUC continued to believe that the impunity that those responsible for abductions have

enjoyed – illustrated by the absence of any prosecutions for abductions in the last 16 years – was responsible for the continuation of this practice throughout the civil war of 1983–2005 and for the current continued abductions in Darfur. The ITUC therefore strongly supported a recommendation made by the Conference Committee in 2008 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". It stated that the Government should accept ILO technical assistance for a mission which should be given a mandate to review the extent to which former abductees have been successfully reintegrated into their communities.

*Government's response.* In its 2008 report, the Government repeated the information already supplied to the ILO in May 2007 and provided the updated information on the activities of the CEAWC up to the end of April 2008. The Government confirmed once again its strong and continued commitment to completely eradicate the phenomenon of abductions and to provide continued support to CEAWC. The Government indicated in its report, as well as in its reply to the observations by the ITUC referred to above, that out of 14,000 documented cases of abductions, CEAWC had been able to reunify abducted persons with their families in 6,000 cases. However, the Committee has noted from the report of activities of the CEAWC, dated 27 April 2008, annexed to the Government's report, that only in 3,708 cases abducted persons had been reunified with their families, including 310 new cases of reunification due to the recent funding by the Government of the Southern Sudan. The Government has confirmed once again its previous statement that abductions have stopped completely, which, according to the Government, has been confirmed also by the Dinka Chiefs Committee (DCC). For that reason, the Government has urged to dismiss this case and to stop its discussion in the ILO, since it has already been satisfactorily dealt with according to the reports of the UN specialized agencies. Concerning the situation in Darfur, the Government expressed the view that, since it was under examination by the UN Security Council and the African Union, the issues concerned should not be discussed in the ILO, in order to avoid duplication of work. Regarding the workers' concerns expressed by the ITUC in its observations referred to above about the release and reintegration process, and whether the return of abductees is voluntary, the Government stated that such concerns had no factual base. It referred to the above report of the CEAWC, which contained a reference to a letter by the UNICEF Representative in Sudan, according to which no cases of forced return had been identified and several cases of unaccompanied children had been dealt with effectively at field level in the North. The Government also indicated in its report that it committed itself to provide all funds required to complete the remaining work, despite the fact that many international agencies had claimed that the remaining abductees were no longer abductees in the strict sense of the word and called upon CEAWC to avoid forced returns. As regards the prosecution of perpetrators, the Government repeated its previous indications that CEAWC, which was initially of the view that legal action was the best measure to eradicate the abduction, had 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. The Government considered that legal action takes very long time and is very expensive, it could not build peace among the tribes concerned and did not correspond to the spirit of national reconciliation. The Government also stated that it was not in a position to force people to pursue legal action. It also rejected the recommendation that there should be an independent verification of the work of CEAWC.

***While noting these views and comments, as well as the Government's renewed commitment to resolve the problem, the Committee urges the Government to redouble its efforts in order to completely eradicate the forced labour practices which constitute a gross violation of the Convention and, in particular, to resolve the cases of abductions in all the regions of the country and to provide the means for victims to be reunified with their families. While noting the new achievements by CEAWC in the liberation of abductees, the Committee hopes that the Government would continue to provide detailed information on the liberation and reunification process, supplying accurate and reliable statistics supported by CEAWC reports. Noting also with concern that the Government's statement according to which abductions have stopped completely is in contradiction with other sources of information available, 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 expresses the firm hope 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. The Committee encourages the Government to avail itself of the technical assistance of the ILO, in accordance with the proposal of the Conference Committee.***

*Article 25. Penalties for the illegal exaction of forced or compulsory labour.* The Committee previously noted the 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. The Committee has noted the Government's repeated indication in its reports that CEAWC, which was initially of the view that legal action was the best measure to eradicate the abductions, has been requested by all the tribes concerned not to resort to legal action, unless the amicable efforts of the tribes are not successful. The Government reiterates its view that there is an argument for not pursuing prosecutions against those responsible for abductions and forced labour in the spirit of national reconciliation. The Committee recalls again in this connection that, under Article 25 of the Convention, "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 therefore considers that the non-application of penal sanctions to perpetrators is contrary to this provision of the Convention and may have the effect of ensuring impunity for abductors who exploit forced labour.

***The Committee expresses the firm hope that the necessary measures will at last 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 again requests the Government to 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.***

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

## Belarus

(Ratification: 1956)

The Committee notes the information provided by the Government on the measures taken to implement the recommendations of the Commission of Inquiry and the discussion that took place in the Conference Committee on the Application of Standards in June 2009. The Committee further notes the comments made by the International Trade Union Confederation (ITUC) and the Congress of Democratic Trade Unions (CDTU) on the application of the Convention in law and in practice in communications dated 26 and 28 August 2009, respectively.

The Committee also takes note of the seminar on the implementation of the Commission of Inquiry's recommendations organized jointly by the ILO and the Government of Belarus in January 2009 and welcomes the plan of action to implement the recommendations of the Commission of Inquiry subsequently adopted by the tripartite National Council on Labour and Social Issues (NCLSI). The Committee further notes with *interest* that, pursuant to the plan of action, the Council for the Improvement of Legislation in the Social and Labour Sphere ("the Council") evolved into a tripartite body where trade unions could raise their concerns and that the Council's composition now included three representatives of the CDTU.

*Article 2 of the Convention.* The Committee recalls that it had previously noted with regret the absence of action by the Government to register trade union organizations, the registration of which had been requested by the ILO supervisory bodies (i.e. those primary-level organizations that were the subject of the complaint before the Commission of Inquiry, as well as organizations of the Radio and Electronic Workers' Union (REWU) in Mogilev, Gomel, Smolevichi and Rechitsa and its primary trade union at "Avtopark No. 1"; two regional organizations of the Belarusian Free Trade Union (BFTU) in Mogilev and Baranovichi; and the Belarusian Trade Union of Individual Entrepreneurs "Razam", a partner organization of the CDTU.

The Committee takes note of the Government's indication that at its sitting of 30 April 2009 the Council discussed the issue of trade union registration and reached the following decisions, agreed upon by all members of the Council:

- The Council noted registration of the primary REWU organizations in Smolevichi and Rechitsa.
- The primary trade union of the Belarus Independent Trade Union (BITU) at the "Belshina" enterprise could not be registered due to the absence of confirmation of its legal address. The Council recommended to the administration of the enterprise, the Confederation of Industrialists and Entrepreneurs (Employers) (CIE(E)), the BITU, the CDTU and the local executive body to find a solution to the question of legal address in this case.
- The Council took note of the information provided by a Ministry of Justice representative that no request for registration was submitted by the BFTU regional organization in Baranovichi.
- The Council noted the reasons for denial of registration of the BFTU regional organization in Mogilev and "Razam" union.
- In the Council's opinion, refusals to register the REWU territorial structures in Gomel and Mogilev were justified because their members were not bound by common interests by virtue of the nature of their work, as required by section 1 of the Law on Trade Unions.
- The Council noted that the abovementioned grounds for refusal were not applicable to the REWU primary trade union at "Avtopark No. 1" as all its members were employed at the same enterprise.

The Committee notes with *interest* the registration of the primary REWU organizations in Smolevichi and Rechitsa. It further notes with *interest* that, following the Council's decision, suitable premises for the legal address of the "Belshina" enterprise union were found and that this organization was re-registered in October 2009. The Committee observes that at its sitting of 26 November 2009, the Council once again discussed the issue of registration of the "Razam" union. ***The Committee requests the Government to indicate the outcome of the discussion. It encourages the Government to continue its close cooperation with the social partners in addressing the difficulties with registration in practice. Regretting that no information has been provided by the Government on the number of registered organizations and those denied registration during the reporting year, the Committee requests the Government to provide this information with its next report.***

The Committee notes the Government's indication that a REWU representative present at the sitting argued that the common interest of the members of the Gomel and Mogilev territorial organizations lay in the fact that they were all employed workers. This view was rejected by the Council's members, who concluded that the refusal to register these organizations did not restrict the right of unions to freely determine their own structures and activities.

The Committee notes the CDTU's view that despite the specific cases mentioned above, no real progress had been achieved with regard to trade union registration. Firstly, there had been no clear and unambiguous instructions issued by the Government to employers and registering bodies to register the unions mentioned in the recommendations of the Commission of Inquiry. Only some of the unions succeeded in getting legal address, the largest number of the organizations had to terminate their existence. Secondly, referring to the Council's decision of 30 April 2009, the CDTU confirms that the tripartite body reviewed the refusals to register the REWU territorial structures in Gomel and Mogilev, "Razam" union and the BFTU regional organizations in Baranovichi and Mogilev. With regard to the latter two, the CDTU indicates that the Council limited itself by stating the fact that there were no organizations left to be registered; those primary organizations mentioned in the ILO recommendations no longer existed.

The Committee recalls that it had previously noted with regret that the requirement of legal address continued to raise difficulties with the registration of trade unions in practice and requested the Government to take the necessary measures to immediately amend Presidential Decree No. 2 of 1999 so

as to ensure that workers and employers may form organizations of their own choosing without previous authorization. In this regard, the Committee notes the CDTU's indication that the legal address requirement continues to hinder the establishment and functioning of trade unions.

The Committee notes that, according to the information provided by the Government, the Council adopted a number of measures intended to resolve problems arising from the implementation of the national legislation in practice and discussed approaches to developing legislation on trade unions on the basis of Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The Council took note of the explanation provided by a representative of the Ministry of Justice that the 10 per cent requirement was not applicable to union organizational structures, including primary trade unions. Pursuant to the Council's request, the Ministry of Justice informed the local authorities of the need for strict adherence to this approach. The Committee notes the copy of this instruction forwarded by the Government. The Government further indicates that the Council's members were requested to provide their proposals for the further development of legislation on trade unions by 1 July 2009. The Committee notes the Government's indication that the issue of legislation on trade union registration was discussed at the Council's meeting on 26 November 2009. **The Committee requests the Government to indicate the outcome of the discussion.**

The Committee notes with **regret** that, while the Government refers to continued work on developing legislation on trade unions, it has given no precise indication as to the steps taken to amend Decree No. 2, its rules and regulations, in particular, as regards the legal address requirement – a requirement which the Commission of Inquiry had observed gave rise in practice to arbitrary obstacles in the way of workers' right to organize (see Trade union rights in Belarus, para. 591 et seq.). While observing that the Council was able to successfully resolve the legal address problem for the BITU primary trade union at "Belshina" enterprise, the Committee notes that this very case demonstrates that the legal address requirement as applied in the country continues to be an obstacle to the registration of trade unions. Furthermore, while welcoming the Ministry of Justice's instruction requesting the registering bodies to ensure that the 10 per cent minimum membership was only required to form an autonomous union at the enterprise level, the Committee recalls that, since the issuance of the Decree, it has been expressing its concern over the effect of this requirement on the right to organize in large enterprises. It further recalls that on more than one occasion the Government referred to its intention to amend Decree No. 2. **The Committee therefore once again urges the Government to take the necessary measures to amend without delay Presidential Decree No. 2 as concerns trade union registration in consultation with the social partners so as to ensure that the right to organize is effectively guaranteed. It requests the Government to indicate the progress made in this respect.**

Articles 3, 5 and 6. The Committee recalls that in its previous observation it expressed its concern at the allegations of repeated refusals to authorize the BITU and the REWU to hold pickets and meetings and requested the Government to conduct independent investigations into these allegations and to bring the attention of the relevant authorities to the right of workers to participate in peaceful demonstrations to defend their occupational interests. The Committee notes with **regret** that no information has been provided by the Government in this respect. The Committee notes with **concern** from the CDTU's communication that 15 requests to hold pickets were allegedly denied. **Recalling that protests are protected by the principles of freedom of association and that public meetings and demonstrations should not be arbitrarily refused, the Committee recalls the conclusions of the Commission of Inquiry in this regard (see Trade union rights in Belarus, paras 625–627) and once again requests the Government to indicate the measures taken to investigate the alleged cases of refusals to hold pickets and meetings and to bring the attention of the relevant authorities to the right of workers to participate in peaceful demonstrations to defend their occupational interests.**

**The Committee also once again requests the Government to indicate the measures taken to ensure that National Bank employees may have recourse to industrial action without penalty.**

The Committee recalls that for a number of years it has been asking the Government to amend the Law on Mass Activities, sections 388, 390, 392 and 399 of the Labour Code, and Decree No. 24 concerning the use of foreign gratuitous aid. The Committee notes with **regret** that aside from the general statement to the effect that an agreement has been reached by the members of the Council that any legislation on trade unions should be developed on the basis of Conventions Nos 87 and 98 and that the members of the Council had until 1 July 2009 to submit their proposals in this regard, there were no concrete proposals to amend the abovementioned pieces of legislation. **Recalling 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 and their amendment had been requested by the Commission of Inquiry over five years ago, the Committee reiterates its previous requests and asks the Government to indicate concrete measures taken in this respect.**

**The Committee welcomes the continued commitment to social dialogue expressed by the Government and, like the Conference Committee on the Application of Standards at its last discussion in June 2009, encourages the Government to redouble its efforts to ensure full freedom of association in close cooperation with all the social partners and with the assistance of the ILO. It expresses the firm hope that the Government and the social partners will continue the cooperation within the framework of the tripartite Council so as to ensure that full freedom of association is effectively guaranteed in law and in practice.**

**The Committee requests the Government to respond to the observations made by the ITUC.**

## **Cambodia**

**(Ratification: 1999)**

The Committee notes the comments submitted in August 2009 by the International Trade Union Confederation (ITUC) and the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC), concerning acts of violence, and harassment against trade union leaders and trade unionists, as well as other violations of the Convention. **The Committee requests the Government to send its observations thereon.** The Committee further notes the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2318 (351st Report).

The Committee notes that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

In its previous comment, the Committee had taken note of the discussion on Cambodia in the Conference Committee on the Application of Standards in 2007, and in particular that the Conference Committee had expressed its deep concern at the statements made concerning the assassination of the

trade unionists Chea Vichea, Ros Sovannareth, and Hy Vuthy; death threats; and the emerging climate of impunity in the country. The Conference Committee, recalling that the rights of workers' and employers' organizations could only be exercised in a climate free from violence, pressure or threats of any kind against the leaders and members of these organizations, had called upon the Government to take the necessary measures to ensure respect for this fundamental principle and bring an end to impunity; it further urged the Government to take steps immediately to ensure full and independent investigations into the murders of the abovementioned Cambodian trade union leaders so as to bring not only the perpetrators, but also the instigators of these heinous crimes to justice.

Having also noted the ITUC's comments on the irregularities that had attended the trials of Born Samnang and Sok Sam Oeun, the two men convicted of Chea Vichea's murder despite substantial evidence of their innocence, and numerous acts of harassment and violence against trade union leaders, the Committee had urged the Government to take the necessary measures, including the initiation of judicial inquiries, to bring an end to the acts of violence and intimidation against trade union officials and members. Finally, the Committee had noted the Government's acceptance of an ILO direct contacts mission, as requested by the Conference Committee, and had expressed the firm hope that the mission would achieve significant results in respect of all of the serious matters raised above.

Against this backdrop, the Committee notes with **concern** that according to the FTUWKC, a campaign of systematic violence and repression has been carried out against it in one factory, comprising vicious attacks on union leaders by gangs outside the factory; the violent dispersal of a FTUWKC rally, in which one worker was shot in the back by the police and 16 trade unionists were arrested and detained; the dismissal of 1,500 workers following the protest, virtually all of whom were FTUWKC leaders or members; and the subsequent blacklisting of the dismissed individuals by the management, which had distributed their names and photos to other factories. The FTUWKC also asserts that the authorities have done little to investigate the serious injuries inflicted on union leaders, and in fact have been regularly involved in the violent suppression of worker protests, strikes and marches at various factories.

The ITUC also indicates that in many factories trade unionists continue to face repression of all kinds, with virtually no intervention from the authorities. Anti-union acts include beatings from hired thugs, death threats, blacklisting, the bringing of trade unionists before the courts on false charges, wage deductions and exclusion from promotion. One FTUWKC leader was beaten by four or five masked individuals armed with iron rods on his way home from work. The ITUC also refers to the continued obstruction of the activities of the Cambodian Independent Teachers' Association (CITA), which the Government does not recognize as a trade union and whose demonstrations and protests have often been prohibited. Another organization, the Cambodian Independent Civil Service Association (CICSA), is also not recognized as a trade union.

Finally, the Committee takes note of the report of the direct contacts mission to Cambodia, held on 21 to 25 April 2008. The Committee notes with **grave concern** that the mission report contains, inter alia, the following conclusions: (1) that the Cambodian judiciary is plagued by serious problems of capacity and a lack of independence, (2) that the conviction of Born Samnang and Sok Sam Oeun for the murder of trade union leader Chea Vichea was upheld on 12 April 2007, in a trial marked by procedural irregularities, including the Court's refusal to entertain evidence of their innocence; (3) that Thach Saveth was sentenced to 15 years in prison for the murder of trade union leader Ros Sovannareth; and (4) that no concrete steps had been indicated by the Government to ensure a meaningful and independent review of the outstanding cases. The Committee notes with **concern**, moreover, that it has received no information on any progress made in the investigation respecting Hy Vuthy.

In these circumstances, the Committee can only **deplore** the absence of any further developments in this regard in the Government's report, six months after the direct contacts mission. ***It requests the Government to take the necessary measures to take concrete and tangible steps, as a matter of urgency: (1) to carry out independent inquiries, as a matter of urgency, into the murders of Chea Vichea, Ros Sovannareth and Hy Vuthy; (2) to facilitate an expedited review of the convictions of Born Samnang and Sok Sam Oeun for the murder of Chea Vichea, as well as the conviction of Thach Saveth for the murder of Ros Sovannareth, and to take steps for their release pending the outcome of the above independent inquiries; (3) to take the necessary steps to ensure the independence and effectiveness of the judicial system, including capacity-building measures and the institution of safeguards against corruption. In this regard, the Committee suggests that the Government have recourse to the technical cooperation facilities of the Office, notably in the area of reinforcing institutional capacity, as well as with respect to the establishment of labour courts and the revision of the Law on Trade Unions. Finally, it urges the Government, as also requested by the Committee on Freedom of Association, to take all necessary measures to ensure that the trade union rights of workers in Cambodia are fully respected and that trade unionists are able to exercise their activities in a climate free of intimidation and risk to their personal security and their lives.***

***The Committee hopes that the Government will make every effort to take the necessary action in the very near future.***

The Committee notes the conclusions and recommendations made by the Committee on Freedom of Association in Case No. 2318 and in particular the decision of the Supreme Court on 31 December 2008 ordering the release of Born Samnang and Sok Sam Oeun. ***Observing in this regard that the Supreme Court had also ordered the reopening of the investigation into Chea Vichea's murder, the Committee, like the Committee on Freedom of Association, urges the Government to ensure that the investigation is prompt, independent and expeditiously carried out, and to indicate the outcome.***

Finally, the Committee notes the Government's reply to the 2008 comments submitted by the ITUC and the FTUWKC and hopes that the task force which examines the reform of the trade union legislation will take into account all issues raised by the Committee. Furthermore, the Committee notes that the Government indicates that more than 1,000 trade unions have been established and that tripartite activities have been conducted.

***[The Government is asked to supply full particulars to the Conference at its 99th Session and to reply in detail to the present comments in 2010.]***

## **Canada**

***(Ratification: 1972)***

The Committee takes note of the comments from the International Trade Unions Confederation (ITUC) dated 30 September 2008 and 26 August 2009, as well as of the Government's reply thereto.

The Committee takes note of the conclusions and recommendations reached by the Committee on Freedom of Association in a number of cases concerning allegations of interference into the right to organize and carry out trade union activities, including collective bargaining, in various provinces of Canada (Case No. 2173, 354th Report, paragraphs 35–46; Case No. 2254, 355th Report, paragraphs 29–33; and Case No. 2430, 353rd Report, paragraphs 66–68).

With regard to the implementation of the Convention in a broad perspective, the Committee recalls that in its previous observation it noted with interest the decision of 8 July 2007 of the Supreme Court of Canada (*Health Services and Support – Facilities Subsector Bargaining Association v. British Columbia*, 2007 SCC 27), which held that freedom of association encompasses a measure of protection for collective bargaining under section 2(d) of the Canadian Charter of Rights and Freedoms, and by doing so the Court referred to Convention No. 87 as well as the International Covenants on Civil and Political Rights, and on Economic, Social and Cultural Rights, noting that the “interpretation of these Conventions, in Canada and internationally, not only supports the proposition that there is a right to collective bargaining in international law, but also suggests that such a right should be recognized in the Canadian context under section 2(d). The Committee notes from the Government's report that a number of tripartite round-table discussions were held pursuant to the decision of the Supreme Court, at federal and provincial levels, on its potential implications on future labour relations and the country's international obligations. The Government also indicates that it expects a number of ongoing cases before courts to further clarify the scope of the Supreme Court decision and its implication for the application of the Convention. **The Committee invites the Government to continue to provide information on any development in relation to this decision which may have an impact on the application of the Convention.**

*Article 2 of the Convention. Right to organize of certain categories of workers.* The Committee recalls that it has been expressing concern for many years on the exclusion of wide categories of workers from statutory protection of freedom of association and on the restrictions on the right to strike in several provinces.

*Workers in agriculture and horticulture (Alberta, Ontario and New Brunswick).* The Committee recalls from its previous comments that workers in agriculture and horticulture in the Provinces of Alberta, Ontario and New Brunswick are excluded from the coverage of labour relations legislation and thereby deprived of statutory protection of the right to organize.

The Committee notes with **regret** from the Government's report that there are no plans for a legislative review in Alberta, although the province is closely monitoring the constitutional challenge to the Agricultural Employees Protection Act, 2002, before the Ontario Court of Appeal and subsequently before the Supreme Court of Canada.

As for Ontario, the Committee recalls that in its previous comments it noted the decision dated December 2001 by the Supreme Court of Canada which found the exclusion of agricultural workers from the Labour Relations Act, 1995, to be unconstitutional in the absence of any other statutory protection of their freedom of association (*Dunmore v. Ontario/Attorney-General*, 2001, 207 DLR (4th) 193 (SCC)). The Committee also noted that, although the Agricultural Employees Protection Act, 2002 (AEPA) gave agricultural employees the right to form or join an employees' association, it however maintained the exclusion of agricultural employees from the Labour Relations Act and did not provide a right to a statutory collective bargaining regime. The Committee notes from the Government's report that the appeal lodged by the United Food and Commercial Workers (UFCW) challenging the constitutionality of the AEPA before the Ontario Court of Appeal resulted in a decision acknowledging the right for Ontario farm workers to legislation that protects their ability to bargain collectively. The Ontario Government appealed the decision to the Supreme Court of Canada and the hearing on the case is expected at the end of 2009.

The Committee notes that, as regards the Province of New Brunswick, the Government reiterates that agricultural workers are not excluded from the protection of the Industrial Relations Act, 1971; however their bargaining rights are limited to units comprising at least five or more employees.

The Committee recalls once again that all workers without distinction whatsoever (with the sole possible exception of the armed forces and the police) shall have the right to organize under the Convention. Therefore, any provincial legislation that would deny or limit the application of the Convention in relation to the freedom of association of agricultural workers should be amended. **Consequently, the Committee urges the Government to ensure that the Governments of Alberta and Ontario take all necessary measures to amend their legislation so as to fully guarantee the right of agricultural workers to organize freely and to benefit from the necessary protection to ensure observance of the Convention. The Committee requests the Government to forward the text of the decision of the Supreme Court of Canada concerning the constitutionality of the AEPA when it is delivered and to indicate any review on its implication with regard to the exclusion of agricultural employees from statutory protection of the right to organize in the Provinces of Alberta and Ontario.**

*Domestic workers, architects, dentists, land surveyors, lawyers and doctors (Ontario, Alberta, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan).* The Committee recalls that it has been raising for many years the need to ensure that a number of categories of workers in Ontario, who have been excluded from statutory protection of freedom of association under sections 1(3) and 3(a) of the Labour Relations Act, 1995 (domestic workers, architects, dentists, land surveyors, lawyers and doctors), enjoy the protection necessary, either through the Labour Relations Act, or by means of specific regulations, to establish and join organizations of their own choosing.

In its previous comments, the Committee also noted that legislative provisions in other provinces (*Alberta, New Brunswick, Nova Scotia, Prince Edward Island and Saskatchewan*) contain similar exclusions of domestic workers, architects, dentists, land surveyors, lawyers, doctors and engineers from the scope of industrial relations law. Moreover, these workers might be excluded also in Newfoundland, Labrador and Saskatchewan if the employer has less than two or three employees, respectively.

The Committee notes with **regret** the statements from the Governments of Ontario, Alberta, Nova Scotia and Prince Edward Island that no legislative amendments are planned in respect of the exclusion of domestic workers. The Committee also takes note of the statement by the Government of New Brunswick according to which it will consult stakeholders on the potential for amendment of the Industrial Relations Act to remove the exclusion of



domestic workers. With regard to the other professionals, such as architects, dentists, land surveyors, lawyers doctors and engineers (for Nova Scotia and Prince Edward Island), the Committee also notes the statement from the respective governments that these professionals in question are generally members of professional organizations that represent their interests, including through collective bargaining. Hence, they cannot be considered disadvantaged in the labour market.

The Committee is bound to recall once again its view that the exclusion of these categories of workers from the Labour Relations Act has had as a result that, although they can still exercise their right to associate under the Common Law, their associations are devoid of the higher statutory protection provided for in the Labour Relations Act, 1995, and this can function as an impediment to their activities and discourage membership. **Consequently, the Committee urges the Government to ensure that the Governments of Ontario, Alberta, Nova Scotia, Prince Edward Island and Saskatchewan take all necessary measures to remedy the exclusion of the abovementioned categories of workers from the statutory protection of freedom of association and to amend its legislation to adopt specific regulations so as to ensure that domestic workers, architects, dentists, land surveyors, lawyers, doctors and engineers are allowed to form and join organizations of their own choosing and that these organizations enjoy the same rights, prerogatives and means of recourse as other workers' organizations under the Convention. The Committee requests the Government to ensure that the Government of the Province of New Brunswick indicates the outcome of discussions held on the amendment to the Industrial Relations Act to remove the exclusion of domestic workers and any measures taken thereon.**

*Nurse practitioners (Alberta).* In its previous comments, the Committee referred to the conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 2277 to the effect that nurse practitioners have been deprived of the right to establish and join organizations of their own choosing by the Labour Relations (Regional Health Authorities Restructuring) Amendment Act of the Province of Alberta. The Committee notes with **regret** from the Government's report that there are no planned reviews of the status of nurse practitioners. The Committee once again recalls that the expression "all workers and employers without distinction whatsoever" used in *Article 2* of the Convention means that freedom of association should be guaranteed without discrimination of any kind. **The Committee therefore urges the Government to ensure that the Government of the Province of Alberta takes all necessary measures to amend the Labour Relations (Regional Health Authorities Restructuring) Amendment Act so that nurse practitioners have the right to establish and join organizations of their own choosing.**

*Principals, vice-principals in educational establishments and community workers (Ontario).* The Committee recalls, with regard to Ontario, that its previous comments concerned the need to ensure that principals and vice-principals in educational establishments as well as community workers have the right to organize, pursuant to the conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 1951 and Case No. 1975. The Committee takes note of the Government's statement that it has no plan to amend the legislation concerning principals and vice-principals in educational establishments. However, the Government adds that, with regard to community workers, a detailed review of the 1998 amendments to the Ontario Works Act by the Act to Prevent Unionization with respect to community participation under the Ontario Works Act, 1997, has identified options that would be considered. While the Committee considers that it is not necessarily incompatible with freedom of association principles to deny managerial or supervisory employees the right to belong to the same trade union as other workers; such categories of workers should have the right to form their own associations to defend their interests and should not be defined so broadly as to weaken the organizations of other workers by depriving them of a substantial portion of their present or potential membership. **Taking into account the abovementioned principles, the Committee reiterates its request to ensure that the Government of the Province of Ontario takes all necessary measures to amend the legislation so as to guarantee to principals and vice-principals in educational establishments, as well as community workers, the fundamental right to establish and join organizations of their own choosing.**

*Public colleges' part-time employees (Ontario).* The Committee takes note of the conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 2430 (see 353rd Report, paragraphs 66–68) and notes with **interest** that the Government of Ontario introduced the Act to Enact the Colleges Collective Bargaining Act which allows part-time academic and support staff workers at Ontario's 24 colleges to join unions for collective bargaining purposes. **Along with the Committee on Freedom of Association, the Committee requests the Government to indicate in its next report any progress made in the adoption of this Bill which would allow part-time academic and support staff in colleges of applied arts and technology in Ontario to fully enjoy the right to organize, as enjoyed by other workers, as provided in the Convention.**

*Education workers (Alberta).* With regard to the right to organize of education workers in the Province of Alberta, the Committee recalls that its previous comments concerned the need to repeal the provisions of the University Act which empower the board of governors to designate the academic staff members who are allowed, by law, to establish and join a professional association for the defence of their interests. The Committee expressed its view that such provisions would allow for future designations to exclude faculty members and non-management administrative or planning personnel from membership of the staff associations whose purpose is to protect and defend the interests of these categories of workers. The Committee notes with **regret** that there are no plans to amend this legislation. **The Committee is bound to request once again the Government to ensure that the Government of the Province of Alberta takes all necessary measures with a view to ensuring that all university staff are guaranteed the right to organize without any exceptions.**

*Workers in social, health and childcare services (Quebec).* The Committee recalls that its previous comments concerned two Acts (Act modifying the Act on health and social services (LQ, 2003, c.12) and Act modifying the Act on early childhood centres and other nursery services (LQ, 2003, c.13)), by which the Government redefined workers in social and health services and childcare services as "independent workers", thus divesting them of the status of "employee" and denying them the right to unionize, leading to the cancellation of their trade union registrations. While emphasizing that the Convention does not exclude any of the above categories of workers who should have the right to establish and join organizations of their choosing, the Committee expressed the hope that the domestic courts would render decisions that would take into account the provisions of the Convention.

The Committee takes note with **interest** of the Government's indication that a decision whereby the Superior Court of Quebec held the Act modifying the Act on health and social services and the Act modifying the Act on early childhood centres and other nursery services unconstitutional as they were contrary to section 2(d) of the Canadian Charter of Rights and Freedoms and to section 3 of the *Charte québécoise des droits et libertés de la personne*. Following that court decision, the Government of the Province of Quebec adopted an Act on the representation of family-type resources and intermediate resources and on the respective collective bargaining regime (LQ 2009, c.24) as well as an Act on the representation of certain persons responsible for childcare in family environment on the respective collective bargaining regime (LQ 2009, c.36) on 12 and 19 June 2009. These new

texts established a system of representation for family-type resources and intermediate resources as well as for persons responsible for childcare in family environments. A system of collective agreement "similar to the one encompassed in the Labour Code of the Province of Quebec" is established. The Committee notes with **interest** the indication that the newly adopted texts provide for rules for recognition by the Committee on labour relations of associations representing such persons, the rules of collective bargaining between these associations and the Government and the matters covered by the negotiation. They also provide for measures for better access to government programmes, such as parental insurance, the pension plan and the programme for safe motherhood.

*Prosecutors (Quebec).* In its previous comments, the Committee referred to the conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 2467 with regard to the Prosecutors Act (as amended by the Act amending the Act respecting Prosecutors and the Labour Code, LQ 2004, c.22), which denied to prosecutors the right to join a trade union and deprives them of protection against hindrances, reprisals or sanctions related to the exercise of trade union rights. The Committee takes note with **interest** of the Act on the collective bargaining regime of prosecutors for criminal and penal affairs (LRQ, c. R-8.1.2), which grants them the right to organize as well as protection in the exercise of trade union rights, including the right to strike and to bargain collectively.

*Article 2. Trade union monopoly established by law (Prince Edward Island, Nova Scotia and Ontario).* The Committee recalls that its previous comments concerned the specific reference to the trade union recognized as the bargaining agent in the law of Prince Edward Island (Civil Service Act, 1983), Nova Scotia (Teaching Professions Act) and Ontario (Education and Teaching Professions Act).

The Committee notes with **regret** from the Government's report that there are still no plans to amend the legislation in Prince Edward Island, Nova Scotia and Ontario. The Committee is bound to recall that, although it may consider a system in which a single bargaining agent can be accredited to represent workers in a given bargaining unit and bargain on their behalf to be compatible with the Convention, a trade union monopoly established or maintained by the specific designation of a trade union in the law is in violation of the Convention, thus suppressing any freedom of choice. **The Committee expresses the firm hope that the Government will indicate measures taken or contemplated by the Governments of Prince Edward Island, Nova Scotia and Ontario to bring their legislation into full conformity with the standards of freedom of choice laid down in the Convention by removing the specific designation of individual trade unions as bargaining agents and replacing them with a neutral reference to the most representative organization.**

*Article 3. Right to strike of workers in the education sector.* The Committee recalls from its previous comments that problems remain in several provinces with regard to the right to strike of workers in the education sector (British Columbia and Manitoba).

*British Columbia.* The Committee recalls that its previous comments concerned the Skill Development and Labour Statutes Amendment Act (Bill No. 18), which declares education to be an essential service, and the need to adopt provisions ensuring that workers in the education sector may enjoy and exercise the right to strike pursuant to the conclusions and recommendations reached by the Committee on Freedom of Association in Case No. 2173. The Committee notes the information pertaining to measures undertaken to support and facilitate the bargaining process between teachers and school employers resulting in the parties achieving, through collective bargaining, a five-year collective agreement effective 1 July 2006. However, the Committee observes that progress is yet to be made on the issues raised.

The Committee notes that, when it last examined Case No. 2173 (see 354th Report, paragraphs 35–46), the Committee on Freedom of Association expressed the hope that the settlement reached in the health-care sector, following the Supreme Court decision noted above, would serve as an inspiration for the settlement of grievances prevailing in the education sector between the Government of the Province of British Columbia and the unions concerned with regard to the Skills Development and Labour Statutes Amendment Act and the Education Services Collective Agreement Act. **The Committee invites the Government to indicate any progress made in this respect. Furthermore, while noting that decisions on essential services are made by the Labour Relations Board (LRB) in consultation with the parties concerned, the Committee requests the Government to indicate any decision taken by the LRB with regard to the essential service level (minimum service) in the education sector and the factors taken into consideration in doing so. Finally, while recalling that an outright ban on strikes should only be limited to essential services in the strict sense of the term and that the education sector does not qualify as such, the Committee asks the Government to specify if the Skills Development and Labour Statutes Amendment Act takes away the right of teachers to engage in strike action.**

*Manitoba.* The Committee recalls that its previous comments concerned the need to amend section 110(1) of the Public School Act which prohibits teachers from engaging in strike action. The Committee once again notes with **regret** from the Government's report that there are no plans to make amendments to the Public Schools Act in the immediate future. The Committee is bound to recall that the right to strike should only be restricted for public servants exercising authority in the name of the State and in essential services in the strict sense of the term. **The Committee requests the Government to indicate in its next report any measures taken or contemplated by the Manitoba Government to amend its legislation so that schoolteachers, who do not provide essential services in the strict sense of the term and do not qualify as public servants exercising authority in the name of the State, may exercise the right to strike without undue restrictions, and suggests that the Manitoba Government give consideration to the establishment of a voluntary and effective dispute-settlement mechanism in this regard, on the basis of consultations with all organizations concerned.**

*Article 3. Right to strike of certain categories of employees in the health sector (Alberta).* The Committee recalls that its previous comments concerned the prohibition on strikes for all employees within the regional health authorities, including various categories of labourers and gardeners under the Labour Relations (Regional Health Authorities Restructuring) Amendment Act. The Committee notes that the Government reiterates that the Act in question does not take away the right to strike for the vast majority of gardeners and labourers in the health-care sector, and states that these employees were rather prohibited from striking as staff members of facilities on designated hospital lists prior to the enactment of the Act. **The Committee, recalling its view that gardeners and labourers do not provide essential services in the strict sense of the term, expresses the firm hope that the Government will indicate in its next report measures taken by the Government of the Province of Alberta in order to ensure that all workers in the health-care sector, who are not providing essential services in the strict sense of the term, are not deprived of the right to strike.**

*Article 3. Right to strike in the public sector (Quebec).* The Committee recalls that its comments concerned Act No. 43 which put a unilateral end to negotiations in the public sector by imposing collective agreements for a determined period, and depriving the workers concerned, including teachers, of the right to strike (labour law in Quebec prohibits strikes during the term of a collective agreement). Furthermore, this Act provided for:

- severe and disproportionate sanctions in the event of an infringement of the provisions prohibiting recourse to strike action (suspension of the deduction of trade union dues merely by the employer declaring that there has been an infringement of the Act for a period of 12 weeks for each day or part of a day that the infringement is observed (section 30));
- the reduction of employees' salary by an amount equal to the salary they would have received for any period during which they infringe the Act, in addition to not being paid during that period – a measure applicable also to employees on trade union release during the period in question (section 32);
- the facilitation of class actions against an association of employees by reducing the conditions required by the Civil Procedures Code for such an action (section 38); and
- severe penal sanctions (sections 39–40).

The Committee notes the Government's statement that this Act is currently under appeal before the domestic courts. ***The Committee once again urges the Government to ensure that the Government of the Province of Quebec takes all necessary measures with a view to: (i) ensuring that, where the right to strike may be restricted or even prohibited, adequate compensatory guarantees are afforded to the workers concerned, for example, conciliation and mediation procedures leading, in the event of deadlock, to arbitration machinery seen to be fully impartial and independent by the parties concerned and leading to binding awards which should be implemented rapidly and fully; (ii) reviewing the excessive sanctions provided for in the Act in order to ensure that they may be applied only in cases where the right to strike may be limited in accordance with the principles of freedom of association and that they are proportionate to the infringement committed; and (iii) reviewing the provisions facilitating class actions against an association of employees, as there is no reason, in the Committee's view, to treat such actions differently from other class actions in the Civil Procedures Code. Furthermore, the Government is requested to indicate the outcome of the appeal pending on Act No. 43 before the domestic courts.***

*Article 3. Arbitration imposed at the request of one party after 60 days of work stoppage (article 87.1(1) of the Labour Relations Act) (Manitoba).* The Committee recalls that its previous comments concerned the need to amend article 87.1(1) of the Labour Relations Act which allowed a party to a collective dispute to make a unilateral application to the Labour Board so as to initiate the dispute-settlement process, where a work stoppage exceeded 60 days. The Committee notes from the Government's report that there has been no change to the legislation. The Committee recalls once again that provisions which allow for one of the parties to refer a dispute to compulsory arbitration seriously limit the means available to trade unions to further and defend the interests of their members as well as their right to organize their activities and formulate their programmes (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 148 and 153). ***The Committee urges the Government to ensure that the Government of the Province of Manitoba takes all necessary measures to amend the Labour Relations Act so that an arbitration award may only be imposed in cases involving essential services in the strict sense of the term, of public servants exercising authority in the name of the State or where both parties to the collective dispute agree.***

*Comments from the ITUC on Bills adopted by the Government of the Province of Saskatchewan.* The Committee takes note of communications dated 30 September 2008 and 26 August 2009 from the ITUC denouncing the Public Service Essential Services Act (Bill No. 5) and the Act to amend the Trade Union Act (Bill No. 6), adopted in May 2008 by the Government of the Province of Saskatchewan. While questioning beforehand the need for such legislative texts to be adopted, the ITUC indicates that Bill No. 5 weakens the right of workers to organize, permits employers to potentially designate every worker individually as providing an essential service without recourse to such potential avenues as binding arbitration, reducing the bargaining rights of workers. Furthermore, the ITUC alleges that Bill No. 6 weakens the rights of workers and unions to organize into associations and it potentially permits employers to use coercive means to prevent the creation of union associations, and punish workers for engaging in union activities.

The Committee takes note that a number of national and provincial trade unions have filed in the provincial court in July 2008 to have Bills Nos 5 and 6 declared unconstitutional for violating, amongst other fundamental texts, the Canadian Charter of Rights and Freedoms and international Conventions ratified by Canada. ***The Committee requests the Government to indicate any outcome of the appeal lodged before the provincial court.***

The Committee also observes that the National Union of Public and General Employees (NUPGE) had presented in 2008 a complaint before the Committee on Freedom of Association in relation to Bills Nos 5 and 6.

## **Egypt**

***(Ratification: 1957)***

The Committee notes the comments of the International Trade Union Confederation (ITUC), dated 29 August 2009, which refer to matters already raised by the Committee, as well as the violent repression by the police of a demonstration by workers on 6 and 7 April 2008, resulting in the death of six workers and the detention of 500 people, including three trade unionists who were held in detention for 54 days. In this respect, the Committee recalls that, when disorders have occurred involving loss of human life or serious injury, the setting up of an independent judicial enquiry is a particularly appropriate method of fully ascertaining the facts, determining responsibilities, punishing those responsible and preventing the repetition of such actions, and that the arrest and detention, even for short periods, of trade union leaders and members engaged in their legitimate trade union activities, without any charges being brought and without a warrant, constitute a grave violation of the principles of freedom of association (see General Survey of 1994 on freedom of association and collective bargaining, paragraphs 29 and 31). ***The Committee requests the Government to provide its observations in this respect.***

The Committee notes the discussion during the Conference Committee on the Application of Standards in June 2008 on the application of the Convention. In particular, the Committee notes the Government's indications during that meeting, in relation to the ITUC's comments made in 2007, that: (1) trade union elections were conducted in conformity with the rules adopted by the trade unions at their general assemblies; (2) 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 in the enterprises and undertakings of the country; (3) 23 new trade unions were established; (4) the Central Council of the Confederation of Trade Unions also held elections and re-elected 70 per cent of its executive committees; and (5) a process of such a large scale as this, which mobilized over 4 million workers, gave rise to rivalry and incidents which required the intervention of the security forces, although such intervention could not be seen as Government intervention in trade union affairs. The Committee also notes the Government's indication that its comments on the application of the Convention would be submitted to the Labour Advisory Council with a view to taking the necessary measures to review the Labour Code and the Trade Union Act and bringing them into conformity with the Convention. The Committee notes that the Conference Committee invited the Government to accept an ILO technical assistance mission and welcomed the Government's readiness in this regard.

The Committee notes that the technical assistance mission requested by the Conference Committee on the Application of Standards visited Egypt on 20–23 April 2009.

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

- 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 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, under the terms of sections 41, 42, and 43 of Act No. 35 (as amended by Act No. 12);
- the control exercised by the Confederation of Trade Unions over the financial management of trade unions, by virtue of sections 62 and 65 of Act No. 35 (as amended by Act No. 12);
- 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 of the prior approval of the Confederation of Trade Unions for the organization of strike action, under 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).

In this respect, the Committee notes the Government's indication that, following the technical assistance mission referred to above, the Government and the social partners signed a memorandum of understanding through which they undertook to participate in a tripartite seminar to be organized by the ILO subregional office to analyse the issues raised concerning the application of the Convention, and to study the comparative experience of other countries and make proposals for the measures to be adopted so as to give effect to the Committee's comments. The Committee considers that the holding of this seminar will be an important first step in addressing this longstanding matter. ***The Committee expresses the hope that the seminar referred to above will be held in the near future and will take up all the matters raised in its comments. The Committee further hopes that, following this activity, the necessary measures will be taken to bring the legislation into conformity with the Convention. The Committee requests the Government to provide information in its next report on any measures adopted in this respect.***

## Guatemala

***(Ratification: 1952)***

The Committee notes the Government's report, the discussion in the Conference Committee on the Application of Standards in 2009 and the ten cases that are before the Committee on Freedom of Association (Cases Nos 2203, 2241, 2341, 2361, 2445, 2609, 2673, 2700, 2708 and 2709). In its previous observation, the Committee noted the report of the high-level mission which visited the country in April 2008 and the tripartite agreement signed during the mission with a view to improving the application of the Convention. The Committee notes the high-level mission undertaken from 16 to 20 February 2009 and the technical assistance missions of 3 January 2009, as well as a final mission to provide assistance to the Tripartite Committee for the Formulation of the Road Map on the measures requested by the Committee on the Application of Standards (this mission took place from 16 to 20 November 2009). The Committee notes that in the end there was no consensus between the social partners and the Road Map was prepared solely by the Government.

The Committee also notes the detailed comments on the application of the Convention made by the International Trade Union Confederation (ITUC) in a communication dated 26 August 2008 and by the Indigenous and Rural Workers Trade Union Movement of Guatemala for the Defence of Workers' Rights (MSICG) in defence of the rights of workers in a communication dated 28 August 2009 which relate to issues already raised by the Committee, as well as serious acts of violence against trade union members and leaders, obstacles to the process of registering trade union organizations, difficulties in the exercise of the right of assembly of trade unions and other alleged violations of the Convention. ***The Committee hopes that in the context of the tripartite agreement concluded during the high-level mission all of the matters raised, as well as the comments of the ITUC, the Trade Union Confederation of Guatemala (UNSTRAGUA) and the MSICG will be examined and addressed in a tripartite context by the***

***Government and the social partners in the framework of the Tripartite Commission on International Labour Affairs, as well as the Legal Reform Subcommittee and the mechanism for rapid intervention in cases.***

Acts of violence and impunity against trade unionists

The Committee recalls that for several years it has been noting in its observations acts of violence against trade unionists and impunity in this respect, and that it had asked the Government to indicate developments in this respect.

The Committee notes that, at the proposal of the high-level mission in 2008, the Tripartite Commission approved an agreement to eradicate violence, under the terms of which evaluations will be carried out of: "(1) institutional action, including the most recent activities, and in particular the special protection measures to prevent acts of violence against trade unionists who are under threat; and (2) of the measures that are being taken (increases in the budget and in the number of investigators) to guarantee that effective investigations are conducted with sufficient resources so as to be able to elucidate the crimes committed against trade unionists and to identify those responsible".

The Committee notes that both the ITUC and the MSICG in their comments place emphasis on grave acts of violence against trade union leaders and members during the period 2008–09 and report a climate of fear and intimidation with a view to undermining existing trade unions and preventing the establishment of new ones. Both trade union organizations also emphasize the deficiencies in the labour inspectorate and the crisis of the judicial system.

The Committee notes that in its statements to the Conference Committee and its report the Government indicates that: (1) the State of Guatemala expresses special interest in guaranteeing full respect for the human rights of trade unionists, and of all Guatemalan nationals in general, as well as reiterating the Government's commitment to combating impunity through the improvement of the judicial system and the labour administration system within the executive authority; (2) the Tripartite Commission on International Labour Affairs met the Public Prosecutor and the Attorney-General with a view to requesting the establishment of a public prosecution service for crimes against journalists and trade unionists, with support being expressed for this request by each of the representatives of all sides; it had also met the Council of the Office of the Attorney-General, together with the Public Prosecutor, to discuss the subject of violence not only against trade unionists, but also against the lawyers representing trade unionists and against workers in general; (3) as a strategy of inter-institutional coordination and with a view to supporting the conduct of investigations, in November 2008 two meetings had been held with representatives of the Office of the Attorney-General, the Ministry of the Economy, the Ministry of Government, the Ministry of Foreign Affairs and the Supreme Court of Justice. The meetings had concluded that, in view of the existence of the Multi-institutional Commission for Industrial Relations in Guatemala, established in 2003, by Government Decision No. 430-2003, it was adequate to reactivate the Multi-institutional Commission to follow up cases of violence against trade unionists and other matters relating to industrial relations in the country, and accordingly to collaborate with the Office of the Attorney-General, and particularly with the Office of the Prosecutor General for the investigation and resolution of the cases; (4) during 2009, the Multi-institutional Commission for Industrial Relations in Guatemala had met regularly, holding four meetings between 1 January and 30 July 2009; (5) progress has been made in the criminal investigations of certain murders; for example, on 10 January 2009, a person was apprehended who had been charged with committing the murder of the trade union leader, Pedro Zamora, and on 15 April 2009 the public prosecutor lodged criminal charges with the judiciary, with the requirement to hold a trial; during the hearing on 4 June 2009, the magistrate found that there was sufficient evidence against the trade union member to conclude the preparatory stage and begin court proceedings; in the upcoming months, the accused will be tried in the criminal courts; and (6) there is no criminalization or stigmatization of trade union activity. The Government attaches a copy of the records of the meetings of the National Tripartite Commission. In a recent additional report, the Government indicates that the accused was not convicted by the court of the murder of the trade union leader Pedro Zamora and that the Office of the Attorney-General will appeal against the ruling.

The Committee refers to the conclusions of the Committee on the Application of Standards, in which it noted with concern numerous and serious acts of violence against trade unionists, as well as the inefficiency of the criminal proceedings related to these violent acts, giving rise to a grave situation of impunity and the excessive delays in legal proceedings. It also noted the allegations concerning the lack of independence of the judiciary. The Committee on the Application of Standards noted the high-level mission which visited the country in 2009, which had emphasized that, while additional resources had been allocated to the investigatory mechanisms to combat impunity, further measures and resources were clearly necessary to that effect. In this connection, it observed with deep concern that the situation in relation to violence and impunity appeared to be worsening and it recalled with urgency the importance of ensuring that workers are able to carry out their trade union activities in a climate free from violence, threats and fear. The Committee on the Application of Standards highlighted the need to make meaningful progress in sentencing in relation to crimes of violence against trade unionists and in ensuring that, not only the direct authors of the crime, but also the instigators were punished. The Committee on the Application of Standards observed in this respect the need for the continued strengthening of and specific training for those responsible for investigating violence against trade unionists, as well as an improved collaboration of the various bodies mandated in this regard. The Committee on the Application of Standards hoped that concerted efforts in this regard would finally permit meaningful progress to be made in bringing an end to impunity.

Further noting with concern the important allegations of an anti-union climate in the country and the stigmatization of trade unions, the Committee on the Application of Standards recalled the intrinsic link between freedom of association and democracy. It further noted that, beyond the question of impunity, the conclusions of the high-level mission focused on the need for concerted action in relation to the effectiveness of the judicial system, the effective respect for freedom of association by all parties and the effective functioning of the National Tripartite Commission. In particular, the slowness and lack of independence of the judiciary has given rise to significant challenges to the development of the trade union movement. The Committee of Experts shares the opinion of the high-level mission of 2009 concerning the importance of adopting the necessary measures to ensure that awareness is raised to an adequate level concerning the fundamental role of trade unions in the social and economic development of society and their close links with the consolidation of democracy. For this reason, it is important for measures to be taken to actively prevent any stigmatization of trade unions and the trade union movement.

The Committee on the Application of Standards observed that, despite the seriousness of the problems, there had been no significant progress in the application of the Convention, in legislation or in practice. It urged the Government to redouble its efforts with respect to all the above matters and to adopt a complete, concrete and innovative strategy for the full implementation of the Convention, including through the necessary legal reforms, the

strengthening of the programme for the protection of trade unionists and witnesses, and of the measures to combat impunity and the provision of the financial and human resources necessary for the labour inspectorate and the investigative bodies, such as the Office of the Public Prosecutor. The Committee on the Application of Standards expected, with the assistance and necessary technical cooperation of the Office, that the Government and the social partners would be in a position to agree upon a road map with clearly determined time frames for the necessary action in respect of all the above points. The implementation of this road map and any progress made should be reviewed periodically by the ILO. More tangibly, the Committee on the Application of Standards requested the Government to provide a detailed report to the Committee of Experts containing information on the tangible progress made in legislative reforms, the measures taken to combat impunity and the creation of a conducive environment for trade union movement and it expressed the firm hope that it would be in a position next year to note substantial improvements in the application of the Convention.

The Committee of Experts observes that many of the allegations in the MSICG's communication were submitted to the Committee on Freedom of Association at its meeting in November 2009. In its conclusions, the Committee on Freedom of Association noted with concern that the allegations presented in this case were extremely serious and included numerous murders of union leaders and members (16), one disappearance, acts of violence (sometimes also against the relatives of union members), threats, physical harassment, intimidation, the rape of a family member of a trade unionist, obstacles to granting legal status to unions, the dissolution of a trade union, criminal proceedings for carrying out trade union activities, and major institutional failings with regard to labour inspection and the functioning of the judicial authorities, creating a situation of impunity in labour matters (for example, excessive delays, a lack of independence, failures to comply with reinstatement orders issued by the courts), and in criminal matters (see 355th Report, Case No. 2609, paras 858 et seq.).

The Committee on Freedom of Association regretted the very limited information provided by the Government on a very small number of allegations and concluded that these replies by the Government were an illustration of the excessive slowness of the procedures outlined by the complainant organizations and the resulting climate of impunity.

The Committee of Experts, in the same way as the Committee on Freedom of Association, once again draws the Government's attention to the principle that a genuinely free trade union movement cannot develop in a climate of violence and uncertainty; freedom of association can only be exercised in conditions in which fundamental rights, and in particular those relating to human life and personal safety, are fully respected and guaranteed; the rights of workers' and employers' organizations can only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations, and it is for governments to ensure that this principle is respected. The Committee also recalls that excessive delays in proceedings and the absence of judgements against the guilty parties creates in practice a situation of impunity, which reinforces the climate of violence and insecurity, and which is extremely damaging to the exercise of trade union rights.

In view of all of the above, the Committee concludes that the Government has not demonstrated sufficient political will to combat violence against trade union leaders and members and to combat impunity and that the conclusion of the Committee on the Application of Standards continues to be globally valid concerning the lack of significant progress despite the repeated ILO missions and the very clear and firm recommendations of the ILO supervisory bodies. In the first place, the Committee emphasizes that the Government has only replied to a very small number of allegations of violence submitted to the Committee on Freedom of Association in Case No. 2609, despite their extreme gravity. Secondly, the Road Map on all the measures requested by the Committee on the Application of Standards in June 2009 was only prepared in the third week of November 2009, days before the meeting of the Committee of Experts. Thirdly, the Government emphasizes in its report the recent reactivation of the Multi-institutional Commission (which until recently dealt with issues of anti-union violence), the request for a special unit of the public prosecution service dedicated particularly to trade unionists (without indicating the decision that was adopted), although very little progress has been made in a very low number of cases of violence against trade unionists.

The Committee is bound to note that the situation of violence against trade unionists, the shortcomings in the operation of the criminal justice system and the situation of impunity have been further aggravated. The high-level mission of February 2009 noted that in recent years, despite the higher level of violence committed against trade unionists (according to information from Government officials), there have not been effective prosecutions or convictions. The high-level mission received testimony of the general lack of independence of the judicial authorities and Government bodies in relation to criminal cases. The Government indicated to the high-level mission that the situation of violence was generalized and denied the existence of a state policy against the trade union movement.

The Committee notes that the high-level mission of February 2009 determined that a significant increase is required in the capacity and budget of the Office of the Public Prosecutor of the Nation, with a view to increasing the number of prosecutors and investigators. The mission proposed that additional resources should be allocated to existing programmes for the protection of trade unionists (there are currently 44 trade unionists benefiting from protection measures) and witnesses, and that these programmes should be appropriately coordinated. The high-level mission considered that measures need to be taken to actively combat any stigmatization of trade unions and the trade union movement implied by the association of trade union activities with criminal acts. The high-level mission indicates that the trade union membership rate and the number of collective agreements is very low.

The Committee notes the Road Map formulated by the Government after holding consultations in the National Tripartite Commission, in which it was emphasized that consensus was not reached between workers' and employers' organizations. The Road Map and the Government's introduction are summarized below:

#### Introduction and background

In June 2009, when the 98th Session of the International Labour Conference was held, the Ministry of Labour and Social Insurance (MTPS) of Guatemala undertook to prepare a road map to address the observations of the Committee of Experts on the Application of Conventions and Recommendations of the ILO.

On 2 July 2009, the MTPS requested technical assistance from the ILO for the preparation of a time-bound road map for the adoption of the necessary measures to achieve effective compliance with ILO Convention No. 87 in Guatemala.

In a response to this request, the first outline of the road map was received from the International Labour Standards Department of the ILO, which was submitted for consideration by the Tripartite Commission on International Labour Affairs in Guatemala in the context of five meetings. It was only examined in three sessions, without the road map being formulated and approved because, although the representatives of workers and employers expressed their viewpoints, they did not reach consensus. They were also convened to a meeting on 19 November at which the sole item on the agenda was the road map.

In view of this situation, the High Office of the Ministry of Labour and Social Insurance of Guatemala took the decision to formulate the road map through which the State of Guatemala undertakes to implement the activities set out therein.

Strategic Objective I: Provide an effective response to all the cases submitted to the ILO Committee on Freedom of Association

The State of Guatemala, in the same way as many countries in the region, has historically been singled out on many occasions concerning the violation of the right to organize and freedom of association, which are protected by ILO Conventions Nos 87 and 98.

In view of this situation, the current Government of the Republic of Guatemala considers it a priority to address the observations, recommendations and complaints relating to freedom of association which have been referred to the ILO supervisory bodies, particularly those relating to the legal status of persons who due to the exercise of their right to organize are subject to persecution, violence or intimidation.

We are aware of the need for greater attention to be paid to the follow-up investigation and conclusion of cases of violence against trade unionists, and we therefore consider it necessary to begin with affirmative action involving an effective and periodic report to the Committee on Freedom of Association (CFA), including measures of inter-institutional coordination with a view to the exchange of pertinent and relevant information, thereby ensuring that it is brought to the knowledge of the ILO supervisory bodies.

Accordingly, we propose the strengthening of the prosecution unit of the Directorate of International Affairs, through the assignment of qualified personnel devoted exclusively to this subject, with the necessary resources to carry out their activities and provide an immediate response to the specific situation of each of the cases under investigation.

It is also our wish to formulate an annual schedule of meetings between the Ministry of Labour (International Labour Affairs Unit) and the Office of the Attorney-General, with a view to establishing a permanent framework for action between the two institutions.

The Directorate of International Labour Affairs will also undertake an assessment of the cases which have been concluded to bring them to the knowledge of the CFA, as well as of specific cases of violence against trade unionists, with a view to the establishment of a mechanism for their appropriate follow up in the relevant procedural bodies and to provide relevant and regular responses to the CFA of the ILO.

Strategic Objective II: Strengthening inter-institutional coordination machinery

Based on experience, we consider it necessary to maintain constant and permanent communication in a flexible and effective manner with Government institutions that are closely involved in labour matters. For this purpose, the Multi-institutional Labour Commission for Labour Matters in Guatemala is being reactivated and a list will be drawn up of the bodies which are not yet included in the above Commission, but which are closely related to the subject matter.

Through this new system, the intention is to improve coordination between this Ministry and the related Government institutions, as a basis for addressing labour disputes appropriately and the strengthening of industrial relations in the country.

By way of illustration, it should be noted that recent separate meetings have been held with the Advocate-General of the Nation, the Public Prosecutor and the Attorney-General, the President of the Supreme Court of Justice, accompanied by the four magistrates of the Chamber for the Protection of Constitutional Rights, whose remit includes labour courts, and a magistrate from the Civil Chamber, officials who on 13 October 2009 took office for a period of five years and the Minister of Government. All of these officials were informed of the intention to address the observations, recommendations and complaints submitted against the State of Guatemala in labour matters, and they offered full cooperation.

Strategic Objective III: Addressing the recommendations of the CEACR for legislative reforms

A Lawyers' Commission of the MTPS has been appointed with a view to analysing the feasibility of the recommendations for legislative reforms proposed by the CEACR. The opinion of the Lawyers' Commission was communicated to the former ILO technical assistance mission.

We have in our possession a list of legislative initiatives proposing the adoption of reforms to Decree No. 1441 of the Congress of the Republic and the Labour Code, which are currently being examined by the Congress of the Republic. This shows the political will of the State of Guatemala to resolve gradually the problems deriving from the application of Guatemalan labour law.

In addition to the above, an analysis has also been undertaken of the manner in which the Penal Code penalizes the right to strike of workers and, taking into account the CEACR's recommendations, there is now a study to be submitted to the state bodies for decision.

The strategy that will be applied to achieve the expected objectives has also been planned.

Attached is a matrix containing the Road Map to address the observations and recommendations of the ILO supervisory bodies with regard to Conventions Nos 87 and 98 on the right to organize, freedom of association and collective bargaining.

The Committee observes that the measures outlined in the Road Map are either to be implemented on a constant basis or are subject to time limits, which mainly expire on 31 December 2009, or before that date, except for the submission of draft legal reforms to the state bodies (the time limit for

which is set at 28 February 2010) and certain aspects of the measures for the coordination of state bodies in relation to combating violence.

The mission which provided assistance for the formulation of the Road Map emphasizes in its report with regard to the issue of anti-trade union violence: (1) the commitment of the Office of the Attorney-General to reinforce measures for the investigation of the complaints received, and in general of any complaint relating to punishable offences against trade unions, and to submit regularly to the Ministry of Labour and Social Insurance the available information concerning such complaints, so that it is able to reply to the supervisory bodies and particularly the Committee on Freedom of Association; the public prosecution service indicates difficulties relating to the lack of cooperation of those lodging complaints; (2) the offer of cooperation from the Ministry of Government, both for the protection of persons under threat and in support of the action of the labour inspectorate; (3) the offer of cooperation of the new magistrates in the Supreme Court of Justice to alleviate the expenditure and efforts of the Ministry (inspectors) particularly in procedures to penalize offences; (4) the new meeting of the Multi-institutional Commission established by the Ministry to strengthen the links between the officials represented on the Commission. The meeting was attended by the new magistrate in the Supreme Court of Justice who is responsible for labour matters, the training of judges and the modernization of labour procedures; and (5) the prosecutors provided the following figures for cases concerning crimes against trade unionists: 31 in 2007, 32 in 2008 and 48 in 2009. The Ministry of Government indicated that a series of trade unionists are currently receiving personal or zoned police protection and indicated its readiness to provide support through the police for action by inspectors, when so requested.

With regard to the problem of impunity, the report of the mission indicates that the problem of impunity in Guatemala is seen as a worrying national problem that is more practical than legislative in its nature. The press frequently reports murders, particularly of bus drivers, without those who committed them being arrested and brought to trial. This is due, on the one hand, to the precarious nature of the system of investigation and, on the other, the situation of the judiciary. The International Commission against Impunity in Guatemala (CICIG) indicated in its report that "Currently in Guatemala the conditions do not favour the existence of independent and impartial judges". Nevertheless, steps have recently been taken which could be significant: (a) the resignation of the Prosecutor-General of the Republic and the Attorney-General, at the request of the President of the Republic, and the appointment of a new Prosecutor-General and Attorney-General, who is a career official in the public prosecution service, on 30 July 2009, after first consulting the CICIG; and (b) the renewal of the magistrates of the Supreme Court of Justice on 13 October 2009, following a rigorous selection process, on which, among other bodies, views were expressed by the Commissioner of the International Commission against Impunity in Guatemala (CICIG).

***The Committee requests the Government to: (1) ensure the protection of trade unionists who are under threat of death; (2) convey to the public prosecutors and the Supreme Court of Justice its deep concern at the slowness and ill-effectiveness of the judicial system and its recommendation concerning the need to elucidate murders and crimes committed against trade unionists with a view to penalizing those responsible; (3) allocate sufficient resources for these objectives, and consequently increase human and material resources, ensure coordination between the various state bodies who may be called upon to intervene in the judicial system and train investigators; and (4) give priority to these matters in Government policy. The Committee invites the Government to have recourse to ILO technical assistance to resolve the grave problem of criminal impunity with regard to crimes against trade unionists.***

***The Committee requests the Government to provide regular information on the attainment of the objectives of the Road Map and the administrative, judicial and legal reforms set out therein. The Committee trusts that the objectives and measures envisaged in the Road Map will result within a reasonable period of time in crucial improvements with regard to the serious problems raised.***

Finally, the Committee once again expresses its **deep concern** at the acts of violence against trade union leaders and members and 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 continue to take 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 requests the Government to take the necessary measures without delay to conduct the necessary investigations with a view to identifying those responsible for acts of violence against trade union leaders and members, so that they are prosecuted and punished in accordance with the law. The Committee requests the Government to keep it informed of any developments in this respect. The Committee nevertheless expresses its concern that the information provided by the Government only exceptionally reports cases in which those responsible have been identified and punished, and emphasizes the need to considerably reinforce the criminal justice system.***

#### 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) and delays in the registration of trade unions or the refusal to register them;
- restrictions on the right to elect trade union leaders in full freedom (they need to be of Guatemalan origin and to be a worker in the enterprise or economic activity in order to be elected as a trade union leader, under sections 220 and 223 of the Labour Code);
- restrictions on the right of workers' organizations to organize their activities freely (under section 241 of the Labour Code, strikes are declared not by the 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 officials or workers in specific enterprises (sections 390(2) and 430 of the Penal Code and Decree No. 71-86);
- the Civil Service Bill; in its previous observation, the Committee noted a Civil Service Bill which, according to the UNSITRAGUA and the National Federation of State Workers' Unions (FENASTEG), requires a percentage that is too high to establish unions and restricts the right to strike.



The Committee notes the Government's indication that the Bill was withdrawn and that in July 2008 an inter-sectoral consultation committee was established to prepare a Bill that is consistent with the needs of the sectors involved; and

– the situation of many workers in the public sector who do not benefit from trade union rights. These workers, who are under contract under item 029 and others of the budget, should have been recruited for specific or temporary tasks, but are engaged in ordinary and permanent functions and often do not benefit from trade union rights or other employment benefits, other than wages, and are not covered by social security or by collective bargaining, where it exists. The Committee notes that the members of the Supreme Court of Justice indicated to the high-level mission that, in accordance with case law, these workers enjoy the right to organize. Nevertheless, this principle in case law has not been given effect in national practice according to technical assistance reports.

With regard to these matters, the Committee notes that, at the proposal of the 2008 high-level mission, the Tripartite Commission approved an agreement to modernize the legislation and give better effect to Conventions Nos 87 and 98. This agreement provides for “an examination of the dysfunctions of the current system of industrial 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. The Committee observes that the high-level mission undertook to provide appropriate technical assistance in relation to these matters and notes with *interest* that this assistance has already started.

The Committee has received the report of the first technical assistance mission (November 2008) and of a second technical assistance mission (January 2009), following up the high-level mission (April 2008), and of a technical assistance mission carried out in November 2009 to prepare the Road Map of measures to give effect to the Convention called for by the Conference Committee on the Application of Standards. It observes that the Road Map includes deadlines for the submission of draft legislation covering the legislative reforms requested by the Committee of Experts. It recalls in this respect that a series of proposals to address the legislative problems raised were prepared by the National Tripartite Commission along with the ILO technical assistance missions in the first quarter of 2009.

***The Committee requests the Government to provide information on this matter and hopes to be able to note progress in the near future. The Committee firmly hopes that with the technical assistance that it is receiving, the Government will be able to provide information in its next report offering a positive assessment with regard to the various points mentioned.***

#### Other matters

*Export processing sector (maquilas).* For many years, the Committee has been noting the comments made by trade union organizations on significant problems of application of the Convention in relation to trade union rights in export processing zones (*maquilas*). In its 2008 observation, the Committee noted the Government's indications that: (1) the General Labour Inspectorate of the Ministry of Labour and Social Insurance was addressing complaints made in connection with the export processing sector, as well as developing routine inspections through the Export Processing Inspection Unit; (2) in 2007, 19 enterprises in the sector were closed and ten were closed in 2008; (3) in 2008, a procedure of administrative conciliation allowed the payment of benefits to workers affected by the closures in the case of ten export processing enterprises, and the workers who decided not to make use of the conciliation procedure and opted instead to take legal action received assistance free of charge from the Office of the Labour Ombudsman; (4) there are ten trade unions in the sector, with a total membership of 258 workers; (5) in 2007, ten complaints were dealt with relating to violations of freedom of association rights and in six cases a settlement was reached through conciliation, and in 2008, 17 complaints were dealt with relating to violations of Convention No. 87, and 16 are being processed; and (6) the training activities will continue on the rights established in Conventions Nos 87 and 98 for the export processing sector, for which the Government is relying upon technical support from the ILO.

The Committee notes that the Government confines itself in its report to indicating that, during the last half of 2008 and up to now (December 2009) 61 trade unions have been registered, together with 29 collective accords, but that it does not provide information on training activities in the field of trade union rights.

The Committee notes the recent comments of the ITUC according to which it is impossible to exercise the right to organize in export processing zones in view of the determined opposition of the employers. Only three unions have been established in the 200 export processing zones that exist, and the labour authorities are incapable of exercising control over the failure to comply with and the violations of the legislation in this sector.

The MSICG considers that the fact that it is impossible to establish organizations in export processing zones is a result of anti-union practices.

The Committee notes that, in its conclusions, the high-level mission of 2008 indicated that: “according to the Ministry of Labour and Social Insurance, there are seven collective accords in the export processing sector, but only two of them date from 2007. The remainder date from 2003 and before. With regard to trade union membership, according to the administrative authorities, there are six unions with 562 members in export processing zones, in a context of around 200,000 workers. In the view of the executive committee of the trade union movement, there are only two unions in this sector. Whatever the correct figure, there is clearly only a minimum level of trade union activity and collective bargaining in the export processing sector, thereby constituting a problem in the application of Conventions Nos 87 and 98”. ***The Committee requests the Government to provide information on the exercise of trade union rights in practice in export processing zones (number of trade unions, number of Worker members, number of collective agreements and their coverage, complaints of violations of trade union rights, decisions adopted by the authorities and the number of inspections).***

***Under these conditions, the Committee hopes that the Government will continue benefiting from technical assistance from the Office, so that the Convention is given full effect in the export processing sector, and that it will continue providing information on this matter. The Committee requests the Government to refer to the National Tripartite Commission problems which arise in relation to the exercise of trade union rights in the export processing sector and to provide information on any developments.***

*National Tripartite Commission.* The Committee has received the reports on the work of the National Tripartite Commission between August 2008 and July 2009. The Committee notes that, according to technical assistance reports, this Commission is a valuable tool, although there are currently problems relating to the recognition by all concerned of the workers' representatives due to a division in UNSITRAGUA. Assistance needs to be provided to the Tripartite Commission for the preparation of the documents to be discussed and the management of meetings to facilitate the adoption of decisions or firm conclusions. **The Committee endorses the opinion expressed in the technical assistance report and invites the Government to request technical assistance on this matter, as well as for the works of the Legal Reform Subcommittee, which has prepared the documents setting out the reforms requested by the Committee of Experts, and the functioning of the mechanisms for rapid intervention in cases of violations of trade union rights. The Committee requests the Government to continue providing information on the work of the National Tripartite Commission on International Labour Affairs, and that of the Legal Reform Subcommittee and the mechanism for rapid intervention in cases. The Committee expresses the firm hope that in the near future it will be able to note that significant progress has been made in the application of the Convention.**

## Myanmar

**(Ratification: 1955)**

The Committee notes the discussion that took place at the Conference Committee on the Application of Standards in June 2009. It also notes the conclusions and recommendations reached by the Committee on Freedom of Association in Cases Nos 2268 and 2591 (354th Report, approved by the Governing Body at its 305th Session, June 2009, paragraphs 154–168), and the comments submitted by the International Trade Union Confederation (ITUC) in a communication of 26 August 2009 which refer to grave matters noted by the Committee in its previous comments.

The Committee recalls the ITUC's previous reference to the arrest, heavy-handed interrogation and long prison sentences imposed on six workers (Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win and Myo Min). The six workers were sentenced on 7 September 2007 to 20 years' imprisonment for sedition and Thurein Aung, Wai Lin, Kyaw Win, and Myo Min were sentenced to an additional five years in prison for association with the Federation of Trade Unions of Burma (FTUB) under section 17(1) of the Unlawful Associations Act and to three years for illegally crossing a border, as a result of which their jail time amounted to 28 years in total. The Committee notes that in its 2009 comments the ITUC indicates that the six workers appealed their convictions to the divisional court, which dismissed them, prompting them to file their appeals to the Supreme Court – which reviewed the cases on 4 April 2008 and let the original court rulings stand.

The Committee recalls the previous allegations concerning Burma Railway Union leader U Tin Hla. According to the ITUC, U Tin Hla had been arrested along with his entire family on 20 November 2007, and – while his family was later released – was charged and sentenced to seven years in prison under section 19(a) of the Penal Code for possession of explosives which were, in fact, electric wires and tools in his toolbox. The ITUC had indicated that U Tin Hla's crime was apparently his very active efforts to organize workers from the railways and other sectors to support the popular uprising of the Buddhist monks and people in late September 2007. In its 2009 comments, the ITUC adds that U Tin Hla remains in prison, suffering from tuberculosis and diabetes.

In respect of Su Su Nway, who allegedly had been arrested for her actions in supporting workers' participation in the September 2007 uprising, the Committee notes that in its 2009 comments the ITUC states that in November 2008 Su Su Nway was convicted of encouraging assembly of persons disturbing state tranquillity, obstructing the work of officials, and issuing communications that interfere with Myanmar's relations with other nations. She was sentenced to 12 years and 6 months in prison. The ITUC also indicates that at the end of 2008 three workers – Khin Maung Cho (aka. Pho Toke), Nyo Win, and Kan Myint – employed at the A21 Soap Factory in Hlaing Thayar Industrial Zone, were sentenced to long jail terms for involvement with exiled groups, sedition and other charges. Khin Maung Cho was sentenced to 19 years, while Kan Myint received ten years in jail and Nyo Win was given a five-year sentence.

The Committee recalls that the ITUC had previously referred to numerous other grave violations of the Convention, including:

- the imprisonment of Myo Aung Thant, member of the All Burma Petro-Chemical Corporation Union, who has now been in jail for over 12 years after having been convicted for high treason for maintaining contacts with the FTUB (under section 122(1) of the Penal Code);
- the killing of Saw Mya Than, FTUB member and official of the Kawthoolei Education Workers' Union (KEWU), who was allegedly murdered by the army in retaliation for a rebel attack, and in respect of whose murder the Committee on Freedom of Association had requested the Government to institute an independent inquiry in the framework of Case No. 2268;
- the disappearance on 22 September 2007 of Lay Lay Mon, a female labour activist who is a former political prisoner, after helping organize workers to support protesting monks and citizens in the uprising in Yangon; she was believed to be incarcerated in Insein prison but there was no news of if, or when, she would be brought to trial;
- the disappearance of labour activist Myint Soe during the last week of September 2007 after being active in engaging with workers to increase their involvement in the September uprising;
- the arrest by the military authorities on 8 and 9 August 2006 of seven members of the family of the FTUB member and activist Thein Win at their house in the Kyun Tharyar section of Pegu city. While in detention, several male members of the family were tortured while being interrogated. On 3 and 4 September 2006, the authorities released four of the family members. But three of Thein Win's siblings (Tin Oo, Kyi Thein and Chaw Su Hlaing) were sentenced to 18 years in jail under sections 17(1) and (2) of the Unlawful Associations Act. Tin Oo suffered such intensive torture during detention that he has now become mentally unstable and there are fears for his health;
- the arrest in March 2006 of five underground democracy and labour activists for a variety of offences connected to efforts to provide information to the FTUB and other organizations considered as illegal by the regime, and to organize peaceful anti-SPDC demonstrations. All five were sentenced to long prison terms and four were serving those terms in Insein prison (U Aung Thein, 76 years old, sentenced to 20 years; Khin Maung

Win, sentenced to 17 years; Ma Khin Mar Soe, 17 years; Ma Thein Thein Aye, 11 years; and U Aung Moe, 78 years old, sentenced to 20 years);

- the intimidation by the army of the 934 workers at Hae Wae Garment, located in South Okkapala Township in Yangon, who went on strike on 2 May 2006 to demand better terms and conditions of work. The 48 workers allowed to meet with the authorities were forced to sign a written statement that indicated that there were no problems at the factory;

- the arrest and sentencing to a four-year prison term with hard labour of Naw Bey Bey, an activist member of the Karen Health Workers' Union (KHWU); she was supposedly held in Toungoo;

- the arrest, torture and killing of Saw Thoo Di, aka. Saw Ther Paw, a Karen Agricultural Workers' Union (KAWU) committee member from Kya-Inn township, Karen State, by an armed column of Infantry Battalion 83 outside his village on 28 April 2006;

- the shelling of the Pha village with mortars and rocket propelled grenades by Light Infantry Battalion 308 which had been sent by the SPDC military upon learning that, on 30 April 2006, the FTUB and Federation of Trade Unions – Kawthoolei (FTUK) were preparing a May Day workers' rights commemoration; and

- the arrest, torture, and sentencing by a special court established in prison of ten FTUB activists to prison sentences, from three to 25 years, for having used satellite phones to convey information to the ILO and to the international trade union movement through an intermediation by the FTUB.

As concerns the six workers arrested for allegedly participating in a May Day 2007 event, the Committee notes that the statement of the Government representative to the Conference Committee repeats the Government's previous indication that they had not been arrested for holding a May Day event, but for breach of existing laws and for their involvement in unlawful activities and attempted terrorist acts in the country. There was solid evidence that those persons had been receiving instructions, training and financial assistance from the FTUB, a terrorist group in exile and unlawful association which masterminded bombings and terrorist acts to incite public unrest in the country. The Government representative further stated that any request to release them immediately constituted an infringement upon national sovereignty and was contradictory to the basic principles of public international law and *Article 8 of the Convention*, which stipulates that the law of the land should be respected.

With respect to U Tin Hla, the Committee notes that the statement of the Government representative to the Conference Committee reiterates the Government's previous indication that U Tin Hla was neither a leader nor a member of a labour union, but had worked as a supervisor for Myanmar Railways, which had no union. He had been caught by the police when committing the crime of possessing ammunition and had been subsequently charged and sentenced. As regards the ITUC's other allegations of the murder, detention, torture, arrest and sentencing of trade unionists, the Government states that the persons referred to were not arrested and convicted for having engaged in trade union activity but for having incited hatred of and contempt for the Government.

The Committee can only **deplore** the fact that the Government in its report largely confines itself to its previous observations – referring to the FTUB as a terrorist organization and indicating peremptorily that the numerous persons referred to were convicted for breaches of existing laws and inciting hatred of the Government – while failing to provide any evidence of measures taken to implement the Committee's previous requests. Once again, the Committee **deeply regrets** the dismissive tone of the Government's reply and the paucity of the information provided, which is in stark contrast to the extreme gravity of the issues raised by ITUC. The Committee once again strongly condemns the view expressed by the Government that comments made by workers' organizations under article 23 of the ILO Constitution and recommendations made by the ILO supervisory bodies to remedy violations of the fundamental rights of workers constitute interference in internal affairs, emphasizing in this regard that the membership of a State in the International Labour Organization carries with it the obligation to respect in national legislation freedom of association principles and the Conventions which the State has freely ratified including Convention No. 87.

The Committee once again stresses that respect for the right to life and other civil liberties is a fundamental prerequisite for the exercise of the rights contained in the Convention and workers and employers should be able to exercise their freedom of association rights in a climate of complete freedom and security, free from violence and threats. Furthermore, as regards the reported torture, cruelty and ill-treatment, the Committee once again points out that trade unionists, like all other individuals, should enjoy the safeguards provided by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and governments should give the necessary instructions to ensure that no detainee suffers such treatment (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 30).

Finally, recalling that there is currently no legal basis to the respect for, and realization of, freedom of association in Myanmar, the Committee once again recalls that while trade unions are expected under *Article 8 of the Convention* to respect the law of the land, "[t]he law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention". The authorities should not interfere with legitimate trade union activities through arbitrary arrest or detention and allegations of criminal conduct should not be used to harass trade unionists by reason of their union membership or activities.

The Committee therefore once again most **strongly deplores** the serious alleged acts of murder, arrest, detention, torture and sentencing to many years of imprisonment of trade unionists for the exercise of ordinary trade union activities, including the mere sending of information to the FTUB and participation in May Day activities. **The Committee once again urges, the Government to provide information on measures adopted and instructions issued without delay so as to ensure respect for the fundamental civil liberties of trade union members and officers and to take all necessary measures to secure the immediate release of Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win, Myo Min, and all those who have been imprisoned for the exercise of trade union activities immediately and to ensure that no worker is sanctioned for the exercise of such activities, in particular for having contacts with workers' organizations of their own choosing. Furthermore, recalling that the right of workers and employers to freely establish and join organizations of their own choosing cannot exist unless such freedom is established and recognized both in law and in practice, the Committee once again urges the Government to indicate all measures taken, including instructions issued, to ensure the free operation of any form of organization of collective representation of workers, freely chosen by them to defend and promote their economic and social interests, including organizations which operate in exile.**

The Committee recalls the issues it has been raising over the years with respect to the legislative framework, including the prohibition of trade unions and the absence of any legal basis for freedom of association in Myanmar (repressive anti-union legislation, obscure legislative framework, military orders and decrees further limiting freedom of association, a single trade union system established in the 1964 Law and an unclear constitutional framework); the Federation of Trade Unions of Burma (FTUB) forced to work underground and accused of terrorism; "workers' committees" organized by the authorities; and the repression of seafarers even overseas and the denial of their right to be represented by the Seafarers' Union of Burma (SUB) which is affiliated to the FTUB and the International Transport Workers' Federation (ITF).

The Committee further recalls that, for several years, it has indicated that there exist some pieces of legislation containing important restrictions to freedom of association or provisions which, although not directly aimed at freedom of association, can be applied in a manner that seriously impairs the exercise of the right to organize. More specifically: (1) Order No. 6/88 of 30 September 1988 provides that the "organizations shall apply for permission to form to the Ministry of Home and Religious Affairs" (section 3(a)), and states that any person found guilty of being a member of, or aiding and abetting, or using the paraphernalia of, organizations that are not permitted, shall be punished with imprisonment for a term which may extend to three years (section 7); (2) Order No. 2/88 prohibits the gathering, walking or marching in procession by a group of five or more people regardless of whether the act is with the intention of creating a disturbance or of committing a crime; (3) the Unlawful Association Act of 1908 provides that whoever is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association, or in any way assists the operations of any such association, shall be punished with imprisonment for a term which shall not be less than two years and more than three years and shall also be liable to a fine (section 17.1); (4) the 1926 Trade Union Act requires that 50 per cent of workers must belong to a trade union for it to be legally recognized; (5) the 1964 Law Defining the Fundamental Rights and Responsibilities of the People's Workers establishes a compulsory system for the organization and representation of workers and imposes a single trade union; and (6) the 1929 Trade Disputes Act contains numerous prohibitions of the right to strike and empowers the President to refer trade disputes to courts of inquiry or to industrial courts.

Recalling that it had previously requested a detailed report on the measures taken to address the above-noted legislative matters, the Committee **deeply regrets** that the Government limits itself to repeating previously submitted information on the adoption of the Constitution and upcoming legal reforms. The Government reiterates that several sections of the Constitution would give effect to the provisions of the Convention (paragraph 96 of Chapter IV, paragraphs 353, 354 and 355 of Chapter VIII, and Schedule One, Union Legislative List, in Chapter XV) and repeats that, once the Constitution comes into force, pursuant to its provisions, national legislation would be reviewed and new laws drafted, including the Trade Union Law, and that they would be in line with Convention No. 87. In respect of the legislation, the Committee also notes that according to the Government the FTUB had been declared a terrorist organization by the Ministry of Home Affairs in Declaration No. 1/2006, and was also an unlawful association under the Unlawful Associations Act, 1908.

With regard to the Government's indications, the Committee further notes that in its conclusions the Conference Committee, wishing to highlight the intrinsic link between freedom of association and democracy, observed with regret that the Government had undertaken a road map for the latter without ensuring the basic requisites for the former. The Conference Committee also called upon the Government to take concrete steps urgently, with the full and genuine participation of all sectors of society regardless of their political views, to ensure that the Constitution, the legislation and the practice were fully brought into line with the Convention.

Finally, the Committee recalls its previous observation that there was currently no legal basis for the respect for, and realization of, freedom of association in Myanmar and that the broad exclusionary clause of article 354 of the Constitution subjects the exercise of this right "to the laws enacted for State security, prevalence of law and order, community peace and tranquillity or public order and morality". In this respect the Committee had noted with deep regret that the drafting of article 354 of the Constitution may continue to give rise to continued violations of freedom of association in law and practice. Recalling the particularly serious and urgent issues that it has been raising for nearly 20 years now, the Committee must once again **deplore** the Government's persistent failure to take any measures to remedy the legislative situation which constitutes a serious and ongoing breach by the Government of its obligations flowing from its voluntary ratification of the Convention. Furthermore, the Committee once again **deeply regrets** the exclusion from any meaningful consultation of the social partners and civil society as a whole, which would be a necessary foundation for the establishment of a legislative framework on the particularly serious and urgent issues raised in relation to the application of the Convention.

***In these circumstances, the Committee once again urges the Government to furnish without delay a detailed report on the concrete measures taken, with the full and genuine participation of all sectors of society regardless of their political views, to enact legislation guaranteeing to all workers and employers the right to establish and join organizations of their own choosing, as well as the rights of these organizations to exercise their activities and formulate their programmes and to affiliate with federations, confederations and international organizations of their own choosing without interference from the public authorities. It further urges the Government in the strongest terms to immediately repeal Orders Nos 2/88 and 6/88, the Unlawful Association Act, and Declaration No. 1/2006 of the Ministry of Home Affairs, so that they cannot be applied in a manner that would infringe upon the rights of workers' and employers' organizations. The Committee once again requests the Government to communicate any steps taken towards the adoption of draft laws, orders or instructions to guarantee freedom of association so that it may examine their conformity with the provisions of the Convention.***

The Committee notes that the Conference Committee, recalling its previous conclusion that the persistence of forced labour could not be disassociated from the prevailing situation of a complete absence of freedom of association and the systematic persecution of those who tried to organize, called upon the Government to accept an extension of the ILO presence to cover the matters relating to Convention No. 87. ***Noting the indication in the Government's report that an extension of the ILO presence to cover the matters related to the Convention was under consideration, the Committee expresses the firm hope that the Government will be in a position to accept such an extension in the very near future.***

The Committee notes the discussion that took place at the Conference Committee on the Application of Standards in June 2009. It also notes the conclusions and recommendations reached by the Committee on Freedom of Association in Cases Nos 2268 and 2591 (354th Report, approved by the Governing Body at its 305th Session, June 2009, paragraphs 154–168), and the comments submitted by the International Trade Union Confederation (ITUC) in a communication of 26 August 2009 which refer to grave matters noted by the Committee in its previous comments.

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The Committee once again stresses that respect for the right to life and other civil liberties is a fundamental prerequisite for the exercise of the rights contained in the Convention and workers and employers should be able to exercise their freedom of association rights in a climate of complete freedom and security, free from violence and threats. Furthermore, as regards the reported torture, cruelty and ill-treatment, the Committee once again points out that trade unionists, like all other individuals, should enjoy the safeguards provided by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and governments should give the necessary instructions to ensure that no detainee suffers such treatment (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 30).

Finally, recalling that there is currently no legal basis to the respect for, and realization of, freedom of association in Myanmar, the Committee once again recalls that while trade unions are expected under *Article 8 of the Convention* to respect the law of the land, "[t]he law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention". The authorities should not interfere with legitimate trade union activities through arbitrary arrest or detention and allegations of criminal conduct should not be used to harass trade unionists by reason of their union membership or activities.

The Committee therefore once again most **strongly deplores** the serious alleged acts of murder, arrest, detention, torture and sentencing to many years of imprisonment of trade unionists for the exercise of ordinary trade union activities, including the mere sending of information to the FTUB and participation in May Day activities. **The Committee once again urges, the Government to provide information on measures adopted and instructions issued without delay so as to ensure respect for the fundamental civil liberties of trade union members and officers and to take all necessary measures to secure the immediate release of Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win, Myo Min, and all those who have been imprisoned for the exercise of trade union activities immediately and to ensure that no worker is sanctioned for the exercise of such activities, in particular for having contacts with workers' organizations of their own choosing. Furthermore, recalling that the right of workers and employers to freely establish and join organizations of their own choosing cannot exist unless such freedom is established and recognized both in law and in practice, the Committee once again urges the Government to indicate all measures taken, including instructions issued, to ensure the free operation of any form of organization of collective representation of workers, freely chosen by them to defend and promote their economic and social interests, including organizations which operate in exile.**

The Committee recalls the issues it has been raising over the years with respect to the legislative framework, including the prohibition of trade unions and the absence of any legal basis for freedom of association in Myanmar (repressive anti-union legislation, obscure legislative framework, military orders and decrees further limiting freedom of association, a single trade union system established in the 1964 Law and an unclear constitutional framework); the Federation of Trade Unions of Burma (FTUB) forced to work underground and accused of terrorism; "workers' committees" organized by the authorities; and the repression of seafarers even overseas and the denial of their right to be represented by the Seafarers' Union of Burma (SUB) which is affiliated to the FTUB and the International Transport Workers' Federation (ITF).

The Committee further recalls that, for several years, it has indicated that there exist some pieces of legislation containing important restrictions to freedom of association or provisions which, although not directly aimed at freedom of association, can be applied in a manner that seriously impairs the exercise of the right to organize. More specifically: (1) Order No. 6/88 of 30 September 1988 provides that the "organizations shall apply for permission to form to the Ministry of Home and Religious Affairs" (section 3(a)), and states that any person found guilty of being a member of, or aiding and abetting, or using the paraphernalia of, organizations that are not permitted, shall be punished with imprisonment for a term which may extend to three years (section 7); (2) Order No. 2/88 prohibits the gathering, walking or marching in procession by a group of five or more people regardless of whether the act is with the intention of creating a disturbance or of committing a crime; (3) the Unlawful Association Act of 1908 provides that whoever is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association, or in any way assists the operations of any such association, shall be punished with imprisonment for a term which shall not be less than two years and more than three years and shall also be liable to a fine (section 17.1); (4) the 1926 Trade Union Act requires that 50 per cent of workers must belong to a trade union for it to be legally recognized; (5) the 1964 Law Defining the Fundamental Rights and Responsibilities of the People's Workers establishes a compulsory system for the organization and representation of workers and imposes a single

trade union; and (6) the 1929 Trade Disputes Act contains numerous prohibitions of the right to strike and empowers the President to refer trade disputes to courts of inquiry or to industrial courts.

Recalling that it had previously requested a detailed report on the measures taken to address the above-noted legislative matters, the Committee **deeply regrets** that the Government limits itself to repeating previously submitted information on the adoption of the Constitution and upcoming legal reforms. The Government reiterates that several sections of the Constitution would give effect to the provisions of the Convention (paragraph 96 of Chapter IV, paragraphs 353, 354 and 355 of Chapter VIII, and Schedule One, Union Legislative List, in Chapter XV) and repeats that, once the Constitution comes into force, pursuant to its provisions, national legislation would be reviewed and new laws drafted, including the Trade Union Law, and that they would be in line with Convention No. 87. In respect of the legislation, the Committee also notes that according to the Government the FTUB had been declared a terrorist organization by the Ministry of Home Affairs in Declaration No. 1/2006, and was also an unlawful association under the Unlawful Associations Act, 1908.

With regard to the Government's indications, the Committee further notes that in its conclusions the Conference Committee, wishing to highlight the intrinsic link between freedom of association and democracy, observed with regret that the Government had undertaken a road map for the latter without ensuring the basic requisites for the former. The Conference Committee also called upon the Government to take concrete steps urgently, with the full and genuine participation of all sectors of society regardless of their political views, to ensure that the Constitution, the legislation and the practice were fully brought into line with the Convention.

Finally, the Committee recalls its previous observation that there was currently no legal basis for the respect for, and realization of, freedom of association in Myanmar and that the broad exclusionary clause of article 354 of the Constitution subjects the exercise of this right "to the laws enacted for State security, prevalence of law and order, community peace and tranquillity or public order and morality". In this respect the Committee had noted with deep regret that the drafting of article 354 of the Constitution may continue to give rise to continued violations of freedom of association in law and practice. Recalling the particularly serious and urgent issues that it has been raising for nearly 20 years now, the Committee must once again **deplore** the Government's persistent failure to take any measures to remedy the legislative situation which constitutes a serious and ongoing breach by the Government of its obligations flowing from its voluntary ratification of the Convention. Furthermore, the Committee once again **deeply regrets** the exclusion from any meaningful consultation of the social partners and civil society as a whole, which would be a necessary foundation for the establishment of a legislative framework on the particularly serious and urgent issues raised in relation to the application of the Convention.

***In these circumstances, the Committee once again urges the Government to furnish without delay a detailed report on the concrete measures taken, with the full and genuine participation of all sectors of society regardless of their political views, to enact legislation guaranteeing to all workers and employers the right to establish and join organizations of their own choosing, as well as the rights of these organizations to exercise their activities and formulate their programmes and to affiliate with federations, confederations and international organizations of their own choosing without interference from the public authorities. It further urges the Government in the strongest terms to immediately repeal Orders Nos 2/88 and 6/88, the Unlawful Association Act, and Declaration No. 1/2006 of the Ministry of Home Affairs, so that they cannot be applied in a manner that would infringe upon the rights of workers' and employers' organizations. The Committee once again requests the Government to communicate any steps taken towards the adoption of draft laws, orders or instructions to guarantee freedom of association so that it may examine their conformity with the provisions of the Convention.***

The Committee notes that the Conference Committee, recalling its previous conclusion that the persistence of forced labour could not be disassociated from the prevailing situation of a complete absence of freedom of association and the systematic persecution of those who tried to organize, called upon the Government to accept an extension of the ILO presence to cover the matters relating to Convention No. 87. ***Noting the indication in the Government's report that an extension of the ILO presence to cover the matters related to the Convention was under consideration, the Committee expresses the firm hope that the Government will be in a position to accept such an extension in the very near future.***

The Committee notes the discussion that took place at the Conference Committee on the Application of Standards in June 2009. It also notes the conclusions and recommendations reached by the Committee on Freedom of Association in Cases Nos 2268 and 2591 (354th Report, approved by the Governing Body at its 305th Session, June 2009, paragraphs 154–168), and the comments submitted by the International Trade Union Confederation (ITUC) in a communication of 26 August 2009 which refer to grave matters noted by the Committee in its previous comments.

The Committee recalls the ITUC's previous reference to the arrest, heavy-handed interrogation and long prison sentences imposed on six workers (Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win and Myo Min). The six workers were sentenced on 7 September 2007 to 20 years' imprisonment for sedition and Thurein Aung, Wai Lin, Kyaw Win, and Myo Min were sentenced to an additional five years in prison for association with the Federation of Trade Unions of Burma (FTUB) under section 17(1) of the Unlawful Associations Act and to three years for illegally crossing a border, as a result of which their jail time amounted to 28 years in total. The Committee notes that in its 2009 comments the ITUC indicates that the six workers appealed their convictions to the divisional court, which dismissed them, prompting them to file their appeals to the Supreme Court – which reviewed the cases on 4 April 2008 and let the original court rulings stand.

The Committee recalls the previous allegations concerning Burma Railway Union leader U Tin Hla. According to the ITUC, U Tin Hla had been arrested along with his entire family on 20 November 2007, and – while his family was later released – was charged and sentenced to seven years in prison under section 19(a) of the Penal Code for possession of explosives which were, in fact, electric wires and tools in his toolbox. The ITUC had indicated that U Tin Hla's crime was apparently his very active efforts to organize workers from the railways and other sectors to support the popular uprising of the Buddhist monks and people in late September 2007. In its 2009 comments, the ITUC adds that U Tin Hla remains in prison, suffering from tuberculosis and diabetes.

In respect of Su Su Nway, who allegedly had been arrested for her actions in supporting workers' participation in the September 2007 uprising, the Committee notes that in its 2009 comments the ITUC states that in November 2008 Su Su Nway was convicted of encouraging assembly of persons disturbing state tranquillity, obstructing the work of officials, and issuing communications that interfere with Myanmar's relations with other nations. She was sentenced to 12 years and 6 months in prison. The ITUC also indicates that at the end of 2008 three workers – Khin Maung Cho (aka. Pho Toke),

Nyo Win, and Kan Myint – employed at the A21 Soap Factory in Hlaing Thayar Industrial Zone, were sentenced to long jail terms for involvement with exiled groups, sedition and other charges. Khin Maung Cho was sentenced to 19 years, while Kan Myint received ten years in jail and Nyo Win was given a five-year sentence.

The Committee recalls that the ITUC had previously referred to numerous other grave violations of the Convention, including:

- the imprisonment of Myo Aung Thant, member of the All Burma Petro-Chemical Corporation Union, who has now been in jail for over 12 years after having been convicted for high treason for maintaining contacts with the FTUB (under section 122(1) of the Penal Code);
- the killing of Saw Mya Than, FTUB member and official of the Kawthoolei Education Workers' Union (KEWU), who was allegedly murdered by the army in retaliation for a rebel attack, and in respect of whose murder the Committee on Freedom of Association had requested the Government to institute an independent inquiry in the framework of Case No. 2268;
- the disappearance on 22 September 2007 of Lay Lay Mon, a female labour activist who is a former political prisoner, after helping organize workers to support protesting monks and citizens in the uprising in Yangon; she was believed to be incarcerated in Insein prison but there was no news of if, or when, she would be brought to trial;
- the disappearance of labour activist Myint Soe during the last week of September 2007 after being active in engaging with workers to increase their involvement in the September uprising;
- the arrest by the military authorities on 8 and 9 August 2006 of seven members of the family of the FTUB member and activist Thein Win at their house in the Kyun Thayar section of Pegu city. While in detention, several male members of the family were tortured while being interrogated. On 3 and 4 September 2006, the authorities released four of the family members. But three of Thein Win's siblings (Tin Oo, Kyi Thein and Chaw Su Hlaing) were sentenced to 18 years in jail under sections 17(1) and (2) of the Unlawful Associations Act. Tin Oo suffered such intensive torture during detention that he has now become mentally unstable and there are fears for his health;
- the arrest in March 2006 of five underground democracy and labour activists for a variety of offences connected to efforts to provide information to the FTUB and other organizations considered as illegal by the regime, and to organize peaceful anti-SPDC demonstrations. All five were sentenced to long prison terms and four were serving those terms in Insein prison (U Aung Thein, 76 years old, sentenced to 20 years; Khin Maung Win, sentenced to 17 years; Ma Khin Mar Soe, 17 years; Ma Thein Thein Aye, 11 years; and U Aung Moe, 78 years old, sentenced to 20 years);
- the intimidation by the army of the 934 workers at Hae Wae Garment, located in South Okkapala Township in Yangon, who went on strike on 2 May 2006 to demand better terms and conditions of work. The 48 workers allowed to meet with the authorities were forced to sign a written statement that indicated that there were no problems at the factory;
- the arrest and sentencing to a four-year prison term with hard labour of Naw Bey Bey, an activist member of the Karen Health Workers' Union (KHWU); she was supposedly held in Toungoo;
- the arrest, torture and killing of Saw Thoo Di, aka. Saw Ther Paw, a Karen Agricultural Workers' Union (KAWU) committee member from Kya-Inn township, Karen State, by an armed column of Infantry Battalion 83 outside his village on 28 April 2006;
- the shelling of the Pha village with mortars and rocket propelled grenades by Light Infantry Battalion 308 which had been sent by the SPDC military upon learning that, on 30 April 2006, the FTUB and Federation of Trade Unions – Kawthoolei (FTUK) were preparing a May Day workers' rights commemoration; and
- the arrest, torture, and sentencing by a special court established in prison of ten FTUB activists to prison sentences, from three to 25 years, for having used satellite phones to convey information to the ILO and to the international trade union movement through an intermediation by the FTUB.

As concerns the six workers arrested for allegedly participating in a May Day 2007 event, the Committee notes that the statement of the Government representative to the Conference Committee repeats the Government's previous indication that they had not been arrested for holding a May Day event, but for breach of existing laws and for their involvement in unlawful activities and attempted terrorist acts in the country. There was solid evidence that those persons had been receiving instructions, training and financial assistance from the FTUB, a terrorist group in exile and unlawful association which masterminded bombings and terrorist acts to incite public unrest in the country. The Government representative further stated that any request to release them immediately constituted an infringement upon national sovereignty and was contradictory to the basic principles of public international law and *Article 8 of the Convention*, which stipulates that the law of the land should be respected.

With respect to U Tin Hla, the Committee notes that the statement of the Government representative to the Conference Committee reiterates the Government's previous indication that U Tin Hla was neither a leader nor a member of a labour union, but had worked as a supervisor for Myanmar Railways, which had no union. He had been caught by the police when committing the crime of possessing ammunition and had been subsequently charged and sentenced. As regards the ITUC's other allegations of the murder, detention, torture, arrest and sentencing of trade unionists, the Government states that the persons referred to were not arrested and convicted for having engaged in trade union activity but for having incited hatred of and contempt for the Government.

The Committee can only **deplore** the fact that the Government in its report largely confines itself to its previous observations – referring to the FTUB as a terrorist organization and indicating peremptorily that the numerous persons referred to were convicted for breaches of existing laws and inciting hatred of the Government – while failing to provide any evidence of measures taken to implement the Committee's previous requests. Once again, the Committee **deeply regrets** the dismissive tone of the Government's reply and the paucity of the information provided, which is in stark contrast to the extreme gravity of the issues raised by ITUC. The Committee once again strongly condemns the view expressed by the Government that comments



made by workers' organizations under article 23 of the ILO Constitution and recommendations made by the ILO supervisory bodies to remedy violations of the fundamental rights of workers constitute interference in internal affairs, emphasizing in this regard that the membership of a State in the International Labour Organization carries with it the obligation to respect in national legislation freedom of association principles and the Conventions which the State has freely ratified including Convention No. 87.

The Committee once again stresses that respect for the right to life and other civil liberties is a fundamental prerequisite for the exercise of the rights contained in the Convention and workers and employers should be able to exercise their freedom of association rights in a climate of complete freedom and security, free from violence and threats. Furthermore, as regards the reported torture, cruelty and ill-treatment, the Committee once again points out that trade unionists, like all other individuals, should enjoy the safeguards provided by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights and governments should give the necessary instructions to ensure that no detainee suffers such treatment (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 30).

Finally, recalling that there is currently no legal basis to the respect for, and realization of, freedom of association in Myanmar, the Committee once again recalls that while trade unions are expected under *Article 8 of the Convention* to respect the law of the land, "[t]he law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention". The authorities should not interfere with legitimate trade union activities through arbitrary arrest or detention and allegations of criminal conduct should not be used to harass trade unionists by reason of their union membership or activities.

The Committee therefore once again **most strongly deplores** the serious alleged acts of murder, arrest, detention, torture and sentencing to many years of imprisonment of trade unionists for the exercise of ordinary trade union activities, including the mere sending of information to the FTUB and participation in May Day activities. **The Committee once again urges, the Government to provide information on measures adopted and instructions issued without delay so as to ensure respect for the fundamental civil liberties of trade union members and officers and to take all necessary measures to secure the immediate release of Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win, Myo Min, and all those who have been imprisoned for the exercise of trade union activities immediately and to ensure that no worker is sanctioned for the exercise of such activities, in particular for having contacts with workers' organizations of their own choosing. Furthermore, recalling that the right of workers and employers to freely establish and join organizations of their own choosing cannot exist unless such freedom is established and recognized both in law and in practice, the Committee once again urges the Government to indicate all measures taken, including instructions issued, to ensure the free operation of any form of organization of collective representation of workers, freely chosen by them to defend and promote their economic and social interests, including organizations which operate in exile.**

The Committee recalls the issues it has been raising over the years with respect to the legislative framework, including the prohibition of trade unions and the absence of any legal basis for freedom of association in Myanmar (repressive anti-union legislation, obscure legislative framework, military orders and decrees further limiting freedom of association, a single trade union system established in the 1964 Law and an unclear constitutional framework); the Federation of Trade Unions of Burma (FTUB) forced to work underground and accused of terrorism; "workers' committees" organized by the authorities; and the repression of seafarers even overseas and the denial of their right to be represented by the Seafarers' Union of Burma (SUB) which is affiliated to the FTUB and the International Transport Workers' Federation (ITF).

The Committee further recalls that, for several years, it has indicated that there exist some pieces of legislation containing important restrictions to freedom of association or provisions which, although not directly aimed at freedom of association, can be applied in a manner that seriously impairs the exercise of the right to organize. More specifically: (1) Order No. 6/88 of 30 September 1988 provides that the "organizations shall apply for permission to form to the Ministry of Home and Religious Affairs" (section 3(a)), and states that any person found guilty of being a member of, or aiding and abetting, or using the paraphernalia of, organizations that are not permitted, shall be punished with imprisonment for a term which may extend to three years (section 7); (2) Order No. 2/88 prohibits the gathering, walking or marching in procession by a group of five or more people regardless of whether the act is with the intention of creating a disturbance or of committing a crime; (3) the Unlawful Association Act of 1908 provides that whoever is a member of an unlawful association, or takes part in meetings of any such association, or contributes or receives or solicits any contribution for the purpose of any such association, or in any way assists the operations of any such association, shall be punished with imprisonment for a term which shall not be less than two years and more than three years and shall also be liable to a fine (section 17.1); (4) the 1926 Trade Union Act requires that 50 per cent of workers must belong to a trade union for it to be legally recognized; (5) the 1964 Law Defining the Fundamental Rights and Responsibilities of the People's Workers establishes a compulsory system for the organization and representation of workers and imposes a single trade union; and (6) the 1929 Trade Disputes Act contains numerous prohibitions of the right to strike and empowers the President to refer trade disputes to courts of inquiry or to industrial courts.

Recalling that it had previously requested a detailed report on the measures taken to address the above-noted legislative matters, the Committee **deeply regrets** that the Government limits itself to repeating previously submitted information on the adoption of the Constitution and upcoming legal reforms. The Government reiterates that several sections of the Constitution would give effect to the provisions of the Convention (paragraph 96 of Chapter IV, paragraphs 353, 354 and 355 of Chapter VIII, and Schedule One, Union Legislative List, in Chapter XV) and repeats that, once the Constitution comes into force, pursuant to its provisions, national legislation would be reviewed and new laws drafted, including the Trade Union Law, and that they would be in line with Convention No. 87. In respect of the legislation, the Committee also notes that according to the Government the FTUB had been declared a terrorist organization by the Ministry of Home Affairs in Declaration No. 1/2006, and was also an unlawful association under the Unlawful Associations Act, 1908.

With regard to the Government's indications, the Committee further notes that in its conclusions the Conference Committee, wishing to highlight the intrinsic link between freedom of association and democracy, observed with regret that the Government had undertaken a road map for the latter without ensuring the basic requisites for the former. The Conference Committee also called upon the Government to take concrete steps urgently, with the full and genuine participation of all sectors of society regardless of their political views, to ensure that the Constitution, the legislation and the practice were fully brought into line with the Convention.

Finally, the Committee recalls its previous observation that there was currently no legal basis for the respect for, and realization of, freedom of association in Myanmar and that the broad exclusionary clause of article 354 of the Constitution subjects the exercise of this right "to the laws enacted

for State security, prevalence of law and order, community peace and tranquillity or public order and morality". In this respect the Committee had noted with deep regret that the drafting of article 354 of the Constitution may continue to give rise to continued violations of freedom of association in law and practice. Recalling the particularly serious and urgent issues that it has been raising for nearly 20 years now, the Committee must once again **deplore** the Government's persistent failure to take any measures to remedy the legislative situation which constitutes a serious and ongoing breach by the Government of its obligations flowing from its voluntary ratification of the Convention. Furthermore, the Committee once again **deeply regrets** the exclusion from any meaningful consultation of the social partners and civil society as a whole, which would be a necessary foundation for the establishment of a legislative framework on the particularly serious and urgent issues raised in relation to the application of the Convention.

***In these circumstances, the Committee once again urges the Government to furnish without delay a detailed report on the concrete measures taken, with the full and genuine participation of all sectors of society regardless of their political views, to enact legislation guaranteeing to all workers and employers the right to establish and join organizations of their own choosing, as well as the rights of these organizations to exercise their activities and formulate their programmes and to affiliate with federations, confederations and international organizations of their own choosing without interference from the public authorities. It further urges the Government in the strongest terms to immediately repeal Orders Nos 2/88 and 6/88, the Unlawful Association Act, and Declaration No. 1/2006 of the Ministry of Home Affairs, so that they cannot be applied in a manner that would infringe upon the rights of workers' and employers' organizations. The Committee once again requests the Government to communicate any steps taken towards the adoption of draft laws, orders or instructions to guarantee freedom of association so that it may examine their conformity with the provisions of the Convention.***

The Committee notes that the Conference Committee, recalling its previous conclusion that the persistence of forced labour could not be disassociated from the prevailing situation of a complete absence of freedom of association and the systematic persecution of those who tried to organize, called upon the Government to accept an extension of the ILO presence to cover the matters relating to Convention No. 87. ***Noting the indication in the Government's report that an extension of the ILO presence to cover the matters related to the Convention was under consideration, the Committee expresses the firm hope that the Government will be in a position to accept such an extension in the very near future.***

## **Swaziland**

***(Ratification: 1978)***

The Committee notes the comments of 26 August 2009 by the International Trade Union Confederation (ITUC) concerning issues under examination, as well as to serious acts of brutality from the security forces against peaceful demonstrations and threats of dismissal against trade unionists who took strike action in the textile sector, to the repeated arrests of union leaders, particularly of the Secretary General of the Swaziland Federation of Trade Unions (SFTU), and to the refusal from the public authorities to recognize trade unions. The Committee notes the reply of the Government dated 30 October 2009 contesting in particular the allegations made by the ITUC on arrests of union leaders for participating in protest actions. In reply to the alleged detention of the Secretary-General of the SFTU, the Government indicates that he was not arrested but questioned by the police and his fundamental constitutional rights were not violated. While noting the contradictory nature of the statements from the ITUC and the Government, the Committee wishes to recall, along with the Conference Committee on the Application of Standards, the importance it attaches to the full respect of basic civil liberties such as freedom of expression, of assembly and of the press, and to emphasize once again that freedom of assembly constitutes a fundamental aspect of trade union rights and that the authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof, provided that the exercise of these rights does not cause a serious and imminent threat to public order (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 35).

The Committee notes the discussion which took place in the Conference Committee in June 2009. The Committee observes that in its conclusions the Conference Committee regretted that, although the Government had benefited from ILO technical assistance for some time now, including through a high-level mission, the legislative amendments requested for many years have yet to be adopted. The Conference Committee urged the Government to take the necessary measures so that the amendments requested by the Committee of Experts would finally be adopted. It further highlighted its outstanding calls to the Government to repeal the 1973 Decree, to amend the 1963 Public Order Act, as well as the Industrial Relations Act (IRA), and expressed the firm hope that meaningful and expedited progress would be made in the review of the Constitution before the Steering Committee on Social Dialogue, as well as in respect of other contested legislation and bills.

The Committee recalls that for many years it has been referring to certain provisions of the law that are inconsistent with those of the Convention and asked the Government:

- to amend the legislation or enact other laws to ensure that domestic workers (section 2 of the IRA) have the right to organize in defence of their economic and social interests;
- to amend section 29(1)(i) of the IRA placing statutory restrictions on the nomination of candidates and eligibility for union office, to enable such matters to be dealt with in the statutes of the organizations concerned;
- to amend section 86(4) of the IRA to ensure that the Conciliation, Mediation and Arbitration Commission (CMAC) does not supervise strike ballots unless the organizations so request in accordance with their own statutes;
- to recognize the right to strike in sanitary services (at present banned by IRA section 93(9)), and establish only a minimum service with the participation of workers and employers in the definition of such a service; and
- to amend the legislation in order to shorten the compulsory dispute settlement procedures laid down in IRA sections 85 and 86, read in conjunction with sections 70 and 82.

The Committee takes note of the information provided by the Government on 22 May and 9 September 2009 on steps taken so far to amend the

legislation on the abovementioned issues. In this regard, the Government indicates that the Labour Advisory Board has agreed in May 2009 on a finalized consensus document of proposed amendments to the Industrial Relations Act (IRA) of 2000, a copy of which was communicated to the Committee. As of September 2009, the Cabinet had received the draft bill scrutinized by the Attorney-General and would be passed into a bill. **While taking note of the progress made in this regard, the Committee firmly hopes that the Industrial Relations (Amendment) Bill will be adopted without delay and expects that the Government will provide copy of the new Industrial Relations Act as amended in the near future.**

Furthermore, the Committee recalls that its previous comments referred to other legislative issues and provisions that are inconsistent with those of the Convention, as well as a request for information on the effect given to some provisions in practice:

- The repeal of the 1973 Decree/State of Emergency Proclamation and its implementing regulations concerning trade union rights, and the amendment of the 1963 Public Order Act so that it will not be used to repress lawful and peaceful strikes. On these matters, the Committee notes from the Government's report that it was decided that constitutional review issues raised by the Committee be referred to the Legal and Institutional Affairs Subcommittee of the High-level Steering Committee on Social Dialogue. Concerning measures envisaged with regard to the 1973 Decree and the 1963 Public Order Act, the Committee notes the Government's statement according to which it is in the process of reviewing, repealing and harmonizing all laws that may be in conflict with the Constitution of 2005.

- The amendment of the legislation to ensure that prison staffs have the right to organize in defence of their economic and social interests. The Committee notes from the Government's report that it has been recommended that the issue of the right to organize of prison staff should be addressed under the law governing the Prison Service (Correctional Services) and that consultations have already been initiated to review the Prisons' Act.

- Information on any practical application of section 40 of the IRA with regard to the civil liability of trade union leaders and, in particular the charges that may be brought under section 40(13); as well as information on the effect given in practice to section 97(1) (criminal liability of trade union leaders) of the IRA by ensuring that penalties applying to strikers do not in practice impair the right to strike. In this regard, the Government indicates that it would keep the Office informed of any development.

**Recalling that the Conference Committee noted with concern that the Special Consultative Tripartite Subcommittee of the High-level Steering Committee on Social Dialogue had not met for several months, the Committee urges the Government to tackle all pending issues mentioned above in full consultation with the social partners as a matter of urgency. Consequently, the Committee firmly hopes that the Government will take without delay the necessary steps: (1) to abrogate the 1973 Decree/State of Emergency Proclamation and its implementing regulations concerning union rights; (2) to amend the 1963 Public Order Act so that it will not be used to repress lawful and peaceful strikes; (3) to amend the Prisons' Act so as to guarantee that prison staff have the right to organize in defence of their economic and social interests; (4) to keep the Office informed of the practical application of section 40 of the IRA with regard to the civil liability of trade union leaders and section 97(1) of the IRA concerning criminal liability of trade union leaders, while ensuring their conformity with the principles enshrined in the Convention.**

**Taking into account that freedom of association and the effective recognition of the right to collective bargaining are particularly important to enable the attainment of the four strategic objectives of the Organization (see ILO Declaration on Social Justice for a Fair Globalization, 2008), the Committee encourages the Government as a matter of priority to engage with the Office, including through its technical assistance, so as to ensure the full application of the Convention.**

The Committee notes the comments of 26 August 2009 by the International Trade Union Confederation (ITUC) concerning issues under examination, as well as to serious acts of brutality from the security forces against peaceful demonstrations and threats of dismissal against trade unionists who took strike action in the textile sector, to the repeated arrests of union leaders, particularly of the Secretary General of the Swaziland Federation of Trade Unions (SFTU), and to the refusal from the public authorities to recognize trade unions. The Committee notes the reply of the Government dated 30 October 2009 contesting in particular the allegations made by the ITUC on arrests of union leaders for participating in protest actions. In reply to the alleged detention of the Secretary-General of the SFTU, the Government indicates that he was not arrested but questioned by the police and his fundamental constitutional rights were not violated. While noting the contradictory nature of the statements from the ITUC and the Government, the Committee wishes to recall, along with the Conference Committee on the Application of Standards, the importance it attaches to the full respect of basic civil liberties such as freedom of expression, of assembly and of the press, and to emphasize once again that freedom of assembly constitutes a fundamental aspect of trade union rights and that the authorities should refrain from any interference which would restrict this right or impede the lawful exercise thereof, provided that the exercise of these rights does not cause a serious and imminent threat to public order (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 35).

The Committee notes the discussion which took place in the Conference Committee in June 2009. The Committee observes that in its conclusions the Conference Committee regretted that, although the Government had benefited from ILO technical assistance for some time now, including through a high-level mission, the legislative amendments requested for many years have yet to be adopted. The Conference Committee urged the Government to take the necessary measures so that the amendments requested by the Committee of Experts would finally be adopted. It further highlighted its outstanding calls to the Government to repeal the 1973 Decree, to amend the 1963 Public Order Act, as well as the Industrial Relations Act (IRA), and expressed the firm hope that meaningful and expedited progress would be made in the review of the Constitution before the Steering Committee on Social Dialogue, as well as in respect of other contested legislation and bills.

The Committee recalls that for many years it has been referring to certain provisions of the law that are inconsistent with those of the Convention and asked the Government:

- to amend the legislation or enact other laws to ensure that domestic workers (section 2 of the IRA) have the right to organize in defence of their economic and social interests;
- to amend section 29(1)(i) of the IRA placing statutory restrictions on the nomination of candidates and eligibility for union office, to enable

such matters to be dealt with in the statutes of the organizations concerned;

- to amend section 86(4) of the IRA to ensure that the Conciliation, Mediation and Arbitration Commission (CMAC) does not supervise strike ballots unless the organizations so request in accordance with their own statutes;
- to recognize the right to strike in sanitary services (at present banned by IRA section 93(9)), and establish only a minimum service with the participation of workers and employers in the definition of such a service; and
- to amend the legislation in order to shorten the compulsory dispute settlement procedures laid down in IRA sections 85 and 86, read in conjunction with sections 70 and 82.

The Committee takes note of the information provided by the Government on 22 May and 9 September 2009 on steps taken so far to amend the legislation on the abovementioned issues. In this regard, the Government indicates that the Labour Advisory Board has agreed in May 2009 on a finalized consensus document of proposed amendments to the Industrial Relations Act (IRA) of 2000, a copy of which was communicated to the Committee. As of September 2009, the Cabinet had received the draft bill scrutinized by the Attorney-General and would be passed into a bill. **While taking note of the progress made in this regard, the Committee firmly hopes that the Industrial Relations (Amendment) Bill will be adopted without delay and expects that the Government will provide copy of the new Industrial Relations Act as amended in the near future.**

Furthermore, the Committee recalls that its previous comments referred to other legislative issues and provisions that are inconsistent with those of the Convention, as well as a request for information on the effect given to some provisions in practice:

- The repeal of the 1973 Decree/State of Emergency Proclamation and its implementing regulations concerning trade union rights, and the amendment of the 1963 Public Order Act so that it will not be used to repress lawful and peaceful strikes. On these matters, the Committee notes from the Government's report that it was decided that constitutional review issues raised by the Committee be referred to the Legal and Institutional Affairs Subcommittee of the High-level Steering Committee on Social Dialogue. Concerning measures envisaged with regard to the 1973 Decree and the 1963 Public Order Act, the Committee notes the Government's statement according to which it is in the process of reviewing, repealing and harmonizing all laws that may be in conflict with the Constitution of 2005.
- The amendment of the legislation to ensure that prison staffs have the right to organize in defence of their economic and social interests. The Committee notes from the Government's report that it has been recommended that the issue of the right to organize of prison staff should be addressed under the law governing the Prison Service (Correctional Services) and that consultations have already been initiated to review the Prisons' Act.
- Information on any practical application of section 40 of the IRA with regard to the civil liability of trade union leaders and, in particular the charges that may be brought under section 40(13); as well as information on the effect given in practice to section 97(1) (criminal liability of trade union leaders) of the IRA by ensuring that penalties applying to strikers do not in practice impair the right to strike. In this regard, the Government indicates that it would keep the Office informed of any development.

**Recalling that the Conference Committee noted with concern that the Special Consultative Tripartite Subcommittee of the High-level Steering Committee on Social Dialogue had not met for several months, the Committee urges the Government to tackle all pending issues mentioned above in full consultation with the social partners as a matter of urgency. Consequently, the Committee firmly hopes that the Government will take without delay the necessary steps: (1) to abrogate the 1973 Decree/State of Emergency Proclamation and its implementing regulations concerning union rights; (2) to amend the 1963 Public Order Act so that it will not be used to repress lawful and peaceful strikes; (3) to amend the Prisons' Act so as to guarantee that prison staff have the right to organize in defence of their economic and social interests; (4) to keep the Office informed of the practical application of section 40 of the IRA with regard to the civil liability of trade union leaders and section 97(1) of the IRA concerning criminal liability of trade union leaders, while ensuring their conformity with the principles enshrined in the Convention.**

**Taking into account that freedom of association and the effective recognition of the right to collective bargaining are particularly important to enable the attainment of the four strategic objectives of the Organization (see ILO Declaration on Social Justice for a Fair Globalization, 2008), the Committee encourages the Government as a matter of priority to engage with the Office, including through its technical assistance, so as to ensure the full application of the Convention.**

## Turkey

**(Ratification: 1993)**

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 26 August 2009, by the Confederation of Public Employees' Trade Unions (KESK) in a communication dated 20 August 2009, by the Confederation of Progressive Trade Unions of Turkey (DISK), in a communication dated 14 May 2009, and by the Turkish Confederation of Public Workers Associations (Türkiye Kamu-Sen) in a communication dated 15 September 2009. The Committee further notes the comments made by the Turkish Confederation of Employers' Associations (TISK) in a communication dated 2 September 2009. **The Committee requests the Government to provide its observations on these comments.**

The Committee notes the discussions in the Conference Committee on the Application of Standards in 2009 on the application of the Convention. The Committee notes in particular that the Committee on the Application of Standards requested the Government to accept a high-level bipartite mission with the aim of assisting the Government in making meaningful progress in relation to the long outstanding issues raised by the Committee.

The Committee notes the Government's indication according to which a group of six persons, under the presidency of the Director-General of Labour,

has been established in order to re-examine draft Act No. 2821 on trade unions and draft Act No. 2822 on collective labour agreements, strikes and lockouts.

#### Civil liberties

The Committee notes the Government's reply to the comments made by the ITUC in a communication dated 29 August 2008 that referred to: (1) violent detention and arrest by the police force of trade union leaders and union members of the TÜMTİS trade union for legitimate exercise of trade union rights; (2) violent attacks on trade union members of the TÜMTİS trade union by security forces of a private enterprise; (3) violent repression during a teachers demonstration on 26 November 2005, arrest and prison sentences against ten trade union leaders of unions affiliated to KESK; (4) setting on fire of the trade union premises of Egitim-Sen's branch office on 4 March 2007; (5) public authorities interference on the statutes of public sector confederation KESK and its affiliates; and (6) closing down of the Turkish trade union of retirees (EMEKLİ-Sen) on 19 September 2007. Concerning the allegations of violence against trade unionists and prison sentences, the Government indicates that according to article 34 of the Constitution, everyone has the right to organize meetings and demonstrations without permission provided that they are non-violent. Moreover, it refers once more to Law No. 2911 on Meetings and Demonstrations that provides for the right of meetings and demonstrations, responsibilities, circumstances of prohibition and penalties. Besides, Circular No. 2005/14 of the Prime Minister, already referred to by the Government, states that press statements made by union leaders are not subject to disciplinary proceedings and provides for facilities for meetings and demonstrations organized according to Law No. 2911. The Committee observes that the Government provides general indications as to the allegations concerning violence exercised by the police force. In this regard, while appreciating the important step taken by the Government in 2008 to declare May Day a public holiday, the Committee notes that the recent comments from the ITUC, DISK and KESK refer to new cases of recourse to violence by the police force during May Day celebrations in 2009. The Committee recalls that in previous comments it had taken note of similar allegations and it had raised the issue of measures to give the police adequate instructions so as to ensure that police intervention is limited to cases where there is a genuine threat to public order and to avoid the danger of excessive violence in trying to control demonstrations. The Committee wishes to refer to the conclusions of the Conference Committee on the Application of Standards in 2009, when it took note of the Government's indication that it was determined to take all necessary disciplinary and judicial measures against the members of the security forces who used disproportionate and excessive force, but that it was important that those demonstrating respected the relevant provisions of national legislation. The Committee on the Application of Standards emphasized in this regard, that respect for basic civil liberties was an essential prerequisite to the exercise of freedom of association and urged the Government to take all necessary measures to ensure a climate free from violence, pressure or threats of any kind so that workers and employers could fully and freely exercise their rights under the Convention. **The Committee requests the Government to provide information in this respect. Moreover, the Committee requests once again the Government to respond to the comment formulated by the ITUC in 2007 that trade unions must allow the police to attend their meetings and record the proceedings. The Committee also requests the Government to carry out an investigation on the allegations concerning all the cases of use of violence during police or other security force interventions and to indicate any developments in this respect.**

With respect to the allegations concerning the interference by the Government on the statutes of public sector confederations and trade unions, the Government indicates that these confederation and trade unions refer in their statutes to "collective bargaining", "collective dispute" and "strike", which are not applicable to public sector trade unions because of a Constitutional restriction; they should instead refer, according to the Government, to "collective negotiations". The Committee recalls that *Article 3 of the Convention* provides for the right of workers' organizations to draw up their constitutions (statutes) and rules. In order for this right to be fully guaranteed, the Committee believes that two basic conditions must be met: firstly, national legislation should only lay down formal requirements as regards trade union constitutions; and secondly, the constitutions and rules should not be subject to prior approval at the discretion of the public authorities (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 109). The Committee further recalls that the prohibition of strikes is only acceptable in the case of public servants exercising authority in the name of the State and essential services in the strict sense of the term and that trade unions representing public servants who are not engaged in the administration of the State should be able to engage in collective bargaining on behalf of their members, as one of the fundamental activities in which trade unions are involved. The Committee recalls that under *Article 8 of the Convention*, while trade unions are expected to respect the law of the land, this law should not be such as to impair the guarantees provided for in the Convention. **The Committee requests the Government to refrain itself from all intervention with respect to the right of trade unions to draw their own statutes, especially when, like in the present case, they provide for trade union rights that are in conformity with the principles enshrined in Conventions Nos 87 and 98 ratified by Turkey. The Committee requests the Government to indicate any developments in this regard.**

With respect to the alleged closing down of the EMEKLİ-Sen on 19 September 2007, the Government indicates that only employees and employers have the right to establish unions and senior organizations without permission and that there is no provision in Acts Nos 2821 and 2822 concerning the retired persons in these laws, who may, however, organize in the form of an association. The Committee recalls that the legislation should not prevent the trade union organizations and associations from affiliating retirees if they so wish, particularly when they belong to the activity represented by the union.

The Committee further notes that the Government does not provide any information concerning the setting on fire of the premises of Egitim-Sen's branch office. The Committee recalls that attacks against trade unionists and trade union premises and property constitute serious interference with trade union rights. Criminal activities of this nature create a climate of fear which is extremely prejudicial to the exercise of trade union activities. **The Committee requests the Government to carry out an appropriate investigation on these events and to provide information in this respect.**

#### Legislative issues

The Committee recalls that for a number of years it has been commenting upon several provisions of Act No. 2821 on trade unions, Act No. 2822 on collective labour agreements, strikes and lockouts and Act No. 4688 on Public Employees' Trade Unions. The Committee notes the copies of draft bills amending Acts Nos 2821, 2822 and 4688 submitted by the Government. The Committee had taken note in its previous observation that the Bills amending Acts Nos 2821 and 2822, after having been consulted with the social partners who reached consensus on some issues, were submitted to the Turkish Grand National Assembly on 27 May 2008. In this regard, the Committee on the Applications of Standards took note of the Government's indication that the Tripartite Consultation Board had conducted intensive work in this regard. The Committee notes, that these Bills contain some improvements in the application of the Convention with respect to the following provisions (some of which the Committee had already taken note of in

previous comments):

- The condition of the Turkish citizenship to be a founding member and for the election of trade union officers (sections 5 and 14 of Act No. 2821) has been removed.
- The possibility for the governor to appoint an observer at the General Congress of a trade union (section 14(1), of Act No. 2821) has been removed.
- The condition of the certification of the notary public for the membership registration form and for the notice of resignation (sections 22(2) and 25(2) of Act No. 2821) has been removed.
- The definition of public servant includes those occupied in a post or in a contractual employee position other than that of a worker in the public establishments and institutions, including public servants under probation (section 3(a) of Act No. 4688).

Furthermore, the Committee notes the Government's indication in its reply to the Committee on the Application of Standards, that the Constitutional Court found that section 73(3), of Act No. 2822 was in breach of the Constitution and had therefore repealed it.

However, a reading of the draft bills reveals that a number of concerns raised by the Committee remain valid with respect to their conformity with:

#### Article 2 of the Convention

- The need to ensure that the self-employed workers, homeworkers and apprentices enjoy the right to organize as section 2 of Act No. 2821 and section 18 of Act No. 3308 (Apprenticeship and Vocational Training) lead to the exclusion either explicitly or in practice of these categories of workers.
- The exclusion from the right to organize of a number of public employees (such as senior public employees, magistrates, civilian personnel in military institutions and prison guards, section 15 of Act No. 4688). According to the ITUC and KESK, almost 450,000 public employees are deprived of their right to organize due to this provision.
- The prohibition concerning the establishment of trade unions on an occupational or workplace basis (section 3 of Act No. 2821 and section 4 of Act No. 4688).
- The criteria under which the Ministry of Labour determines the branch of activity covering a worksite (as unions must be constituted on a branch of activity basis) and the implications of such determinations on the workers' right to form and join organizations of their own choosing (section 4 of Act No. 2821).
- The criteria under which the Ministry of Labour determines the branch of activity in the public sector and the implications of such determination on the workers' right to form and join organizations of their own choosing taking into account that unions have to be constituted on a branch of activity basis (section 5 of Act No. 4688 as well as the Regulation on the Determination of Branch of Activity of Organizations and Agencies). In this respect, the Committee has already taken note of Case No. 2537 based in a complaint from Yapi Yol Sen in which the trade union alleged that due to the closure of an administrative unit (General Directorate of village affairs) which belonged to the branch of "Public works, construction and village services" its personnel was transferred to the local administration and therefore to the branch of "local governments" which meant that Yapi Yol Sen automatically lost its membership and had to face financial difficulties as well as the fact that trade union officers lost their office pursuant to section 16 of Act No. 4688.

#### Article 3 of the Convention

- The detailed provisions of Acts Nos 2821, 2822 and 4688 in respect to the internal functioning of unions and their activities that lead to repeated interference by the authorities.
- The provision under which trade union officers' mandates are suspended in case of candidacy in local or general elections and terminated in case of election (Act No. 2821, section 37(3)).
- The removal of union executive bodies in case of non-respect of requirements set out in the law (section 10 of Act No. 4688).
- The termination of trade union office by reason of the transfer of a trade union leader to another branch of activity, or his/her dismissal or simply the fact that a trade union leader leaves the work (section 16 of Act No. 4688, this issue was also dealt with by the Committee on Freedom of Association in Case No. 2537 concerning Yapi Yol Sen, mentioned above).

#### Severe limitations to right to strike

- Prohibition of strikes for political reasons, general strikes and sympathy strikes (section 25 of Act No. 2822 and article 54 of the Constitution). The Government had indicated that this issue was not included in the reform as it required a constitutional revision. ***In this regard, the Committee calls upon the Government to rapidly put forward and ensure the necessary legal and constitutional reforms for the application of the Convention.***
- Prohibition of strike in many services which cannot be considered to be essential in the strict sense of the term (production of coal for water, electricity, gas and coal power plants, exploration, production and distribution of natural gas and petroleum; petrochemical works, banking and public notaries, land, sea, railway urban public transportation and other public transportation on rail, chemists shops, pharmacies, educational and training

institutions) and compulsory arbitration in services where strikes are prohibited (sections 29, 30 and 32 of Act No. 2822). The Committee recalls that in these services, rather than a prohibition, the establishment of a minimum service could satisfy both the workers and the public interest.

- The possibility for the Council of Ministers to suspend for 60 days a lawful strike for public health and national security reasons and then to refer the matter to compulsory arbitration, if the parties have not been able to reach a settlement upon the expiry of the suspension period (section 33 of Act No. 2822). The draft Bill provides for the advisory opinion of the High Board of Arbitration (a tripartite body), however, the Committee considers that the responsibility for suspending a strike should lie with an independent body which has the confidence of all the parties concerned.

- Excessively long waiting period before a strike can be called (section 27 – referring to section 23 – and section 35 of Act No. 2822).

- Minimum services are determined by the regional directorate of the Ministry of Labour and Social Security. The Committee considers, however, that minimum services should be determined with the participation of workers' and employers' associations involved and, in case of disagreement, the question should be settled by an independent body and not by the Ministry of Labour and Social Security (section 40 of Act No. 2822).

- Severe limitations on picketing (section 48 of Act No. 2822); although the draft Bill has eliminated the prohibition for the trade unions to provide shelter to those workers in the picket, other restrictions subsist.

- Heavy sanctions, including imprisonment for participating in unlawful strikes, the prohibition of certain of which however, is contrary to the principles of freedom of association (sections 70, 71, 72, 73 (except for paragraph 3 repealed by the Constitutional Court), 77 and 79 of Act No. 2822 (although section 79 has been modified in the draft, it still provides for fines to those who write posters or signs in workplaces on strike)). KESK refers to concrete cases of trade unions and union members sanctioned for having participated in a strike.

- Section 35 of Act No. 4688 that provides for the determination and settlement of disputes by the conciliation board, makes no mention of the circumstances in which strike action may be exercised in the public service. The Committee recalls that restrictions on the right to strike in the public service should be limited to public servants who are exercising authority in the name of the State and those working in essential services in the strict sense of the term.

***The Committee requests the Government to indicate the current situation of the Bills amending Acts Nos 2821, 2822 and 4688 and the extent to which consensus has been reached with the social partners in this regard. The Committee expresses the hope that the final texts will take fully into account its comments and that it will be in a position of noting progress.***

Associations Act (supervision of organizations' accounts)

The Committee had already observed that section 35 of Associations Act No. 5253 of 4 November 2004 provides that certain specific sections of this Act apply to trade unions, employers' organizations, as well as federations and confederations, if there are no specific provisions in special laws concerning these organizations. In this respect, section 19 enables the Minister of Internal Affairs or the civil administration authority to examine the books and other documents of an organization, conduct an investigation and demand information at any time, with 24 hours' notice. Once again, the Committee recalls that the supervision of accounts should be limited to the obligation of submitting periodic financial reports or to cases where serious grounds exist for believing that the actions of an organization are contrary to its rules or the law (which should be in conformity with the Convention), or if there is a need to investigate a complaint by a certain percentage of the members of the employers' or workers' organizations; both the substance and the procedure of such verifications should be subject to review by the competent judicial authority affording every guarantee of impartiality and objectivity (see General Survey, op. cit., paragraph 125). ***The Committee requests the Government once again to indicate in its next report the measures taken or contemplated to amend sections 19 and 35 of Act No. 5253 of 2004 so as to exclude workers' and employers' organizations from the scope of application of these provisions or ensure that verification of trade union accounts beyond the submission of periodic financial reports takes place only where there are serious grounds for believing that the actions of an organization are contrary to its rules or the law (which should be in conformity with the Convention) or in order to investigate a complaint by a certain percentage of members.***

The Committee ***regrets*** to note that the Government has not provided any information with respect to the elaboration of the plan of action with clear time lines (requested by the Committee on the Application of Standards) that would allow the Committee to note significant progress in bringing the law and practice into full conformity with the provisions of the Convention. ***The Committee requests the Government to accept the high-level bipartite mission suggested by the Conference Committee with the aim of assisting the Government in making meaningful progress on these long outstanding issues. The Committee considers that this kind of mission would be particularly useful taking into consideration the Government's indication to the Conference Committee that some legislative changes required a constitutional amendment.***

## **Bolivarian Republic of Venezuela**

***(Ratification: 1982)***

The Committee notes the comments of the International Trade Union Confederation (ITUC), dated 26 August 2009, the Venezuelan Federation of Chambers and Associations of Commerce and Production (FEDECAMARAS), dated 3 June 2009, and the Confederation of Workers of Venezuela (CTV), dated 28 August 2009. Finally, the Committee notes the conclusions of the Committee on Freedom of Association in relation to the cases presented by national and international organizations of workers (Cases Nos 2422 and 2674) and employers (Case No. 2254), and observes that three other cases are under examination (Nos 2711, 2727 and 2736). In its previous observations, the Committee noted the conclusions of the high-level mission which visited the country in January 2006; the Government has provided a report to follow up the mission. Finally, the Committee notes the discussion in June 2009 on the application of the Convention by the Bolivarian Republic of Venezuela in the Committee on the Application of Standards of the International Labour Conference.

Murders of trade union leaders and members and issues relating to compliance with the human rights of trade unionists and employers' leaders

The Committee notes that, according to the ITUC, four trade union leaders were murdered in December 2008 in the State of Aragua, for whom it supplies the names. According to the ITUC, the murders were also committed of 19 trade unionists and 10 workers in the construction and petroleum sectors in the context of disputes relating to the negotiation and sale of jobs (there were 48 homicides in 2007), but no investigations have been conducted. According to the ITUC, new sections 357 and 360 of the reformed text of the Penal Code repress and punish with sanctions the right of peaceful demonstration and the right to strike, while the Special People's Defence Act against hoarding, speculation and boycotts restrict labour protest action and other forms of social mobilization. According to the ITUC, the authorities have made use on 70 occasions of sections 357 and 360 of the Penal Code and section 56 of the Basic Security Act in the context of strikes and demonstrations. The CTV indicates that hundreds of workers and trade union leaders have been the victims of murders in the construction sector, without any arrests being made up to now. The CTV states that over 2,000 workers, including trade union leaders, have been brought before the criminal courts under a "probationary system" in accordance with which they have to report regularly to the judicial authorities. They are then released, but are prevented from engaging in any protest activities. Eleven workers in the metropolitan town hall were detained for engaging in protests against the Special Act respecting municipal authorities.

FEDECAMARAS indicates that employers who, in the context of their sectorial representative activities, protest against the kidnapping of their members or the fall in national production as a result of government policies are the victims of threats by the authorities (such as in the case of the President of FEDENAGA) and of the occupation and expropriation of land or interference with their enterprises and property. Various important enterprises have been the victims of harassment and fines and the closure has been ordered of television enterprises which gave air time to employers. The food and agricultural sectors are subject to discretionary practices by the authorities. Furthermore, the investigations by the authorities into the attack on the premises of FEDECAMARAS on 26 May 2007 and the attempted bomb attack on 24 February 2008 (carried out by an inspector of the metropolitan police, whose explosive device blew up and killed him) on its headquarters have not produced any results (according to the Government, arrest warrants have been issued against two persons).

The Committee **regrets** to note that the Government has not replied to the comments on the application of the Convention made by the above workers' and employers' organizations in relation to violations of human rights. In his statement, the Government representative of the Bolivarian Republic of Venezuela in the Committee on the Application of Standards indicated that in certain cases of the murder of trade union leaders the investigations had identified those responsible, including police officers.

The Committee expresses **deep concern**, particularly taking into account the high number of assassinations of trade union leaders and members, the apparent impunity of those responsible and the persistence of such deaths in the cement and construction sectors. The Committee wishes to refer to the conclusions of the Conference Committee on the Application of Standards, which read as follows:

Concerning the alleged acts of violence, detentions and attacks on the FEDECAMARAS headquarters, the Committee highlighted the seriousness of these allegations that urgently needed thorough investigation. The Committee further noted with concern the allegations of violence against trade unionists and the expropriation of private properties. The Committee recalled that the rights of workers' and employers' organizations can only be enjoyed in a climate of absolute respect for human rights, without exception. Recalling that freedom of association cannot exist in the absence of full guarantees of civil liberties, in particular freedom of speech, assembly and movement, the Committee highlighted that respect for these rights implied that both workers' and employers' organizations are able to exercise their activities in a climate free of fear, threats and violence and that the ultimate responsibility in this regard lies with the Government.

The Committee also notes with **concern** the various provisions of the Penal Code and other legislation which tend to restrict the exercise of the right to demonstrate and the right to strike and which criminalize legitimate trade union activities, as well as the allegations that a climate of intimidation is being intensified towards workers' and employers' organizations and their leaders which do not support the Government.

***The Committee requests the Government to reply in detail to the allegations made by the workers' and employers' organizations and to carry out investigations into them with a view to addressing the worrying situation of impunity alleged by these organizations. The Committee requests the Government to indicate any progress in the investigations. The Committee also requests the Government to examine together with the workers' and employers' organizations the penal provisions that they criticize and to ensure that their application is not incompatible with the requirements of the Convention.***

Legislative issues

The Committee recalls that it previously raised the following issues:

– the need to adopt the Bill to amend the Basic Labour Act so as to eliminate the restrictions placed on the exercise of the rights granted by the Convention to workers' and employers' organizations. On this issue, the Committee previously made the following comments:

The Committee previously noted that a Bill to amend the Basic Labour Act took account of the requests for amendment that it had made on the following points: (1) it deletes sections 408 and 409 (over-detailed enumeration of the mandatory functions and purposes of workers' and employers' organizations); (2) it reduces from ten to five years the required period of residence before a foreign worker may hold office in an executive body of a trade union organization (it should be noted that the new Regulations of the Basic Labour Act establish that trade union statutes may provide for the election of foreign nationals as trade union leaders); (3) it reduces from 100 to 40 the number of workers required to establish a trade union of independent workers; (4) it reduces from ten to four the number of employers required to establish an employers' organization; (5) it provides that the technical cooperation and logistical support of the electoral authority (the National Electoral Council) for the organization of elections to executive bodies of trade unions shall be provided only where so requested by the trade union organizations in accordance with the provisions of their statutes, and that elections held without the participation of the National Electoral Council and which comply with the statutes of the trade unions concerned shall have full legal effect once the corresponding reports are submitted to the appropriate labour inspectorate.



The Committee also noted that the Bill provided that “in accordance with the constitutional principle of democratic changeover, the executive board of a trade union organization shall discharge its functions during the period established by the statutes of the organization, but in no case may a period in excess of three years be established”. Although the Government provided information indicating that trade union leaders are re-elected in practice, the Committee hoped that the legislative authority would include in the Bill a provision explicitly allowing the re-election of trade union leaders;

- the need for the National Electoral Council (CNE), which is not a judicial body, to cease interfering in trade union elections and to no longer be empowered to annul them, and the need for the statute for the election of the executive bodies of national (trade union) organizations, which accords a preponderate role to the CNE in the various stages of such elections, to be amended or repelled;

- the need to amend section 152 of the Regulations of the Basic Labour Act, dated 25 April 2006, which provide for the possibility of compulsory arbitration in non-essential public services;

- the Committee also noted the criticisms made by the International Confederation of Free Trade Unions (ICFTU) – presently known as ITUC – concerning Resolution No. 3538 of 3 February 2005 giving trade union organizations 30 days to provide information on their administration and register of members in a form that includes each worker’s full identify, their place of residence and signature. The Committee requested the Government to adopt measures to guarantee their confidentiality.

The Committee notes that the Conference Committee, after hearing the Government representative indicate that in May 2009 a new process of public consultations had been initiated on the draft text of the Basic Labour Act, adopted the following conclusion:

The Committee on the Application of Standards observed with deep concern that the Committee of Experts had, for ten years, being requesting legislative amendments to bring the law into conformity with the Convention and that the Bill submitted to the Legislative Assembly several years ago has not been adopted. The Committee regretted the Government’s apparent lack of political will to pursue the adoption of the Bill in question and the lack of progress despite visits by several ILO missions to the country. The Committee considered that the National Electoral Council’s interference in the elections of occupational organizations seriously violated freedom of association.

The Committee notes the Government’s indication in its report that a public consultation has encompassed numerous trade union federations, workers and branch associations (including through a virtual forum) and that the observations of the ILO supervisory bodies have been forwarded to the competent committee of the Legislative Assembly. The draft text should be examined in plenary in the month of September or when this phase of broad consultations has been completed.

With regard to the interference by the CNE in trade union elections, the Committee notes the Government’s statement that, in accordance with section 33 of the Basic Act on the Electoral Authority, the CNE has the following functions: “To organize trade union elections in compliance with their autonomy and independence, in accordance with the international treaties to which the Bolivarian Republic of Venezuela has subscribed in this respect, and providing the necessary technical and logistical support”. The Government concludes that, based on an interpretation of article 293(6) of the Constitution of the Bolivarian Republic of Venezuela in conjunction with section 33 of the Basic Act on the Electoral Authority, it may be understood that trade union organizations, whether they are first, second or third level, are independent and autonomous organizations for the organization of their internal electoral processes, and that the intervention of CNE is therefore only possible when so requested by the respective trade union organization.

With regard to the CNE standards for the election of the authorities of trade union organizations, the Government indicates that by Resolution No. 090528-0264, of 28 May 2009, the CNE issued standards on technical advice and logistical support for trade union elections (once these standards have entered into force, the standards for the election of the authorities of trade union organizations, issued by the CNE in Resolution No. 041220-1710, will be repealed). The Government adds that the CNE, through Resolution No. 090528-0265 of the same date as the previous Resolution, and published in the *Gaceta Electoral* No. 488, issued standards to guarantee the human rights of workers in trade union elections, the objective of which is to safeguard the principles and human rights of active participation, trade union democracy, suffrage, free election and the alternation of representatives of trade union organizations.

The Committee observes that these standards regulate very closely trade union elections and give an important role to the CNE, once again empowering it to examine appeals made by workers or “the worker concerned”. The Committee concludes that the new standards governing trade union elections are not only in violation of *Article 3 of the Convention* (under which, the regulation of elections is a matter for trade union rules), but also allows an appeal by one worker to paralyse the proclamation of election results, which is open to anti-union interference of every type.

Under these circumstances, the Committee **regrets** that for over nine years the Bill to reform the Basic Labour Act has still not been adopted by the National Assembly despite the fact that it had tripartite consensus support. ***Taking into account the significance of the restrictions which remain in the legislation with regard to freedom of association and the freedom to organize, the Committee once again urges the Government to take measures to accelerate the examination by the Legislative Assembly of the Bill to reform the Basic Labour Act and to ensure that the CNE ceases to interfere in trade union elections. The Committee emphasizes the need to reform the standards adopted in 2009 respecting trade union elections and recalls that the Committee on Freedom of Association has repeatedly found cases of interference by the CNE that are incompatible with the Convention. The Committee once again requests the Government to provide information on the scope of the Regulations of the Basic Labour Act in relation to compulsory arbitration in basic or strategic services.***

Shortcomings in social dialogue

In successive observations in recent years, the Committee has identified considerable shortcomings in social dialogue. The ITUC, the CTV, the General Confederation of Venezuelan Workers (CGT) and FEDECAMARAS have indicated that the authorities only hold formal consultations without the intention of taking into account the views of the parties consulted and that there is no authentic dialogue. The Committee notes that in its most recent comments the ITUC states that the absence of dialogue between the Government and trade union organizations meant that workers had little or no participation in the nationalization of enterprises in the steel and cement sectors. According to the ITUC, the Government is promoting “parallel”

trade unionism at all levels, with emphasis on the establishment of a new trade union confederation (the Bolivarian Socialist Workers' Force) as a counterweight to organizations that are not close to the policies of the Ministry of Labour or which oppose the Government. This "parallelism" has given rise to a high number of trade unions with a low number of workers covered by collective agreements, with the result that the proportion of workers covered by collective bargaining has continued to decline in relation to previous years. The lack of social dialogue and tripartite meetings in the public sector is a recurrent practice and 243 collective contracts in the sector have not been signed.

The CTV indicates that national executive authorities do not recognize trade union organizations which are not close to them and disregard federations in the health and education sectors, thereby creating an obstacle to collective bargaining or interfering in it.

FEDECAMARAS emphasizes the absence of social dialogue and of bipartite or tripartite consultations with the Government and the adoption without previous consultation of important laws which affect the interests of workers and employers, despite the principle of participatory democracy enshrined in the law. In its view, this is giving rise to numerous controls, legal barriers for the productive sector and new taxes which are endangering production and employers' organizations. It adds that the Government has still not convened the National Tripartite Commission envisaged in the Basic Labour Act for the determination of minimum wages, which are established by the Government without due consultation with any sector. With reference to the employers' delegation to the Conference, FEDECAMARAS confirms that the Government imposed the inclusion as employers' technical advisers of representatives of CONFAGAN, FEDEINDUSTRIA and EMPREVEN, which follow Government policy and are not representative (see, in this respect, the report of the Credentials Committee of the International Labour Conference in 2009, objection concerning the nomination of the Employers' delegation of the Bolivarian Republic of Venezuela).

The Committee notes the Government's indications that: (1) social dialogue has been broad and inclusive; the national, regional and local governments have held innumerable meetings and discussions with the participation of various members and leaders of the different employers' and workers' organizations which form part of the life in the country; the confederations and federations of employers and workers of the Bolivarian Republic of Venezuela have been convened to national dialogue round tables and their comments and observations have been sought on different types of subjects, which has given rise to an inclusive, participative and productive exchange with all the social actors; (2) the various types of action undertaken by the Government have shown its interest, unequivocal action and will to promote dialogue and seek agreement with employers, workers and the productive sectors of the population, without the exclusion of or discrimination against any organization or sectorial association, through dialogue that has been broad and inclusive; (3) in addition, the Government has maintained and continues to maintain dialogue and negotiations with the sectors of small and medium-sized enterprises, which have traditionally been excluded from political, economic and social decisions, which were previously undertaken only by a group of employers or organizations within a highly monopolistic and oligarchic structure subordinated to transnational interests; (4) emphasis needs to be placed on the innumerable attempts by the national, regional and local executive authorities to establish discussion round tables for economic and social decision-making, which have been repeatedly rejected in view of the lack of readiness and will of certain employers' sectors; (5) as a result of this social dialogue, in the first half of 2009, a total of 255 collective labour agreements were approved, covering 537,332 workers in various sectors; (6) similarly, in 2008, over 600 new trade union organizations were established freely and democratically, while in the first half of 2009 a total of 152 have been established, thereby rebutting any argument claiming to insinuate violations of freedom of association in the context of Convention No. 87; (7) the existence of isolated cases, which have been presented as generalized and inappropriate conduct by the Government, of alleged violations of freedom of association are fabrications presented out of context, and fail to take a comprehensive view of all the respective information; (8) it is necessary to reiterate that the Venezuelan State guarantees, respects and protects the exercise of freedom of association at both the individual and collective levels, and consequently guarantees political and ideological freedom; (9) the national Government, on 26 May 2009, following the recommendations of the ILO supervisory bodies in relation to the determination of objective and verifiable criteria with regard to representativeness, convened a meeting which was attended by representatives of FEDECAMARAS, EMPREVEN, CONFAGAN and FEDEINDUSTRIA, with a view to the adoption of positive measures to determine the level of representativeness and the membership of employers' organizations, chambers of commerce, industry, agriculture and any other branch; (10) subsequently, on 30 June 2009, a second meeting was held with the representatives of the Ministry and of the employers' organizations referred to above with a view to continuing the discussions of aspects relating to the determination of criteria of representativeness; no representative of FEDECAMARAS attended this meeting; (11) the People's Ministry for Labour and Social Security is currently engaged in a process of broad consultation with a view to the amendment of section 11 of the Social Security Act, with a view to extending maternity and paternity benefits, and invitations were sent to the employers' organizations referred to above with a view to their commenting on the leave provisions of the above Act; during these meetings, the organizations referred to above engaged in an open dialogue in a cordial atmosphere, thereby illustrating the will of the national Government and of the most representative employers' organizations in the country to develop broad, inclusive and participatory social dialogue as a principle based on an international mandate. The Committee also notes the Government's information concerning recent legislation establishing the Occupational Safety and Health Committee as a tripartite, collegial and joint body and providing for the inclusion in the Directorate of the National Occupational Prevention, Health and Safety Institute of a representative of the most representative organizations of employers and workers.

The Committee expresses appreciation at the invitation made by the Government to FEDECAMARAS to two meetings for the determination of criteria of representativeness and to meetings on the Social Security Act, but emphasizes that the Government has not specified or provided details concerning other meetings held with the most representative trade union organizations and with FEDECAMARAS.

The Committee *regrets* to note, with reference to certain of its previous requests and those of the Conference Committee and the Committee on Freedom of Association, that the national tripartite commission on minimum wages envisaged in the Basic Labour Act has not been established and that a national forum for social dialogue has not been created in accordance with ILO principles with a tripartite composition and which complies in its composition with the representative status of workers' organizations. The Committee further observes that the Government has repeatedly disregarded the recommendations of the Committee on Freedom of Association in relation to the important problems encountered by employers and their organizations, in which it requested direct dialogue with this organization, and more specifically its recommendation urging the Government to establish in the country a high-level joint national commission (Government-FEDECAMARAS) assisted by the ILO to examine each and every one of the allegations and matters that are pending so that such problems can be resolved through direct dialogue. As it is not a complex or costly measure, the Committee concludes that the Government has not promoted the conditions for social dialogue in the Bolivarian Republic of Venezuela with the most representative organization of employers. The Committee emphasizes the conclusions of the Conference Committee on in which it observed that the Government was continuing to ignore its urgent calls to promote meaningful dialogue with the post representative social partners and called on the Government to intensify social dialogue with the representative organizations of workers and employers, including FEDECAMARAS, and to ensure that

this organization was not marginalized in respect of all matters of concern to it. The Conference Committee requested a follow up to the 2006 high-level mission to assist the Government and the social partners to improve social dialogue, including through the creation of a national tripartite committee, and to resolve all of the outstanding matters brought before the supervisory bodies. The Committee **deplores** the fact that there has been no follow-up to the high-level mission of 2006, as requested by the Conference Committee.

***The Committee, noting that there are still no structured bodies for tripartite social dialogue, once again emphasizes the importance that should be attached to full and frank consultation taking place on any questions or proposed legislation affecting trade union rights and that it is essential that the introduction of draft legislation affecting collective bargaining or conditions of employment should be proceeded by full and detailed consultations with the independent and most representative workers' and employers' organizations. The Committee also requests the Government to ensure that any legislation adopted concerning labour, social and economic issues which affect workers, employers and their organizations should first be the subject of real in-depth consultations with the independent and most representative employers' and workers' organizations, and that sufficient efforts are made in so far as possible to reach joint solutions, since this is the cornerstone of dialogue.***

***The Committee once again invites the Government to request the technical assistance of the ILO for the establishment of the dialogue bodies mentioned above.*** In this context, the Committee emphasizes once again that it is important, taking into account the allegations of discrimination against FEDECAMARAS, the CTV and their member organizations, including the establishment or promotion of organizations or enterprises close to the regime, that the Government is guided exclusively by criteria of representativeness in its dialogue and relations with workers' and employers' organizations and that it refrains from any form of interference and complies with *Article 3* of the Convention. ***The Committee requests the Government to indicate any developments in social dialogue and their outcome, and it strongly hopes that it will be in a position to note progress in the near future.***

In this respect, it is important to determine with precision the representativeness of workers' and employers' organizations, and particularly of confederations. The Committee notes the Government's indication that these confederations do not comply with their legal obligation to provide the registers of their members. The Committee emphasizes that in 2008 it received allegations that the CNE did not give authorization for the holding of many of the respective elections. The Committee recalls that the ILO's assistance for the determination of criteria of representativeness in accordance with the principles of the Convention remains at the Government's disposal.

In the view of the Committee it is also important, in relation to social dialogue, for an independent investigation to be conducted into the allegations concerning the promotion by the authorities of parallel organizations of workers and employers that are close to the Government, and of favouritism and partiality in relation to such organizations (the Government maintains that these may be erroneous perceptions by those who benefited from exclusive rights in the past). ***The Committee requests the Government to take steps for this investigation to be conducted and to provide information on this matter.***

The Committee also **regrets** that the former President of FEDECAMARAS, Carlos Fernández, is still covered by an arrest warrant which prevents his return to the country without fear of reprisals.

The Committee notes the Government's statements on certain legislative matters (section 115 of the Basic Labour Act and the single paragraph of the Regulations, respecting the majorities required to engage in collective bargaining, and the possibility of compulsory arbitration in certain essential public services (section 152)). ***The Committee requests it to supply further information on the application of these provisions in practice and on cases in which they have been applied.***

Finally, with regard to the decision of the Ministry of Labour of 3 February 2005, which requires trade union organizations to present within 30 days the data concerning their administration and the list of members in a format which includes the full identification of each worker, their address and signature, the Committee reiterates that the confidentiality of trade union membership should be ensured and recalls the importance of developing a code of conduct between trade union organizations covering the conditions under which membership data may be furnished, with the use of appropriate techniques respecting personal data which guarantee absolute confidentiality. The Committee notes the Government's statement that the confidentiality of the data has been guaranteed, that it has received no information of cases of abuse and that there have not been denunciations. ***The Committee also raises this comment with regard to the obligation for trade union organizations to supply the lists of their members to the Ministry and requests the Government to take measures in this respect.***

## Protection of Wages Convention, 1949 (No. 95)

### Ukraine

(Ratification: 1961)

*Article 12, paragraph 1, of the Convention. Regular payment of wages.* The Committee notes with **regret** that the Government's report does not provide up to date information on the wage arrears situation on which the Committee has been commenting for a number of years. Unlike previous years, no statistical or other indications are given concerning the accumulated wage debt, any new legislative measures or relevant inspection results. The Government merely refers to its intention to elaborate a legal mechanism in order to protect workers' wage claims in the event of the employer's insolvency through a wage guarantee fund. **To enable the Committee to effectively evaluate compliance with the Convention in law and practice, the Government is once again requested to transmit detailed information on any persistent problems with regard to the regular payment of wages, including the sector(s) concerned and the number of workers and enterprises affected, the total amount of outstanding payments, the average delay in the payment of wages and any negotiated schedule for the settlement of accumulated wage debts. In the absence of such a schedule, the Government is asked to initiate negotiations to this end.**

In addition, the Committee continues to receive voluminous communications concerning the ongoing problem of unpaid wages in the Nikanor-Nova mine. By letters dated 5 and 30 May 2008, the Workers' Union of the Nikanor-Nova Coal Mine ((NPG) denounced the extensive problems of non-payment of wages and also complained about the deteriorating living conditions of miners, especially in the town of Zorinsk. In its reply, dated 11 September 2008, the Government indicates that there is currently a one-month delay in the payment of wages at the Nikanor-Nova mine with the total wage debt amounting to 197,200 hryvna (UAH) (approximately €16,500). The Government further indicates that all mine workers, including those at the Nikanor-Nova mine, have been transferred as from 1 April 2008 to the new wage and salary scales based on a minimum monthly wage of UAH525 (approximately 43.5 euros). With respect to allowances intended to improve the living conditions of miners, the Government refers to the new Act on enhancing the prestige image of coalminers' labour adopted on 2 September 2008, which amends the Mining Act and introduces an allowance for electricity, gas and central heating for workers employed in mining enterprises. Finally, the Government indicates that in the first seven months of 2008 the Nikanor-Nova mine spent UAH1.5 million (approximately 124,000 euros) on improvement of the occupational safety and health standards while the Ministry of Coal Industry is planning the acquisition of new protective equipment.

While noting the Government's explanations, the Committee observes that in a new communication received in November 2008, the Confederation of Free Trade Unions of the Lugansk Region (KSPLD) refers to a resolution adopted in the KSPLD Congress of October 2008 which alleges continued failure of executive authorities to pay adequate wages punctually and calls upon public authorities to make every effort to rectify the situation. In another communication received in February 2009, the NPG complains about violations of labour legislation, in particular the delayed payment or non-payment of wages, and provides statistical information on the sums owed to the pension fund at the Nikanor-Nova mine.

Moreover, the Committee notes the communication of the NPG, dated 23 July 2009, and a similar communication of the KSPLD, dated 26 August 2009, by which the two workers' organizations transmitted copies of recent correspondence with the labour inspectorate of the Ministry of Labour and of Social Policy, the Ministry of Coal Industry, and the management of the state enterprise "Luganskugol" pointing at the following facts: (i) in accordance with applicable collective agreements, the minimum guaranteed remuneration as from 1 July 2009 should be not lower than UAH786 (approximately 65 euros) (605 x 1.3 adjustment factor) for workers engaged in underground work and UAH726 (approximately 60 euros) (605 x 1.2) for all others; (ii) the management of the state enterprise "Luganskugol" has admitted that it is unable to pay workers at the new minimum wage rate (i.e. UAH786) for lack of sufficient financial resources; (iii) in accordance with section 3 of the Act on enhancing the prestige image of coalminers' labour, the salary scales of coalminers must be established on the basis of a rate of the worker of category 1 which exceeds the statutory level of the minimum wage by at least 30 per cent; and (iv) the labour inspectorate last visited the state enterprise "Luganskugol" on 23 February 2009, and found that the enterprise is in violation of labour legislation for non-observance of the applicable minimum wage levels. It also observed that even though at the time of inspection no wage arrears were found, wages were paid irregularly, there were accumulated liabilities to the pension fund, and the compensation for the delay in payment was not always paid on the day of settling the wage arrears. In light of the foregoing considerations, the two workers' organizations denounce a deliberate and systematic failure of the state enterprise "Luganskugol" (and other state-owned coal production enterprises such as "Donbassantratsit" and "Sverdlovatratsit") to comply with state social guarantees in the field of remuneration thus depriving coalminers of a decent standard of living.

By letter, dated 8 October 2009, the Deputy Minister of Labour and Social Policy replied to the latest communication of the NPG indicating that the Territorial State Labour Inspection in the Lugansk region carried out in 2009 inspections at the coalmine Nikanor-Nova and at the state enterprise "Luganskugol". As a result, it was found that the minimum guarantees of labour remuneration were not observed and that the wage rate of workers was fixed without taking into account the provisions of the general and sectoral collective agreements. The Deputy Minister indicates that disciplinary action was taken against the managers of the enterprises concerned in accordance with section 188-6 of the Code of Administrative Offences, while the inspection results were forwarded to law enforcement bodies as provided for in section 95 of the Code of Criminal Procedure.

As pointed out in previous comments, the Committee is of the view that the wage situation in the Nikanor-Nova mine is not an isolated phenomenon but rather symptomatic of the difficulties of the Ukrainian coalmining industry as a whole, that is high unemployment, low profitability and poor safety record. **The Committee accordingly requests the Government to communicate full particulars on the employment and working conditions prevailing in the mining sector – including the several hundred illegal mines reportedly operating in the country – and the measures taken or envisaged to ensure the regular payment of wages in the coalmining industry in accordance with applicable collective agreements.**

**[The Government is asked to supply full particulars to the Conference at its 99th Session and to reply in detail to the present comments in 2010.]**

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

### Costa Rica

(Ratification: 1960)

In its previous comments, the Committee noted the report of the High-level Mission that visited Costa Rica in October 2006, and Cases Nos 2490 and 2518, examined by the Committee on Freedom of Association, which confirmed that a large number of trade unionists had been dismissed. The Committee took note of the comments on the application of the Convention made by the International Trade Union Confederation (ITUC), the Confederation of Workers Rerum Novarum (CTRN), the Petroleum, Chemical and Allied Workers' Union (SITRAPEQUIA) and the Costa Rican Federation of Chambers and Associations of Private Enterprises (UCCAEP). The Committee notes the Government's reply to the comments in the CTRN's communication of 12 September 2008. Lastly, it notes the discussion on the application of the Convention that took place in June 2009 in the Conference Committee on the Application of Standards.

*Slowness and ineffectiveness of procedures regarding complaints and compensation in the event of anti-union acts.* The Committee noted that, according to the High-level Mission that visited the country in 2006, the proceedings in cases of anti-union discrimination are so slow that it takes at least four years to obtain a final ruling. The Committee notes that in its comments the ITUC states that the problem still exists. The employers' organization UCCAEP states that legislative and judicial treatment of anti-union discrimination is satisfactory, and points out that the criticism of Costa Rican law has mostly been levelled at the slow proceedings for complaints claiming cancellation of dismissals of trade union leaders, and that work has been done to improve matters, particularly through a Bill to reform labour procedures currently on the agenda of the Legislative Assembly.

The Committee notes the Government's statements to the effect that: (1) discussion of the legislation being developed under the Free Trade Agreement, signed by Central America, the Dominican Republic and the United States, has delayed discussion of the Bill to reform labour procedures in the Legislative Assembly but, because the Executive called for discussion of the Bill at the first meeting of the Assembly's extraordinary plenary session (August 2009), at which the Executive determines the order of agenda items, the Bill to reform labour procedures (which addresses the problem of slow proceedings in cases of anti-union acts and strengthens the right to collective bargaining in the public sector) is the second item on the agenda of the Legislative Assembly's Legal Affairs Committee (whose subcommittee was attended by three deputies, the President of the Second Chamber, a representative of the Ministry of Labour and representatives of employers' and workers' organizations); (2) the Bill, which also had the backing of the Higher Labour Council (a national tripartite body), introduces oral proceedings, strengthens protection against anti-union acts and is the outcome of ILO technical assistance; (3) furthermore, Bill No. 13475 to reform various provisions of the Labour Code, Act No. 2 of 27 August 1943, and sections 10, 15, 16, 17 and 18 of Decree No. 832 of 4 November 1949, and the amendments thereto is high on the agenda of the Assembly's plenary session; the aim of this initiative is to strengthen trade union activity in the country through amendments to the Labour Code that contribute to the establishment of unions in private enterprises and to compliance with ILO international standards; the deputies are aware that this proposal forms part of the Government's commitments still outstanding in the ILO, yet the Executive has placed adoption of the Bill to reform labour procedures higher on the plenary agenda, because it is broader and more inclusive than the provisions of Bill No. 13475.

The Committee further notes the information from the Government to the effect that various training activities have been conducted in connection with the problems pointed out by the Committee of Experts and have included judges, deputies and employers' and workers' organizations.

The Government adds that in 2008 the Judiciary had some 22,563 new labour-related cases before it, but completed 27,936 out of a total case load of 30,029. It can be inferred from this that the Judiciary has significantly shortened the average length of the proceedings in labour cases, and has reduced the case load. It is also pursuing a programme to deal with the backlog of cases, the aim being to develop a new system to improve the response and running of the administration of justice. To this end, a process has begun to reorganize the supernumerary judges' programme by switching from an office-based scheme for the distribution of judges to a centralized scheme consisting of groups, each with a maximum of 20 judges and a work programme geared to providing assistance to offices with workloads that exceed their normal capacity; between the start-up of this programme in 2001, and 2008, 46,398 cases were received, in 38,209 of which there have been judgements, and in 8,189 of which files have been returned and matters have been settled from which it can be inferred that 82.3 per cent of the cases submitted were resolved by judges belonging to the abovementioned programme. Specifically, in 2008 the annual average of cases received was 5,799, with an annual average of 4,776 cases judged. In order to strengthen the justice administration system even further, the Supreme Court of Justice, at a plenary sitting held on Monday, 12 March 2007, approved the establishment of the Conciliation Centre of the Judiciary, which promotes flexible, informal and effective judicial mechanisms; in the course of 2008, in the various chambers of the abovementioned Conciliation Centre, 3,505 conciliation hearings were held and 2,606 agreements were reached, in other words conciliation agreements were reached in 74.35 per cent of the cases heard. The Government further indicates that the Ministry of Labour and Social Security is also engaged in strengthening alternative methods of administrative dispute settlement, and that through the Alternative Dispute Settlement Centre (RAC) of the Ministry's Labour Relations Department, in 2008 and the first quarter of 2009 the number of persons heard rose to 8,738, with an average of 2,815 applications for conciliation hearings.

The Committee welcomes the actions and initiatives referred to by the Government that are described in the above paragraphs, particularly in the light of the Government's previous report stating that in 2005 there were 38 cases of complaints of anti-union discrimination. There is no doubt that the general improvement in the administration of justice and the efficiency of proceedings will likewise have a positive effect on cases of anti-union practices. The Committee nonetheless notes that the Government has not assessed the impact of the general improvements in the administration of justice on proceedings relating to trade union actions, where the main problem is that owing to appeals and constitutional complaints (*recursos de amparo*), it can take years for a decision to be handed down. Nor has the Government provided information on the number of instances where penalties were imposed for breach of the labour legislation on trade union rights, and the number of decisions in such cases that have become final, as well as the length of the proceedings.

***The Committee hopes that the Bill to reform labour procedures will be adopted in the near future and asks the Government to provide the text of the future Act as soon as it is adopted.***

**The Committee notes with regret, however, that Bill No. 13475 to reform various provisions of the Labour Code and other legal texts has not as yet been discussed although it is high on the agenda of the Legislative Assembly's plenary session, and requests the Government to take steps to move the processing of the Bill forward, and to provide information in this regard.** The Committee recalls that, at its session of June 2009, the Conference Committee on the Application of Standards asked the Government to submit, this year, a detailed time schedule of steps taken and future steps so that the legislative reforms were made a reality, and expressed the hope that the bills upon which tripartite consensus has been reached would be adopted without delay.

*Submission of collective bargaining to criteria of proportionality and rationality.* In its case law, the Constitutional Chamber of the Supreme Court of Justice had ruled unconstitutional a significant number of clauses in collective agreements in the public sector, at the instigation of public authorities (Citizens' Ombudsman, General Prosecutor of the Republic) or one or another political party.

In its previous observation, the Committee noted that SITRAPEQUIA and the CTRN emphasized the seriousness of the problem of collective bargaining in the public sector and the constraints placed on public employers by the Committee on Negotiation Policy. It further noted that the CTRN and the country's other confederations held the view that the long delay in the adoption of the bills to amend the legislation and ratify the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154) (which resulted from a tripartite agreement), demonstrates a lack of interest in moving forward.

The Committee observes that the Government referred to statements it had made in previous reports to the effect that: (1) the Government possesses the will and commitment to resolve the problems raised by the Committee of Experts; (2) it has requested the ILO's technical assistance and trusts that this will enable it to overcome the problems raised; (3) the Government's efforts (many of them supported by tripartite agreement) to solve these problems have included the submission of several legislative proposals to the Legislative Assembly and their reconsideration: a draft constitutional amendment (of article 192), a Bill on collective bargaining in the public sector and the addition of a subsection (5) to section 112 of the General Act on Public Administration (the three initiatives are intended to strengthen collective bargaining in the public sector); a draft amendment to the chapter of the Labour Code on freedom of association; approval of ILO Conventions Nos 151 and 154; (4) the Government's efforts have also included other types of initiatives in legal actions of unconstitutionality brought in order to annul specific clauses in the agreements; (5) the present Government has the will to push forward draft legislation to resolve pending problems and has maintained contact with the Executive – including the Ministry of the Presidency – and parliament (deputies from various parties as well as the leaders of the principal opposition party which also supports the reforms sought by the ILO) for the re-examination of the draft texts in question. The Government states that it has sent reports to the judiciary forwarding the observations and position of the Committee of Experts. The Government lays emphasis on the follow-up meetings held by the Minister of Labour and Social Security, on occasion with the technical assistance of the ILO Subregional Office, with this assistance including the gathering of information on matters relating to Conventions Nos 151 and 154 on collective bargaining. The Government adds that a meeting was held with various representatives of all the sectors involved (the authorities, civil society, etc.) to analyse and seek consensus for the bill to reform labour procedures which is on the agenda of the Legislative Assembly.

The Committee requests the Government to provide information on developments regarding the draft legislation that has been under examination by the Legislative Assembly for years and which is intended to achieve greater efficiency and speed in the procedures for collective bargaining in the public sector, and on any developments regarding the Supreme Court of Justice's case law on this matter.

The Committee notes that, at its session of June 2009, the Conference Committee on the Application of Standards took note of the Government's commitment to create a bipartisan congressional committee with participation of all the State Powers and the social partners to promote the adoption of the bills that had tripartite support, with ILO technical assistance. The Committee recalls in this connection that the Conference Committee on the Application of Standards expressed the firm hope that in the very near future it would be able to note considerable progress in the application of the Convention, and trusted that the bills upon which tripartite consensus had been reached would be adopted without delay. It likewise trusted that the report due this year for examination by the Committee of Experts would include a copy of the bills so that the Committee of Experts could verify their conformity with the Convention. It asked the Government to submit, this year, a detailed time schedule of steps taken and future steps so that the legislative reforms were made a reality.

The Committee notes that in its latest report the Government reiterates many of its earlier statements, and indicates that the Higher Labour Council (a tripartite advisory body) agreed to analyse the bills relating to collective bargaining issues to determine which of them can be promoted on a tripartite basis, and that they include the bills relating to ILO Conventions Nos 151 and 154. The Committee notes that, according to the Government, the bill to reform labour procedure – which has tripartite support – is the second item on the agenda of the Legal Affairs Committee of the Legislative Assembly and that it aims, among other things, to strengthen the right to collective bargaining in the public sector. According to the Government, the Bill on the collective negotiation of collective agreements in the public sector, and the addition of a subsection (5) to section 112 of the General Act of Public Administration, is currently under examination. It was referred by the Legal Affairs Committee for consideration by the Special Commission on Human Rights. It is currently item No. 14 on the latter's agenda. A legal report on the bill has been submitted by the Technical Services Department of the Legislative Assembly and it is expected that the deputies will move to have it discussed in ordinary sittings. As to the other bills and the ILO Conventions relating to freedom of association and collective bargaining, the Government indicates that, as soon as circumstances allow, they will be submitted to the Legislative Assembly, bearing in mind that these are matters pending for the Government which are of vital importance to strengthening the trade union rights of men and women workers in Costa Rica. The Committee notes with **regret** that discussion of the bills has again delayed.

According to the UCCAEP, the bill in question deals satisfactorily with collective bargaining in the public sector. The Government states that it is attaching copies of the bills as requested by the Committee on the Application of Standards at the 98th Session of the International Labour Conference. However, these texts have not been received and it is therefore not possible to verify their consistency with the Convention, as the Conference Committee asked.

It is with **regret** that the Committee must take note of this statement, in view of the fact that in previous years it was informed that these bills, which aimed to strengthen collective bargaining in the public sector, and most particularly those relating to ratification of Conventions Nos 151 and 154, had tripartite support and had already been submitted several times to the Legislative Assembly. **The Committee asks the Government to do everything**

***in its power to ensure that the bills to strengthen the right to collective bargaining in the public sector, including those relating to the ratification of Conventions Nos 151 and 154 are examined and, it is to be hoped, adopted by the Legislative Assembly.***

The Committee also takes note of the information sent by the Government concerning developments in the case law since it last examined the application of the Convention, regarding relevant judicial decisions cancelling collective agreements on the basis of "criteria of proportionality and rationality".

The Government states in particular that it views with optimism the developments regarding the issue of the cancelling by judicial bodies of clauses in collective agreements, and sees these developments as a positive outcome since there have been significant changes in the practical effect given to Convention No. 98 in recent years, owing to intense training and information activities that it has been carrying out with technical assistance from the ILO. The Government also expresses the view that it sees as positive the advances in the case law of the Second Chamber of the Supreme Court of Justice, the highest court dealing with labour matters. Time and again in its decisions, the Chamber has risen fully to the challenge set by the constitutional case law, finding collective agreements in the public sector to be constitutional. Furthermore, in its case law the Chamber cites not only the ILO Conventions that Costa Rica has ratified but also Conventions it has not ratified, such as Conventions Nos 151 and 154, as well as citing the ILO's 1998 Declaration on Fundamental Principles and Rights at Work and recalling that freedom of association and the right to organize, and effective recognition of the right to collective bargaining are established in the abovementioned instrument as fundamental rights to be applied by all member States of that Organization; it also confirms that Convention No. 98, along with the rights laid down in the ILO Declaration on Fundamental Principles and Rights at Work, not only take precedence over the law, but would be divided of their substance if exemption from the right to collective bargaining were to become the rule.

The Second Chamber thus finds that allowing collective bargaining is the rule and to restrict it the exception. In support of its finding, the Chamber cites Executive Decree No. 29576 of 31 May 2001 regulating the negotiation of collective agreements in the public sector. This decision, along with the dissenting opinions of the Constitutional Chamber, which the High-level Mission noted, together with the Second Chamber's acceptance of the Regulations on collective bargaining in the public sector, are important legal events which could not only reduce but ultimately preclude the challenging of approved clauses in collective agreements, which might be the beginning of a *ius laboris* approach to analysis of an issue that has been dominated in recent years by administrative law scholars. But there are other positive cases where the Constitutional Chamber itself has found against appeals challenging public sector collective agreements as unconstitutional, as in Decision No. 2005-6858 of 1 June 2005.

The dissenting opinions of the Constitutional Chamber, referred to in the previous report (2008), which were noted by the High-level Mission, and the Second Chamber's acceptance of the Regulations on collective bargaining in the public sector, are important legal events which could preclude any future appeals against approved clauses in collected agreements, which could be the beginning of a *ius laboris* approach to analysis of an issue which has for years been dominated by scholars of administrative law. This, says the Government, would increase the Costa Rican Government's interest in overcoming the shortcomings pointed out by the Committee of Experts, for which it trusts that there will be international cooperation and technical assistance from the ILO.

***The Committee welcomes these developments in the case law and infers from the foregoing that in 2008–09 there has been no further cancelling of clauses in collective agreements, and requests the Government to provide information on any new developments.***

The Committee also welcomes the training for members of the three Powers of State and the social partners, referred to by the Government, and appreciates in particular the forthcoming workshop on collective bargaining in the public sector, which is to include an up to date study on developments on constitutional case law and the strengths and weaknesses of the existing regulations; information on this will be sent to the Committee.

The Committee recalls that, although there may be instances of serious breach of constitutional rights in certain clauses of agreements, it is normal and usual for collective agreements to provide favourable treatment for trade union members, particularly as many such agreements arise in the context of a collective dispute in which both parties make concessions, there is nothing preventing non-unionized from joining one or another union if they are seeking more favourable treatment, and in any event collective bargaining, as an instrument for social peace, cannot be repeatedly subjected to recurrent scrutiny as to constitutionality, without losing its credibility and enormous usefulness. In other words, undue recourse to constitutional challenge is to be avoided.

***With regard to SITRAPEQUIA's comments on the constraints that the Committee on Policy Negotiation places in practice on negotiation procedures in the public sector, the Committee asks the Government to refer this matter to the Higher Labour Council and to ask the latter and other relevant public authorities to undertake a thorough examination of the working of the current system, it being understood that state resources are not unlimited and that the Government has many social needs to meet.***

With regard to the tripartite assessment requested by the Committee of Experts, relating to the high proportion of agreements concluded directly with non-unionized workers in relation to collective agreements, and which the Committee had asked to be carried out in the light of the report of an independent technical expert, the ITUC states that most such direct agreements are promoted by employers and that as a result the number of collective agreements in the private sector has been reduced to a minimum. The employers' organization UCCAEP states that all parties have drawn attention to the importance of standing workers' committees and the protection that arises for them pursuant to the Workers' Representatives Convention, 1971 (No. 135), ratified by Costa Rica, and it is clear that this is a reality in Costa Rica which has acted as a means of guaranteeing freedom, democracy and social peace and that to eliminate standing workers' committees or direct agreements is to overlook and abuse the right of workers to associate freely and settle their disputes peacefully and through dialogue.

The Committee welcomes the Government's statement that it placed the abovementioned expert report on the agenda of the Higher Labour Council's meeting of 30 April 2008; the meeting of 26 June 2008 re-examined the need for an analysis of the report, which proved owing to discussion of other items. The Government states that only collective bargaining has constitutional rank and that an administrative directive of 4 May 1991 bans the labour inspectorate from looking into the content of a direct agreement when there is an established union, so that when there is such a union the direct agreement must be rejected outright. The Committee notes that the Government is aware of the need to reactivate as soon as possible the tripartite

study of the content of the expert report and hopes to be able to report on progress when discussions are resumed in the Higher Labour Council.

Lastly, the Government indicates that, in the Conference Committee on the Application of Standards, it sought ILO technical assistance to prevent standing committees of workers (non-unionized) and direct agreements (with non-unionized workers) from having any anti-union impact in practice, as pointed out by the independent expert. The Government states that the matter is complex and hopes that in the near future there will be an agreed-upon proposal for a satisfactory solution to the situation noted by the independent expert.

The Committee recalls that the independent expert pointed out a little over two years ago that there were 74 direct agreements in force whereas only 13 collective agreements remained. Lastly, the Committee recalls that at its meeting of June 2009 the Conference Committee asked the Government to submit this year a detailed time schedule of steps taken and future steps, so that the legislative reforms would be made a reality.

***The Committee hopes to receive information on a tripartite approach to the problem of direct agreements with non-unionized workers in the light of the expert report, and of any other satisfactory solution proposed, including measures to promote collective bargaining with existing organizations of workers and to avoid direct agreements being used for anti-union purposes, which is to be presumed where a representative trade union already exists.***

The Committee notes that in its report the Government states that it is fully disposed and willing to resolve the abovementioned problems. The Committee noted previously the initiatives taken by the High-level Mission to promote the bills submitted to the Legislative Assembly that pertain to the issues raised by the Committee of Experts, and that, at a special meeting of the Higher Labour Council (a tripartite body) that it attended, the Mission consulted the members and agreed unanimously to request the Legislative Assembly to set up a joint committee with ILO technical assistance for the processing of the bill to reform labour procedure. ***The Committee expresses the hope that the abovementioned joint committee in the Legislative Assembly will be established without delay and will take up the issues pending. It requests the Government to provide information in this regard. It notes that the Government has requested ILO technical assistance in ascertaining the consistency of the text of the Bill to reform labour procedure (No. 15990) with the principles of Conventions Nos 87 and 98, and suggests that such assistance be provided as soon as the Joint Committee is set up in the Legislative Assembly.***

The Committee again points out that the issues pending raise important problems regarding the application of the Convention. ***Bearing in mind the various ILO missions that had visited the country over the years and the seriousness of the problems, it expresses the hope that it will be in a position to note significant progress in the near future in both the legislation and practice. The Committee requests the Government to indicate any developments in this regard.***

## Georgia

***(Ratification: 1993)***

The Committee notes the comments made by the Georgian Trade Union Confederation (GTUC) in a communication dated 27 August 2008, the observations made thereon by the Georgian Employers' Association (GEA), as well as the Government's reply. The Committee also notes that the GTUC submitted allegations referring to the same matters to the Committee on Freedom of Association. It further notes the comments of the International Trade Union Confederation (ITUC) submitted in a communication dated 26 August 2009 referring to the same issues as well as to the matters previously raised by the Committee.

The Committee recalls that it had previously expressed its concern at the several provisions of the Labour Code adopted in 2006. In particular, the Committee considered that the Labour Code did not provide for an adequate protection against anti-union discrimination and meaningful promotion of collective bargaining. It notes in this respect, the discussion that took place in the Conference Committee on the Application of Standards in June 2008, which considered that a tripartite round table to address these issues in a context of full dialogue 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.

The Committee notes from the Government's report that a memorandum was signed between the Ministry of Health, Labour and Social Affairs (MoHLSA), the GTUC and the GEA with a view to institutionalizing social dialogue in the country. Since then, the social partners have been regularly holding sessions to discuss issues concerning the labour legislation with an emphasis on the issues of compliance with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and Convention No. 98. The Committee further notes with ***interest*** that, in line with the conclusions of the Conference Committee, over the course of 2009, the ILO has been providing technical support to the tripartite constituents to advance the process of dialogue and the review of the labour legislation. The Committee further notes with ***interest*** the holding in October 2009 of an ILO tripartite round table in Tbilisi which discussed the current status of the national labour legislation, application of Conventions Nos 87 and 98 and promotion of tripartism in Georgia. The Committee also notes with ***interest*** Decree No. 335 of 12 November 2009 issued by the Prime Minister of Georgia, which formalized and institutionalized the National Social Dialogue Commission, as well as the creation of a tripartite working group to review and analyse the conformity of the national legislation with the findings and recommendations of the Committee and to propose the necessary amendments. ***The Committee hopes that any proposed amendments will take into account its following comments and requests the Government to provide information on the developments in this regard.***

***Articles 1 and 3 of the Convention. Protection against acts of anti-union discrimination.*** The Committee had previously noted that section 11(6) of the Law on trade unions and section 2(3) of the Labour Code prohibited, in very general terms, anti-union discrimination, and did not appear to constitute sufficient protection against anti-union discrimination at the time of recruitment of workers and at the time of termination of their employment. In particular, the Committee had noted that, pursuant to section 5(8) of the Labour Code, an employer was not required to substantiate his/her decision for not recruiting an applicant and considered 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 had also 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 an employee, provided that the employee was given one month's pay, unless otherwise envisaged by the contract. The Committee considered that, in light of the absence of explicit provisions banning dismissals by reason of union membership or participating in union activities, as well as the absence of provisions regulating cases of anti-union



dismissals, the Labour Code did not offer sufficient protection against anti-union dismissals. The Committee notes that the Government refers to the general prohibition of anti-union discrimination provided for in article 26 of the Constitution, section 11(6) of the Law on trade unions and section 2(3) of the Labour Code and considers that the legislation is in compliance with the Convention. The Government indicates nevertheless that the tripartite working group will review the legislation as necessary. With regard to the protection at the time of recruitment, the Committee is of the opinion that, since it may often be difficult, if not impossible, for a worker to prove that he/she has been the victim of an act of anti-union discrimination, legislation could provide ways to remedy these difficulties, for instance by stipulating that grounds for the decision of non-recruitment should be made available upon request. With regard to the termination of employment, the Committee considers that legislation which allows the employer in practice to terminate the employment of a worker on condition that he/she pay the compensation provided for by law in all cases of unjustified dismissal, without any specific protection aimed at preventing anti-union discrimination, is insufficient under the terms of *Articles 1 and 3* of the Convention. ***The Committee therefore trusts that the necessary measures to revise sections 5(8), 37(d) and 38(3) of the Labour Code will soon be taken so as to ensure that the Labour Code provides for an adequate protection against anti-union discrimination taking into account the principles above. It requests the Government to provide information on the measures taken or envisaged in this respect.***

The Committee notes article 42 of the Code of Administrative Breaches and section 142 of the Criminal Code imposing penalties for violation of the labour legislation. ***The Committee requests the Government to indicate the form of compensation available to workers, victims of acts of anti-union discrimination, including dismissals, transfers, downgrading, etc.***

*Article 2. Protection of workers' organizations against acts of interference by employers.* With regard to the Committee's previous request to provide for rapid appeal procedures, coupled with effective and dissuasive sanctions against acts of interference, 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.

*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 notes the Government's indication that an employer is authorized to introduce internal operation rules only if working conditions are not regulated by a labour agreement (either individual or collective) and that if working conditions are regulated by a labour agreement, such an agreement prevails over any other internal rules.

The Committee had previously noted that sections 41– 43 of the Labour Code seemed to put in the same position collective agreements concluded with trade union organizations and agreements between an employer and non-unionized workers, including as few as two workers. The Committee notes that the Government points out that Convention No. 98 does not stipulate that collective agreements must prevail over individual agreements and confirms that, under the national legislation, agreements concluded with trade unions and agreements with non-unionized workers are treated equally. The Government emphasizes that, under the national legislation, the right to bargain collectively is not solely a trade union prerogative; other groupings of employees can also engage in negotiations with an employer. The Committee finds it difficult to reconcile the equal status given in the law to these two types of agreement with the ILO principles on collective bargaining, according to which the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations should be encouraged and promoted, with a view to the regulation of terms and conditions of employment by means of collective agreements. If, in the course of collective bargaining with the trade union, the enterprise offers better working conditions to non-unionized workers under individual agreements, there is a serious risk that this might undermine the negotiating capacity of the trade union and give rise to discriminatory situations in favour of the non-unionized staff; furthermore, it might encourage unionized workers to withdraw from the union. The Committee draws the Government's attention to the Collective Agreements Recommendation, 1951 (No. 91), which emphasizes the role of workers' organizations as one of the parties in collective bargaining. ***Considering that direct negotiation between the undertaking and its employees, bypassing representative organizations where these exist, runs counter to the principle that negotiation between employers and organizations of workers should be encouraged and promoted, the Committee requests the Government to take the necessary measures in order to amend its legislation so as to ensure that the position of trade unions is not undermined by the existence of other employees' representatives or discriminatory situations in favour of the non-unionized staff. The Committee requests the Government to indicate any developments in this regard.***

The Committee notes the information provided by the Government according to which most of the Georgian state institutions and companies have collective agreements with trade unions. ***The Committee requests the Government to indicate the number of collective agreements concluded in the country within the next reporting period and to provide statistics in this regard in relation to the private sector.***

## Equal Remuneration Convention, 1951 (No. 100)

### India

(Ratification: 1958)

*Assessment of the gender remuneration gap.* The Committee notes the detailed statistical information provided by the Government. It notes the Sixth Round of the Occupational Wage Survey on ten engineering industries, the report on "Socio-economic conditions of women workers in selected food processing industries including seafood and marine products", and information compiled by the National Sample Survey Organization providing statistical data on earnings of men and women by occupation, sector or industry, and level of skills or education. The Committee notes that the data provided show that considerable differentials in the earnings of men and women exist, even where they are engaged in the same occupations or where they have the same level of skills or education. **The Committee asks the Government to continue to provide detailed statistical information on the earnings of men and women. It also encourages the Government to undertake in-depth studies into the reasons for the wide gender remuneration gap, particularly where men and women engage in the same occupations and have the same levels of skills or education, with a view to promoting equal remuneration for men and women for work of equal value.**

*Articles 1 and 2 of the Convention. Equal remuneration legislation.* The Committee recalls its previous comments concerning the scope of section 4 of the Equal Remuneration Act 1976, which requires employers to pay equal remuneration to men and women for the same work or work of a similar nature. The Committee observed that section 4 was more restrictive than is required to give effect to the principle of equal remuneration for men and women for work of equal value, as set out in the Convention, because the concept of "work of equal value" goes beyond "similar work" and encompasses work that is of an entirely different nature, but which is nevertheless of equal value. Accordingly, the Committee considered that limiting the scope of the legislation to "work of a similar nature" would unduly restrict the scope of comparison of remuneration received by men and women.

In its report, the Government states that replacing the notion of "work of a similar nature" in section 4 with "work of equal value" was not considered necessary in the Indian context, "especially since the term 'work of equal value' has not been quantified". The Committee notes that the importance of the concept of work of equal value lies in its requirements that the content of the work performed is the focus for comparing the remuneration of men and women, and that the scope of comparison is as wide as possible. **Noting that the Government refers to six cases decided by the Supreme Court of India, the Committee would be grateful if the Government could provide copies of these decisions. It also requests the Government to review and strengthen the existing equal pay legislation, taking into account the Committee's general observation of 2006 on the Convention.**

*Enforcement of the legislation.* Further to the abovementioned judicial decisions, the Committee notes that the Government has supplied statistical data on action taken to enforce the Equal Remuneration Act by the respective authorities at the levels of the central Government and the state governments. As regards the establishments falling under the competence of the Central Government, the number of inspections has increased from 3,004 in 2006–07 to 3,224 in 2007–09. The Committee notes that in a large majority of these inspections violations were identified and rectified, and that in a considerable number of cases prosecutions were launched (3,051 violations detected, 2,712 rectified, 439 prosecutions launched in 2007–08). The Committee notes that the increase in the number of inspections was accompanied by an increase in violations detected. This may indicate that, in practice, violations of the Acts are widespread. According to data received from ten states or union territories 27,290 inspections in establishments falling under the competence of the respective authorities had been carried out in 2006–07, and 24,441 in 2007–08. In 2007–09, 172 violations were detected in these ten states and union territories and 158 were rectified, while six prosecutions were launched. The Committee notes that taken together the number of inspections for these ten states and union territories has decreased. The Committee notes with **concern** that only very few violations have been detected, particularly when compared to those inspections undertaken by the central authorities. **The Committee considers that the above information points to a need to make the principle of equal remuneration for men and women, the Convention, and the pertinent national legislation, better known and understood among workers and employers, and also to a need to strengthen enforcement action, particularly at the level of the states and union territories. The Committee also notes that a more in-depth analysis of the violations detected would provide a basis for further action to ensure the effective application of the Convention. The Committee asks the Government to provide information on the measures taken or envisaged with regard to strengthening enforcement of the legislation applying the Convention. The Committee encourages the Government to consider seeking the ILO's assistance and support in this regard.**

The Committee previously noted a number of proposals made by the Centre of Indian Trade Unions (CITU) with a view to strengthening the application of the Convention. In reply to these proposals the Government indicates that setting up special units exclusively monitoring the implementation of the Equal Remuneration Act by state governments may not be practicable, given the low number of violations reported. The Government agrees that the involvement of female officers in hearing and deciding equal remuneration complaints can be arranged, subject to availability. As regards the suggestion that trade unions should be allowed to lodge complaints under section 12 of the Act, the Government indicates that the central Government has recognized four institutions as competent to bring complaints, in addition to the aggrieved persons, namely the Centre of Women Development Studies, the Institute of Social Studies Trust, the Working Women's Association and the Self-Employed Women's Welfare Association (SEWA) which is a recognized central trade union. **As stated above, the Committee does not interpret the low level of violations detected by the authorities of the states and union territories as indicating that such violations do not occur; it therefore hopes that measures to strengthen these authorities would be considered. In addition, the Committee asks the Government to provide further information on the participation of women officers in the enforcement of the Equal Remuneration Act in practice, and also to elaborate further on the extent to which the abovementioned institutions have made use of the possibility of bringing complaints under section 12 of the Act and the outcome of such complaints.**

*Article 3. Objective job evaluation.* The Committee recalls that by ratifying the Convention, India has undertaken to take measures to promote the objective evaluation of jobs on the basis of the work to be performed, where such action will assist in giving effect to the provisions of this Convention. In its previous comments, the Committee noted information indicating that women's remuneration was determined on the basis of classifications which did not reflect the real nature of the work involved. The Committee considered that there was a clear need to promote the use of objective job evaluation methods, as envisaged in Article 3. In its reply, the Government states merely that there is no mention of job classification based on sex or

otherwise in the Equal Remuneration Act or the Minimum Wages Acts. While noting the Government's statement, the Committee emphasizes that the Convention envisages the promotion of objective job evaluation as a key aspect of ensuring equal remuneration for men and women for work of equal value. ***Hence, the Committee trusts that the Government will take the measures necessary to give effect to Article 3 of the Convention with a view to promoting the use of objective job evaluation methods as a means of determining wage rates irrespective of the worker's sex, and to provide information on any further developments in this regard.***

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

### Czech Republic

(Ratification: 1993)

The Committee recalls its previous observation issued in 2007 which addressed the following issues: (1) the developments concerning the adoption of new non-discrimination legislation; (2) the situation of the Roma in employment and occupation; and (3) the outstanding issues with regard to the follow-up to the representations under article 24 of the ILO Constitution (November 1991 and June 1994) regarding Act No. 451 of 1991 (Screening Act). In its observation, the Committee asked the Government to supply full particulars to the International Labour Conference at its 97th Session and to report in detail in 2008.

Subsequently, the Conference Committee on the Application of Standards discussed the application of the Convention by the Czech Republic at its 97th Session (June 2008). In its conclusions, the Conference 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. It also called on the Government to adopt the new non-discrimination legislation without further delay and to ensure that it was in full conformity with the Convention.

With regard to the situation of the Roma, the Conference 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 Conference 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. It also 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 Conference Committee 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 Conference 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 Conference Committee requested the Government to provide information on all these issues in its report under article 22 due in 2008.

The Committee recalls that a report had not been received in 2008 and the Committee repeated its previous comments. However, the Committee noted comments received from the Czech Moravian Confederation of Trade Unions (CM KOKS) dated 25 November 2008. In its comments, the CM KOKS states that, following the 97th Session of the Conference, it made an official request to the Prime Minister to place the application of the Convention on the agenda of the national tripartite body. In October 2008, a meeting of the national tripartite body took place. According to the union, the Government failed on this occasion to submit to the social partners the conclusions adopted by the Conference. The CM KOKS also reiterates its concerns regarding the withdrawal of specific legal protection from discrimination based on marital status, family responsibilities, political or other conviction, membership of, or activity in political parties and movements, trade unions or employers' organizations. The CM KOKS further maintains that there is a need to improve the role of the State in monitoring compliance of anti-discrimination legislation. Further, it calls for the repeal of the Screening Act.

***The Committee notes with regret that since the Conference discussion in 2008 no report has been received from the Government, despite the specific request made by the Conference Committee. The Committee is concerned that its previous comments and the Conference conclusions may not yet have been discussed in an appropriate manner at the national level. The Committee urges the Government to take the measures necessary to ensure follow-up to all the points raised by the Committee in its 2007 observation and direct request, and by the Conference Committee in 2008, and to provide all the information requested without delay.***

***[The Government is asked to supply full particulars to the Conference at its 99th Session and to reply in detail to the present comments in 2010.]***

### Islamic Republic of Iran

(Ratification: 1964)

The Committee notes the discussion that took place in the Conference Committee in June 2009. In its conclusions, the Conference Committee noted that, during its examination of this case in June 2008, it had requested 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 the relevant legislation and practice into line with the Convention by no later than 2010. The Conference Committee noted with concern the lack of information that had been provided to the Committee of Experts, and the range of serious issues that remained outstanding.

The Committee notes that the Conference Committee, while acknowledging that certain achievements had been made in the past in respect of education, vocational training and employment of women, remained concerned at the lack of evidence of any real progress made with respect to their situation in the labour market. Detailed information on the number of women actually finding employment after their education and training was still lacking, and concerns remained with respect to existing and draft legislation limiting women's employment. The Conference Committee also noted the need for information on the quota system in universities and how it was applied in practice, as well as information on the impact on women's employment of the recent bill limiting working hours for women with children. The Conference Committee expressed continuing concern about the situation of religious and ethnic minorities with regard to their equal access to employment and occupation, and the failure to provide adequate

statistical information in this regard. It concluded that the Baha'i continued to be subjected to discrimination as regards access to education and employment without any significant measures being taken by the Government to bring discriminatory practices, including on the part of the authorities, to an end.

The Conference Committee urged the Government to take immediate and urgent action to ensure the full application of the Convention, both in law and practice, and to establish genuine social dialogue in this context. It urged the Government to provide full, objective and verifiable information in its report of 2009 on the application of the Convention, in reply to all the issues raised by the Conference Committee and by the Committee of Experts.

However, the Committee notes with **regret** that the Government's report has not been received. It must therefore repeat its previous observation which, in relevant parts, read as follows:

[...]

#### Legislative developments

The Committee notes the Government's indication that a comprehensive Bill prohibiting any form of discrimination in employment and education has been drafted. The Bill relates to access of all Iranian nationals, irrespective of gender, colour, creed, race, language, religion, ethnic and social background, to education, technical and vocational training, and to job and employment opportunities and similar working conditions. The Government states that violations of the proposed Bill would be subject to very heavy penalties and sanctions, unlike violations of the Constitution or the Labour Law. The Committee notes that this Bill is awaiting approval of the Cabinet of Ministers, and that the Government hopes to receive comments of the Office on the Bill. The Committee understands that the proposed Bill has not yet been sent to the Office with a request for comment thereon. **The Committee urges the Government to forward the proposed Bill on non-discrimination to the Office for its comments as soon as possible.** The Committee hopes that in drafting the new law, the opportunity will be taken to prohibit direct and indirect discrimination against nationals and non-nationals, on all the grounds enumerated in the Convention, including political opinion, national extraction and social origin. Noting the concern expressed by the Conference Committee that over the years a number of bills, plans and proposals had been referred to which had not come to fruition, the Committee hopes that every effort will be made to adopt a comprehensive law on non-discrimination which is fully in conformity with the Convention, in the near future.

#### National equality policy

The Committee notes the Government's indication that the Charter of Citizenry Rights referred to in article 100 of the Fourth Economic, Social and Cultural Development Plan (the Plan) was approved by Parliament in 2007. The Committee also notes from the Government's report that disciplinary measures, including dismissal, were taken by the head of the judiciary against the judges who failed to apply the Charter. As regards article 101 of the Plan, calling for the elaboration of 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", the Government indicates that regular meetings with the social partners are held in order to survey and monitor the implementation of this provision. No information is provided with regard to article 130 of the Plan empowering the judiciary to take measures towards the elimination "of all types of discrimination – gender, ethnic and group – in the legal and judicial [field]". **The Committee requests the Government to provide a copy of the Charter of Citizenry Rights as well as information on its application in practice, and detailed information on any measures taken against judges and other officials failing to respect and apply the rights set forth in the Charter, including any disciplinary sanctions imposed. The Committee also reiterates its request for information on the status of the adoption of the National Plan foreseen under article 101 of the Plan and on any measures taken to implement article 130. The Committee would also appreciate receiving specific information on the outcome of the meetings held to survey and monitor the implementation of article 101 of the Plan, including detailed information on the measures taken to implement this provision. The Committee again requests the Government to provide translated summaries of the evaluation reports prepared pursuant to article 157 of the Plan, 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 again 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 of Women's Rights.**

#### Equal opportunity and treatment of men and women

With regard to the measures taken to improve women's access to employment and occupation, through increasing access to university and technical and vocational training, the Committee recalls that in June 2008 the Conference Committee, while noting the efforts to promote women's access to university education, also noted the Government's acknowledgement that there remained a long way to go in practice to remove the barriers to women's employment. The Committee notes that in his report on the situation of human rights in the Islamic Republic of Iran, the UN Secretary-General pointed out that "women have limited participation in wage labour outside of the agricultural sector, estimated at 16 per cent, which signifies that the progress achieved in female education in the recent past has not as yet translated into increased women's economic participation" (A/63/459, 1 October 2008, paragraph 51). The Committee also notes the ITUC's allegation that quotas restricting women's access to university have been secretly applied since 2006 in up to 39 fields of study.

The Committee notes that, according to official government statistics collected by the ILO, the unemployment rate for women decreased from 17 per cent in 2005 to 15.8 per cent in 2007. In the same period, however, the number of women in the occupational category of legislators, senior officials and managers, decreased by almost 20 per cent. The Committee also notes the Government's indication that the Deputy Minister for Industrial Relations is responsible for the supervision of the Presidential Circular calling for the guarantee of equal access to women and religious minorities to employment opportunities. Moreover, the Government indicates that various empowerment programmes for women were implemented under article 101 of the Plan. The Committee recalls that the Conference Committee 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. The Committee notes that these statistics were not provided. **The Committee urges the Government to provide detailed statistics on the number of women and men in public and private sector employment, disaggregated by category and level of employment. The**

**Committee also requests the Government to provide information on the number of women participating in the empowerment programmes mentioned in the Government's report. Please also provide more information on the content and impact of these programmes. The Committee also asks the Government to provide a copy of the Presidential Circular referred to above and more detailed information on the role of the Deputy Minister for Industrial Relations in supervising the implementation of the Circular. The Committee again requests the Government to provide information on the number of women trained through the Technical and Vocational Training Organization (TVTO) and on the participation rate of women and men in the various disciplines of technical and vocational training in privately run institutes. The Committee further reiterates its request for information on the activities of the Women's Entrepreneurship Guild as well as on the activities of the Centre for Women and Family Affairs.**

The Committee notes from the ITUC's submission that an increasing number of women are working in temporary jobs and contract employment, and thus are not covered by legal entitlements and facilities, including maternity protection. The ITUC states that since Iranian labour law does not require companies employing less than 20 people to abide by these regulatory protections and women often work in small and medium-sized enterprises, they may in practice face serious discrimination in the labour market. The Committee recalls that the Conference Committee had urged the Government to ensure that all entitlements and facilities are made available to women working in temporary and contract employment. **Noting that no information has been provided by the Government on this point, the Committee urges the Government to take the necessary measures to ensure that women in temporary and contract employment benefit from all the legal entitlements and facilities, and to provide information on progress made in this regard.**

The Committee recalls the Government's acknowledgement 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 raised the issue of the difficulty of women balancing work and family responsibilities. The Government indicates that the Ministry of Labour and Social Affairs held regular workshops throughout the country to raise public awareness about ILO standards and the rights set out in the Labour Law. The Committee also notes the Government's indication that various workshops were held at provincial level with a view to "teaching Iranian women how best to balance work and family responsibilities". The Committee refers to its previous comments and stresses that restricting measures to reconcile work and family responsibilities to women reinforces the assumption that women are solely responsible for caring for children. **The Committee requests the Government to provide detailed information on the measures taken to improve awareness, access and enforcement of equality and non-discrimination rights and policies, as well as on protection and benefits aimed at balancing work and family responsibilities. It also again requests the Government to consider extending the special measures for workers with children to men as well as women.**

The Committee recalls the findings of the technical assistance mission regarding the prevalence of discriminatory job advertisements. **In the absence of the information previously solicited, the Committee again requests the Government to provide information on measures taken or envisaged to prohibit such practice. Further to its 2002 general observation, the Committee also reiterates its request for information on measures taken or envisaged to prevent and prohibit sexual harassment in employment and occupation.**

#### Discriminatory laws and regulations

The Committee, as well as the Conference Committee, has raised over a number of years the need to repeal or amend discriminatory laws and regulations. In June 2008, the Conference Committee expressed deep regret that despite the Government's statements that it was committed to repealing laws and regulations that violated the Convention, progress in this regard was slow and insufficient. The Committee notes with regret that despite the repeated call from this Committee and the Conference Committee for the amendment or repeal of the laws and regulations restricting women's employment and the discriminatory application of the social security legislation, the Government reports no new developments since the Conference Committee discussion.

Regarding section 1117 of the Civil Code pursuant to which a husband can prevent his wife from taking up a job or profession, the Government states that due to the existence of section 18 of the Family Protection Law, section 1117 is automatically repealed and courts are not authorized to hear complaints regarding section 1117. The Committee notes from the UN Secretary-General's report that a family protection draft Bill was being debated. However, it is not clear if the reference to section 18 in the Government's report is a provision in the draft Bill. The Committee also notes that the same explanation was provided to the Conference Committee, which nonetheless expressed concern that in the absence of the express repeal of section 1117, the provision would continue to have a negative impact on women's employment opportunities. **The Committee requests the Government to clarify the content of section 18 of the Family Protection Law, and how it automatically repeals section 1117, as well as to provide information on the status and content of the family protection draft Bill. Noting the concern expressed by the Conference Committee that in the absence of an express repeal of section 1117, it would continue to have a negative impact on women's employment opportunities, the Committee urges the Government to take steps to repeal the provision or to ensure that the public is aware of any consequential repeal due to the adoption of new legislation, and the fact that a husband can as a result no longer prevent his wife from taking up a job or profession. Please provide the Committee with detailed information of steps taken in this regard.**

Regarding the discriminatory provisions in social security regulations, the Government indicates that it is collaborating with the social partners to launch a global plan for social security that would address amendments to the social security regulations. With respect to the limitations on women's access to all positions in the judiciary, with particular reference to Decree No. 55080 of 1979, the Government once again refers to a Bill addressing this issue having been drafted. The Government rejects the existence of any administrative rules restricting the employment of wives of government employees. With respect to the age barrier to women's employment, the Government states that the maximum age for employment is 40 years, not 30, and a five-year extension is possible exceptionally in the civil service. On the issue of the obligatory dress code, the Committee notes that no information has been provided by the Government. **The Committee urges the Government to repeal or amend all laws and regulations restricting women's employment, and the discriminatory application of the social security legislation. The Committee also urges the Government to take measures to address any barriers to women being hired after the age of 30 or 40. Please also provide details of the content and status of the most recent Bill regarding women in the judiciary.**

#### Discrimination on the basis of religion

In its previous comments, the Committee noted that the situation of unrecognized religious minorities, and in particular the Baha'i, appeared to be very serious, and called on the Government to take a range of measures. The Conference Committee also strongly urged the Government "to take decisive action to combat discrimination and stereotypical attitudes, through actively promoting respect and tolerance for the Baha'i", to withdraw all discriminatory circulars and other government communications, and to ensure that authorities and the public were informed that discrimination against religious minorities, in particular the Baha'i, would not be tolerated. In reply, the Government states generally that a circular was recently issued by the President of the Technical and Vocational Training Organization, providing that all Iranian nationals had free access to vocational training. **Noting that the Committee has been urging the Government to take decisive action to address the very serious situation of discrimination against religious minorities, in particular the Baha'i, and the urgency expressed by the Conference Committee with respect to this matter, the Committee deeply regrets that the Government appears to have taken no action along the lines called for by this Committee or the Conference Committee, and urges it to do so without further delay. The Committee is also once again obliged to request information on the practice of "gozinesh" and on the status of the Bill that had been before Parliament asking for a review of this practice.**

#### Ethnic minorities

**Noting the very general information provided by the Government to the Committee's previous request, the Committee once again asks the Government to provide information on the employment situation of ethnic minority groups, including the Azeris, the Kurds and the Turks, including 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. The Committee also reiterates its request for information on the positions from which members of ethnic minorities are excluded on the ground of national security.**

#### Dispute settlement and human rights mechanisms

**As no information has been provided regarding the Committee's previous request on this issue, the Committee, stressing the importance of accessible dispute resolution mechanisms to address cases of discrimination, again requests the Government to provide information on the nature and number of complaints lodged with the various dispute settlement and human rights bodies and the courts, including the outcome thereof. The Committee urges 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.**

#### Social dialogue

The Committee previously raised concerns that in the context of the freedom of association crisis in the country, meaningful national-level social dialogue regarding issues related to the implementation of the Convention would not be possible. The Conference Committee also expressed deep concern in this regard. The Committee regrets that the Government has provided no information on this issue. The Committee understands, however, that there has been no improvement in the social dialogue situation in the country. **The Committee, expressing its deep concern at the social dialogue situation in the country, urges the Government to make every effort to establish constructive dialogue with the social partners to address the considerable gaps in law and practice in the implementation of the Convention, and to demonstrate concrete results by 2010.**

**The Committee hopes that the Government will make every effort to take the necessary action in the near future.**

## Russian Federation

**(Ratification: 1961)**

*Articles 2 and 5 of the Convention. Gender equality and special measures of protection.* The Committee recalls its comments regarding Resolution No. 162 adopted by the Government on 25 February 2000 which contains a list of industries, occupations and work from which women are excluded. The Resolution excludes women from being employed in 456 occupations in 38 sectors of industry. In its report, the Government states that the list contained in Resolution No. 162 is in accordance with section 253 of the Labour Code which provides that "the use of labour of women in arduous work and work in harmful and/or dangerous conditions, and also in underground work, except for non-physical work or work with regard to sanitary and domestic servicing, shall be limited". The Government states that the list contained in Resolution No. 162 has been established on the basis of consultations with representatives of scientific and research institutes and that every restriction has been medically justified. The Government confirms that the list's intention was not specifically to protect women's reproductive health, but more broadly to "exclude women from such working conditions which generally do not correspond to the requirements of life and health protection of workers". The Government points out that, in accordance with Resolution No. 162, the employer may decide to assign women to work included on the list provided that the employer creates safe working conditions and these are certified as safe by the competent state authorities. In the Government's view, Resolution No. 162 did not require any changes as it did not establish unjustified restrictions.

The Committee maintains that Resolution No. 162 raises issues with regard to equality of opportunity and treatment in employment and occupation of men and women. It recalls that the Convention aims at promoting and ensuring equality of men and women, inter alia, in respect of terms and conditions of employment, including regarding occupational safety and health measures. The Convention therefore requires the Government to provide occupational safety and health protection to men and women on an equal footing. However, the approach embodied in Resolution No. 162 raises doubts as to whether adequate measures are being taken to provide such equal protection. Further, the Committee recalls that, where special measures of protection for women within the meaning of Article 5 of the Convention are being taken, it must be ascertained that exclusions from employment opportunities are limited to cases where this is strictly necessary to protect women's reproductive health and that the measures are proportional to the nature and the scope of the protection needed. The Committee considers that the exclusion of women from any work or employment due to arduous, hazardous or dangerous working conditions that involve equal risks for men and women goes beyond what is permitted under Article 5. On this basis, the Committee also remains concerned that broad exclusions from employment opportunities due to occupational safety and health concerns that only apply to women not only have a discriminatory effect on women's equality in the labour market, but may also hinder further progress in providing healthy and safe working environments to men and women. **The Committee therefore urges the Government to take the necessary steps to review the current system of protective measures excluding women from employment opportunities with a view to ensuring equal**

**opportunities for women and men and equal protection of health and safety, and provide information on the action taken in this regard. Please also include information on the measures taken to consult workers' and employers' organizations and the results of such consultations.**

*Enforcement of the Labour Code's non-discrimination provisions.* The Committee previously noted that, following the 2006 amendments to the Labour Code, persons considering themselves to be discriminated against in the sphere of labour can no longer petition the labour inspectorate. In this connection, the Committee notes the Government's explanation to the effect that due to the special nature of labour disputes regarding discrimination, it was considered preferable to have such matters decided by the courts through civil legal proceedings, rather than by the labour inspectorate through administrative proceedings. Accordingly, the legislation does not permit the Federal Service on Labour and Employment to settle disputes regarding discrimination. **The Committee requests the Government to provide information on the number of cases concerning discrimination in employment and occupation brought before the court under the Labour Code, and on the outcome of such cases. In addition, noting that the broad mandate of the Federal Service on Labour and Employment would not appear to exclude it from providing information and at least advice on the prohibition of discrimination to workers and employers, the Committee requests the Government to provide information on any measures taken to strengthen the capacity of labour inspectors to provide such advice.**

*Articles 2 and 3. Equality of opportunity and treatment of men and women.* The Committee notes from statistical data compiled by the ILO that in 2008 the rate of economically active women (over 15 years of age and older) was 56.1 per cent, compared to a rate of 70.4 per cent for men. The Committee notes that the labour market in the Russian Federation remains highly segregated, with women being concentrated in clerical occupations and underrepresented in senior positions. The Committee also notes that the Government's report contains no reply to the Committee's previous comments requesting information on the measures taken to promote equal opportunities of men and women in employment and occupation, including information on the specific steps taken to ensure that men and women have equal access to employment in the broadest possible range of sectors and industries, as well as at all levels of responsibility. **The Committee therefore reiterates its request to the Government to supply the requested information, as well as updated detailed statistical information on the distribution of men and women in the different sectors and industries, as well as levels of responsibility.**

The Committee notes the Government's confirmation that a draft Federal Law on state guarantees of equal rights and freedoms and equal opportunities for men and women in the Russian Federation has been adopted by the State Duma in a first reading. However, the report highlights that a number of issues have arisen in the course of the elaboration of the draft Law. More specifically, the Government indicates that some of the provisions should rather be included in the federal Constitution. The Government also notes that there are overlaps with legislation already in force and uncertainties as to which government body would be in charge of supervision. The Government adds that it would be preferable to introduce amendments to the Labour Code instead. **The Committee hopes that further efforts will be made to strengthen the legal framework in the Russian Federation to promote and ensure gender equality in employment and occupation and requests the Government to provide information on the measures taken and progress made in this regard.**

*Equality of opportunity and treatment of ethnic minorities and indigenous peoples.* In its report, the Government refers to the Constitution which requires the State to guarantee the equality of human and citizens' rights, regardless of race, nationality, language, origin, place of residence, religion and prohibits "all forms of limitations of human rights on social, racial, national, linguistic or religious grounds" (article 19). The Government also acknowledges that a number of constituent republics of the Russian Federation are built on "national and territorial principles", which explains some of the problems in these republics with regard to preferences being given to people belonging to the locally predominant ethnic group. The Government considers that these problems cannot be overcome by legal means. It states that with a view to overcoming "discriminatory trends in the field of employment and occupation" and to build harmonious inter-ethnic relations, it is necessary to encourage ethnic associations created under the Federal Law on National and Cultural Autonomy, 1996, to participate in addressing these problems. In this connection, the Committee also notes that the UN Committee on the Elimination of Racial Discrimination has recently recommended that measures be taken to address discrimination against ethnic minority workers in respect of recruitment (CERD/C/RUS/CO/19, 20 August 2008, paragraph 25). The Committee welcomes the Government's acknowledgement that there is a need for measures promoting non-discrimination in employment and occupation based on ethnic or national origin and to promote tolerance between the various ethnic groups in the country. The Committee shares the Government's view that promotional measures involving civil society organizations is important, but it also stresses the need to provide effective legal protection from discrimination. **The Committee recommends that measures be taken to strengthen the enforcement of the Labour Code's provision on non-discrimination, with particular emphasis on discrimination on racial or ethnic grounds. It requests the Government to continue to provide information on the measures taken to promote and ensure equality of opportunity and treatment of ethnic minorities through promotional measures as well as effective enforcement of the legislation. It reiterates its request to the Government to provide information with regard to equal opportunities and treatment in employment and occupation of the indigenous peoples.**

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

**[The Government is asked to supply full particulars to conference at its 99th Session and to reply in detail to the present comments in 2010.]**



## Employment Policy Convention, 1964 (No. 122)

### Thailand

(Ratification: 1969)

The Committee notes that the Government has not provided any information on the application of the Convention since its last report received in April 2007. The Committee trusts that the Government will be able to provide a report including information in reply to the points raised in the Committee's 2008 observation, which sets forth the following matters.

*Articles 1 and 2 of the Convention. Employment policy and social protection.* The Committee recalls that, as noted in its previous comments, an unemployment insurance scheme was launched in 2004. The Government's report indicates that, between July 2004 and February 2007, out of a total of 403,403 persons registered under the scheme, 111,568 persons – representing 27 per cent of the beneficiaries were re-employed within six months following registration, and a remaining 722 persons were referred to further skills training. Research studies conducted during 2004–05 indicate that there are 15,500,000 workers in the informal economy that are not covered by any form of social protection. To address this, and as reflected in the Ninth National Economic and Social Development Plan (2002–06), workers from the informal economy receive benefits to the same extent as other insured persons upon registration. The Committee also notes a communication forwarded by the National Congress of Thai Labour in April 2007, which insists that there are many workers in the informal sector including the service industry as well as self-employed persons who are not covered by the social security system. In a communication received in October 2007, the Government indicates that concrete measures and plans will soon be introduced to better serve and protect workers in the informal economy. **The Committee requests the Government to include in its next report information on the extent, terms and type of coverage reaching workers in the informal economy under the revised scheme as well as any other steps taken to coordinate the employment policy measures with unemployment benefits.**

*Coordination of employment policy with poverty reduction.* The Committee notes that the Government established a policy on employment promotion to increase income, as shown by the priority given to three strategies in its development plan – development of human potential and social protection strategy, sustainable restructuring of rural and urban development strategy and upgrading national competitiveness strategy. The policies implemented under these strategies include job creation for self-employed persons as well as enabling small business ventures through skills training for unemployed persons and enhancing access to credit from cooperative funds. It also includes skills training to generate job opportunities in the informal sector, remote areas as well as to promote overseas employment. Furthermore, online labour market information systems have been set up to assist jobseekers. **The Committee would appreciate receiving information on how the measures taken to promote employment under the three mentioned strategies operate within the framework of a coordinated economic and social policy.** In this respect, the Ministry of Labour in cooperation with the Faculty of Economics of Chulalongkorn University, has conducted research on the impact of free trade agreements on labour in seven industrial sectors. According to these studies, labour standards are often compromised as a result of highly competitive practices associated with free trade agreements. The Ministry of Labour expects to improve the employment situation using the information and recommendations of research done in collaboration with the Faculty of Economics of Thammasat University. **The Committee would welcome receiving information on labour market programmes implemented to match labour supply and demand.**

*Labour market and training policies.* The Committee notes that the skills training offered by the Department of Skills Development (DSD) focuses on pre-employment training, upgrading training and retraining. Moreover, such programmes are designed based on the market needs. The DSD biannually surveys the needs of the public and private sectors at the provincial and national level and designs programmes accordingly. The Government's report also provides that a quality assurance system was introduced in 2003 to ensure that skills development will be gradually expanded to cover all the regional institutes and provincial skill development centres by 2008. **The Committee asks the Government to continue to provide information on the results achieved by the measures taken by the Ministry of Labour and the Ministry of Education to coordinate education and training policies with prospective employment opportunities.**

*Article 1, paragraph 2(c). Prevention of discrimination. Women.* The Government indicates that employers were encouraged to appoint female labour advisers in their establishments. In addition, female workers have also been provided with equal opportunities to the same extent as male workers in accessing services of the DSD. In 2006, 102,990 trainees finished vocational skills training courses organized by the DSD; 100,141 were women, mostly employed in the clothing and textile industries and service sectors. The Ministry of Social Development and Human Security also provided courses for women and young female workers and to those at risk of being, or have been, laid off or are unemployed or poor. In rural areas, a special project known as "Building New Life for Rural Women" has been organized with the aim of providing vocational training and increasing income. **The Committee requests the Government to continue to provide detailed information in its next report on the impact of the measures adopted to ensure that progress is achieved in raising the participation rate of women in the labour market. Please also indicate the gender distribution of trainees in the training courses of the DSD.**

*Persons with disabilities.* According to the Government's statistics, the relative number of persons with disabilities that have found job placements increased in 2006. Other interventions include providing vocational training courses for persons with disabilities; occupational development services to help those that have completed vocational training develop practical skills, as well as family and community welfare services to provide care and support for children with disabilities. **The Committee would appreciate continuing to receive information on the impact of the training programmes for persons with disabilities, in particular, the number of people that completed the programme and were able to find employment in the open labour market.**

*Migrant workers.* The Government indicates in its report that the registration of thousands of migrant workers has improved their situation. The Committee also notes the statistics for the period 2004–06 on the implementation of bilateral Memoranda of Understanding with neighbouring countries including Cambodia, Lao People's Democratic Republic and Myanmar. It also notes the observation submitted by the National Congress of Thai Labour, which indicates that illegal foreign workers, especially from Myanmar, are increasing and are paid below minimum wage. In its reply, the Government indicates that irregular migrant workers tend to get lower wages than the minimum rates announced by the National Wages Committee because of their illegal status. **On this important issue, the Committee refers again to the tripartite discussion that took place during the**

***International Labour Conference in June 2006 on the application of the Convention by Thailand and asks the Government to continue to report in detail on the impact of the action taken within the framework of an active employment policy to prevent abuse in the recruitment of labour and the exploitation of migrant workers in Thailand.***

*Workers in the rural sector and the informal economy.* The Government indicates that homeworkers in the informal sector can register at provincial employment offices to receive basic training to enhance their skills. It also initiated a project in 2006 to reach agricultural sector workers and improve working and living conditions and raise awareness of labour protection. ***The Committee requests the Government to also provide information in its next report on the implementation of rural employment policies and programmes and on any other measures it has taken to promote employment and improve the quantity and quality of employment opportunities for homeworkers. It also reiterates its interest in examining information on the measures taken to reduce the decent work deficit for men and women workers in the informal economy and to facilitate their absorption into the labour market.***

*Article 3. Consultations with representatives of the persons affected.* The Committee notes that, in issuing policies on employment and labour protection, the Ministry of Labour has given opportunities for all parties concerned to participate. Draft copies of policies and regulations are open for public comment. In certain provinces, the Provincial Offices of Labour Protection and Welfare have collaborated with local government authorities, NGOs and foundations in order to access those migrant workers more easily and provide protection more efficiently. ***The Committee invites the Government to provide information in its next report on any recommendations made by the abovementioned mechanisms in relation to the formulation and implementation of employment measures.***

***[The Government is asked to reply in detail to the present comments in 2010.]***

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

### Central African Republic

(Ratification: 2000)

*Article 1 of the Convention and Part V of the report form. National policy and the application of the Convention in practice.* In its previous comments, the Committee noted a study by the Ministry of the Economy, Planning and International Cooperation of 2003 on the situation of children in the country. According to this study, 5.2 per cent of boys and 5.6 per cent of girls between the ages of 6 and 9 years are engaged in work. The study also shows that boys work, in particular, in the private wage sector (boys account for 68.5 per cent of children working in this sector), the para-public wage sector (66.7 per cent), for an employer (72.7 per cent) and as apprentices (60.2 per cent), while the number of girls is greater in own-account work (girls account for 56.9 per cent of children working in this sector) or as family helpers (53.5 per cent). The Committee also noted the Government's indication that a study to identify and classify types of child labour, carried out in collaboration with UNICEF, was in the process of being validated.

The Committee notes that, according to UNICEF statistics for 2007, 57 per cent of children between the ages of 5 and 14 years are engaged in work in the Central African Republic (44 per cent of boys and 49 per cent of girls). It notes the Government's indication that, in the context of the adoption of the new Act No. 09.004 issuing the Labour Code of the Central African Republic in January 2009 (Labour Code of 2009), the Labour Department has worked on the preparation of texts to implement the Code. The Government indicates that a national policy for the progressive abolition of child labour and to increase the minimum age for admission to employment or work will be prepared once the implementing texts have been issued. The Committee must, however, express once again its deep **concern** at the situation of young children who work in the country out of personal necessity. ***It therefore urges the Government to take the necessary measures to ensure that the national policy for the progressive abolition of child labour is adopted in the very near future and that programmes of action are implemented in the sectors in which child labour is the most problematic. It requests the Government to provide information in its next report on the progress achieved in this respect. It also once again requests the Government to provide a copy of the study to identify and classify child labour.***

*Article 2, paragraph 1. Scope of application and minimum age for admission to employment or work. Self-employed work.* In its previous comments, the Committee noted the information provided by the Government that most children are used in the sectors of the informal economy, such as diamond workshops, portage or diving in search of diamonds. The Government indicated that the juvenile courts and the Children's Parliament guarantee the protection envisaged by the Convention with respect to children engaged in an economic activity on their own account. The Committee notes that the Labour Code of 2009 is not applicable to self-employed workers (section 2), but only governs professional relationships between workers and employers derived from labour contracts (section 1). ***Noting that the Government's report does not contain any information on this subject, the Committee requests it once again to provide information on the manner in which the juvenile courts and the Children's Parliament ensure the application of the protection envisaged by the Convention in respect of children who work without an employment relationship, in particular when they work on their own account or in the informal economy. In this respect, it once again requests the Government to envisage the possibility of adopting measures to adapt and strengthen the labour inspection services so as to secure this protection.***

*Family enterprises.* The Committee noted previously that, under section 2 of Order No. 006 of 21 May 1986 determining the conditions of employment of young workers, the types of work and the categories of enterprises that are prohibited for young persons and the age limit up to which this prohibition applies (Order No. 006 of 1986), children under 14 years of age may be employed, even as apprentices, in establishments in which only family members are engaged. The Committee notes that section 166 of the Labour Code of 2009 provides that no one may be apprenticed who is not at least 14 years of age. Furthermore, section 259 provides that children may not be employed in any enterprise, even as apprentices, before the age of 14 years, unless an exception is issued by order of the minister responsible for labour taking into account the opinion of the National Standing Labour Council. ***The Committee requests the Government to indicate whether exceptions have been authorized by the minister responsible for labour under section 259 of the Labour Code of 2009.***

*Domestic work.* In its previous comments, the Committee noted that section 3(a) of Order No. 006 of 1986 provides that children over 12 years of age may carry out light domestic work and that section 125 of the Labour Code respecting the minimum age for admission to employment only applies to work performed in an enterprise. The Committee observed previously that no text in the national legislation explicitly establishes a minimum age of 14 years for domestic workers. It therefore recalled that *Article 2* of the Convention is applicable to domestic work and that the minimum age for admission to this type of work must not be less than 14 years, except for work considered to be light, in accordance with the conditions laid down in *Article 7* of the Convention. In this respect, the Government indicated that measures to explicitly establish a minimum age for admission to employment for light domestic work were envisaged in the preliminary draft of the Labour Code. The Committee notes with **interest** that section 259 of the Labour Code of 2009 establishes the minimum age for admission to employment at 14 years and that the application of the Labour Code is now no longer limited to work performed in an enterprise (section 1).

*Article 2, paragraph 3. Age of completion of compulsory schooling.* In its previous comments, the Committee noted that the age of completion of compulsory schooling is 14 years. It also noted the Government's indication to the Committee on the Rights of the Child that, pursuant to section 6 of Act No. 97/014 of 10 December 1997 respecting education policy, school attendance is compulsory from 5 to 15 years and that the texts to be issued under this Act are being prepared. The Committee also noted the adoption of the Plan of Action on Education for All (NPA-EFA) in 2005, the objective of which is to increase the school attendance rate, reduce the school drop-out rate and ensure the completion of the full cycle of primary education by all children. The Committee further noted that, according to UNICEF statistics for 2006, the net school enrolment rate for primary education was 44 per cent for boys and 37 per cent for girls, while the figures for secondary education were 13 per cent for boys and 9 per cent for girls. The Committee also noted that, according to the Education for All Global Monitoring Report 2008, published by UNESCO under the title "Education for All in 2015: Will we make it?", in view of the lack of data, it was impossible to make projections for the achievement of the goals established by the NPA-EFA for the Central African Republic for 2015. However, the study indicates that 20 per cent or more of primary school students are repeating their grade and that girls repeat grades more than boys.

The Committee observes that, according to UNICEF statistics for 2007, the school attendance rates at the primary and secondary levels remain a

matter of great concern: the net enrolment rate at primary school is 53 per cent for boys and 38 per cent for girls, and the figures for secondary education are 13 per cent for boys and 9 per cent for girls. The Committee, however, notes that the Government has not provided any information on this subject in its report. The Committee therefore once again expresses its deep **concern** at the low rate of school enrolment in both primary and secondary education, and particularly at the disparity between the two sexes, to the detriment of girls, and the fairly high rate of repeating school years, which affects girls in particular. It once again observes that poverty is one of the primary causes of child labour and that, when combined with a deficient educational system, it prevents the development of the child. **Considering that compulsory education is one of the most effective means of combating child labour, the Committee urges the Government to take the necessary measures to improve the functioning of the education system in the country so as to enable children to attend compulsory basic education or to be integrated into an informal school system. In this respect, it once again requests the Government to provide information on the measures adopted in the context of the NPA-EFA of 2005 to increase the school enrolment rate and reduce the school drop-out rate, so as to prevent children under 14 years of age from working. The Committee requests the Government to provide information in its next report on the results achieved. Finally, the Committee once again asks the Government to provide a copy of Act No. 97/014 of 10 December 1997 on education policy.**

*Article 3, paragraphs 1 and 2. Minimum age for admission to hazardous types of work and determination of these types of work.* With reference to its previous comments, the Committee notes that, under the terms of section 263 of the Labour Code of 2009, the worst forms of child labour, that is work by any person under 18 years of age (section 3), are prohibited throughout the Central African Republic. Section 262 provides that the worst forms of child labour include work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. The Committee notes the Government's indication in its report that section 261 of the Labour Code of 2009 provides that a joint order of the Minister of Labour and the Minister of Public Health, issued taking into account the opinion of the National Standing Labour Council, shall determine the nature of the types of work and the categories of enterprises prohibited for children and the age limit up to which this prohibition applies. The Committee however observes that no list of these hazardous types of employment or work appears to have been published up to now. The Committee reminds the Government that, by virtue of *Article 3(2)* of the Convention, the hazardous types of employment or work shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned. **The Committee therefore requests the Government to take the necessary measures to ensure that a list determining the hazardous types of employment or work that are prohibited for persons under 18 years of age, in accordance with section 261 of the Labour Code of 2009, is adopted in the near future. It requests the Government to provide information on the progress achieved in this respect.**

*Article 6. Apprenticeship.* With reference to its previous comments, the Committee notes with **interest** that Chapter II of the Labour Code of 2009 regulates the nature and conditions of apprenticeship contracts. Under section 166, no person may be apprenticed who is not at least 14 years of age. Furthermore, the provisions of sections III and IV of this chapter lay down the duties of masters and those of apprentices. Accordingly, masters have to teach apprentices progressively and completely the craft, trade or special occupation covered by the contract (section 172), while apprentices have to help the master through their work within the bounds of their capacities and strength (section 173).

*Article 9, paragraph 1. Penalties.* The Committee notes with **interest** that section 389 of the Labour Code of 2009 provides that any person who commits a violation of section 259 (minimum age for admission to work or employment of 14 years) is liable to a fine of between 100,000 and 1 million CFA francs. Under section 392, in the event of a repeat offence, including violations of section 259, liability may include terms of imprisonment of between one and six months. The Committee further notes that, under the terms of section 393, any person who has procured or endeavoured to procure a child for the worst forms of child labour shall be liable to a fine of between 500,000 and 5 million CFA francs and a term of imprisonment of between one and five years, or to only one of these penalties. In the event of a repeat offence, these penalties are doubled.

*Article 9, paragraph 3. Keeping of registers by employers.* With reference to its previous comments, the Committee notes that, under the terms of section 331 of the Labour Code of 2009, the employer shall always keep an up to date employment register, the first part of which shall contain data relating to the persons and the contracts of all workers engaged in the enterprise. The employment register has to be kept at the disposal of labour inspectors, who may require its production at any time. However, the Committee notes that section 331 also provides that certain enterprises or establishments, as well as certain categories of enterprises or establishments, may be exempted from the obligation to keep an employment register by reason of their situation, their small size or the nature of their activity, by order of the Ministry of Labour, issued taking into account the views of the National Standing Labour Council. The Committee once again reminds the Government that *Article 9(3)* of the Convention does not envisage such exceptions. **Noting that the Labour Code of 2009 has not taken this issue into account, the Committee urges the Government to take the necessary measures to ensure that all employers are required to keep a register indicating the names and ages or dates of birth, duly certified wherever possible, of persons employed by them or working for them who are under 18 years of age. It requests the Government to provide information in its next report on the progress achieved in this respect.**

**[The Government is asked to supply full particulars to the Conference at its 99th Session and to reply in detail to the present comments in 2010.]**

*Article 1 of the Convention and Part V of the report form. National policy and the application of the Convention in practice.* In its previous comments, the Committee noted a study by the Ministry of the Economy, Planning and International Cooperation of 2003 on the situation of children in the country. According to this study, 5.2 per cent of boys and 5.6 per cent of girls between the ages of 6 and 9 years are engaged in work. The study also shows that boys work, in particular, in the private wage sector (boys account for 68.5 per cent of children working in this sector), the para-public wage sector (66.7 per cent), for an employer (72.7 per cent) and as apprentices (60.2 per cent), while the number of girls is greater in own-account work (girls account for 56.9 per cent of children working in this sector) or as family helpers (53.5 per cent). The Committee also noted the Government's indication that a study to identify and classify types of child labour, carried out in collaboration with UNICEF, was in the process of being validated.

The Committee notes that, according to UNICEF statistics for 2007, 57 per cent of children between the ages of 5 and 14 years are engaged in work in the Central African Republic (44 per cent of boys and 49 per cent of girls). It notes the Government's indication that, in the context of the adoption of the new Act No. 09.004 issuing the Labour Code of the Central African Republic in January 2009 (Labour Code of 2009), the Labour Department has worked on the preparation of texts to implement the Code. The Government indicates that a national policy for the progressive abolition of child labour and to increase the minimum age for admission to employment or work will be prepared once the implementing texts have been issued. The Committee must, however, express once again its deep **concern** at the situation of young children who work in the country out of personal necessity. **It**

**therefore urges the Government to take the necessary measures to ensure that the national policy for the progressive abolition of child labour is adopted in the very near future and that programmes of action are implemented in the sectors in which child labour is the most problematic. It requests the Government to provide information in its next report on the progress achieved in this respect. It also once again requests the Government to provide a copy of the study to identify and classify child labour.**

*Article 2, paragraph 1. Scope of application and minimum age for admission to employment or work. Self-employed work.* In its previous comments, the Committee noted the information provided by the Government that most children are used in the sectors of the informal economy, such as diamond workshops, portage or diving in search of diamonds. The Government indicated that the juvenile courts and the Children's Parliament guarantee the protection envisaged by the Convention with respect to children engaged in an economic activity on their own account. The Committee notes that the Labour Code of 2009 is not applicable to self-employed workers (section 2), but only governs professional relationships between workers and employers derived from labour contracts (section 1). **Noting that the Government's report does not contain any information on this subject, the Committee requests it once again to provide information on the manner in which the juvenile courts and the Children's Parliament ensure the application of the protection envisaged by the Convention in respect of children who work without an employment relationship, in particular when they work on their own account or in the informal economy. In this respect, it once again requests the Government to envisage the possibility of adopting measures to adapt and strengthen the labour inspection services so as to secure this protection.**

*Family enterprises.* The Committee noted previously that, under section 2 of Order No. 006 of 21 May 1986 determining the conditions of employment of young workers, the types of work and the categories of enterprises that are prohibited for young persons and the age limit up to which this prohibition applies (Order No. 006 of 1986), children under 14 years of age may be employed, even as apprentices, in establishments in which only family members are engaged. The Committee notes that section 166 of the Labour Code of 2009 provides that no one may be apprenticed who is not at least 14 years of age. Furthermore, section 259 provides that children may not be employed in any enterprise, even as apprentices, before the age of 14 years, unless an exception is issued by order of the minister responsible for labour taking into account the opinion of the National Standing Labour Council. **The Committee requests the Government to indicate whether exceptions have been authorized by the minister responsible for labour under section 259 of the Labour Code of 2009.**

*Domestic work.* In its previous comments, the Committee noted that section 3(a) of Order No. 006 of 1986 provides that children over 12 years of age may carry out light domestic work and that section 125 of the Labour Code respecting the minimum age for admission to employment only applies to work performed in an enterprise. The Committee observed previously that no text in the national legislation explicitly establishes a minimum age of 14 years for domestic workers. It therefore recalled that *Article 2* of the Convention is applicable to domestic work and that the minimum age for admission to this type of work must not be less than 14 years, except for work considered to be light, in accordance with the conditions laid down in *Article 7* of the Convention. In this respect, the Government indicated that measures to explicitly establish a minimum age for admission to employment for light domestic work were envisaged in the preliminary draft of the Labour Code. The Committee notes with *interest* that section 259 of the Labour Code of 2009 establishes the minimum age for admission to employment at 14 years and that the application of the Labour Code is now no longer limited to work performed in an enterprise (section 1).

*Article 2, paragraph 3. Age of completion of compulsory schooling.* In its previous comments, the Committee noted that the age of completion of compulsory schooling is 14 years. It also noted the Government's indication to the Committee on the Rights of the Child that, pursuant to section 6 of Act No. 97/014 of 10 December 1997 respecting education policy, school attendance is compulsory from 5 to 15 years and that the texts to be issued under this Act are being prepared. The Committee also noted the adoption of the Plan of Action on Education for All (NPA-EFA) in 2005, the objective of which is to increase the school attendance rate, reduce the school drop-out rate and ensure the completion of the full cycle of primary education by all children. The Committee further noted that, according to UNICEF statistics for 2006, the net school enrolment rate for primary education was 44 per cent for boys and 37 per cent for girls, while the figures for secondary education were 13 per cent for boys and 9 per cent for girls. The Committee also noted that, according to the Education for All Global Monitoring Report 2008, published by UNESCO under the title "Education for All in 2015: Will we make it?", in view of the lack of data, it was impossible to make projections for the achievement of the goals established by the NPA-EFA for the Central African Republic for 2015. However, the study indicates that 20 per cent or more of primary school students are repeating their grade and that girls repeat grades more than boys.

The Committee observes that, according to UNICEF statistics for 2007, the school attendance rates at the primary and secondary levels remain a matter of great concern: the net enrolment rate at primary school is 53 per cent for boys and 38 per cent for girls, and the figures for secondary education are 13 per cent for boys and 9 per cent for girls. The Committee, however, notes that the Government has not provided any information on this subject in its report. The Committee therefore once again expresses its deep *concern* at the low rate of school enrolment in both primary and secondary education, and particularly at the disparity between the two sexes, to the detriment of girls, and the fairly high rate of repeating school years, which affects girls in particular. It once again observes that poverty is one of the primary causes of child labour and that, when combined with a deficient educational system, it prevents the development of the child. **Considering that compulsory education is one of the most effective means of combating child labour, the Committee urges the Government to take the necessary measures to improve the functioning of the education system in the country so as to enable children to attend compulsory basic education or to be integrated into an informal school system. In this respect, it once again requests the Government to provide information on the measures adopted in the context of the NPA-EFA of 2005 to increase the school enrolment rate and reduce the school drop-out rate, so as to prevent children under 14 years of age from working. The Committee requests the Government to provide information in its next report on the results achieved. Finally, the Committee once again asks the Government to provide a copy of Act No. 97/014 of 10 December 1997 on education policy.**

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Government that, by virtue of *Article 3(2)* of the Convention, the hazardous types of employment or work shall be determined by national laws or regulations or by the competent authority, after consultation with the organizations of employers and workers concerned. ***The Committee therefore requests the Government to take the necessary measures to ensure that a list determining the hazardous types of employment or work that are prohibited for persons under 18 years of age, in accordance with section 261 of the Labour Code of 2009, is adopted in the near future. It requests the Government to provide information on the progress achieved in this respect.***

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*Article 9, paragraph 1. Penalties.* The Committee notes with ***interest*** that section 389 of the Labour Code of 2009 provides that any person who commits a violation of section 259 (minimum age for admission to work or employment of 14 years) is liable to a fine of between 100,000 and 1 million CFA francs. Under section 392, in the event of a repeat offence, including violations of section 259, liability may include terms of imprisonment of between one and six months. The Committee further notes that, under the terms of section 393, any person who has procured or endeavoured to procure a child for the worst forms of child labour shall be liable to a fine of between 500,000 and 5 million CFA francs and a term of imprisonment of between one and five years, or to only one of these penalties. In the event of a repeat offence, these penalties are doubled.

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***[The Government is asked to supply full particulars to the Conference at its 99th Session and to reply in detail to the present comments in 2010.]***

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

### Mexico

(Ratification: 1984)

The Committee notes with **satisfaction** the adoption on 23 December 2008 of Mexican Official Standard NOM-032-STPS-2008 concerning safety in underground coalmines. Noting that, according to the Government, this standard reflects provisions laid down in the Safety and Health in Mines Convention, 1995 (No. 176), the Committee hopes that this would pave the way for a ratification of that Convention. **The Committee invites the Government to provide information on any developments in these respects.**

*Follow-up of measures taken pursuant to the recommendations adopted by the Governing Body in document GB.304/14/8. Representation concerning an accident in the Pasta de Conchos Mine in 2006.* The Committee notes that in March 2009 the Governing Body adopted a report on a representation alleging non-observance by the Government of certain Articles of this Convention, of the Labour Administration Convention, 1978 (No. 150), and of the Chemicals Convention, 1990 (No. 170). It notes that in paragraph 99 of the abovementioned report, the Governing Body made recommendations and entrusted the Committee with the task of following up the issues raised in the report. The Committee notes the report sent by the Government containing information on the measures taken to follow up on these recommendations, which is examined below.

#### I. Measures to be adopted in consultation with the social partners

*Articles 4 and 7 of the Convention. National policy and reviews, either overall or in respect of particular areas.* The Committee notes that in paragraph 99(b) of its report, the Governing Body invited the Government, in consultation with the social partners, to continue to take the necessary measures in order to:

(i) *ensure full compliance with Convention No. 155, and, in particular, to review and periodically examine the situation as regards the safety and health of workers, in the manner provided for in Articles 4 and 7 of Convention No. 155, with particular attention given to hazardous work activities such as coalmining.* The Committee notes that according to the Government's report, the National Advisory Committee on Occupational Safety and Health (COCONASHT) and the 32 state advisory committees on occupational safety and health (COCOESHT) have held many meetings since 2007. From the web site of the advisory committees (COCOSHT), referred to by the Government, the Committee notes the 2009 work programme, which includes legislative and training activities to be carried out. It notes that the programme provides for activities in the following areas: (1) establishment of a national OSH system; (2) modernization of the regulatory framework for OSH; (3) enhancing the OSH self-management system; (4) development of the national system of information on occupational accidents and diseases; (5) strengthening the machinery for consultation and risk prevention; (6) promoting specialized technical training on OSH; and (7) promoting a review of compliance with safety and health obligations. **The Committee requests the Government to continue to provide information on any developments concerning the review and periodical examination of the situation as regards the safety and health of workers as provided in Articles 4 and 7 of the Convention, with particular attention given to hazardous work activities such as coalmining.**

(ii) *Concluding and adopting a new regulatory framework for OSH in the coalmining industry, taking into account the Safety and Health in Mines Convention, 1995 (No. 176), and the ILO code of practice on safety and health in underground coalmines, 2006.* The Committee notes that, according to the Government, the newly adopted NOM-032-STPS-2008 lays down limits and specifications that are even stricter than some of the existing regulations governing the mining industry in other countries and that it was drafted with ILO cooperation. **The Committee requests the Government to provide detailed information on how NOM-032-STPS-2008 is applied in practice.**

*Article 9. An adequate and appropriate system of inspection.* The Committee notes paragraph 99(b)(iii) and (iv), and (d) of the Governing Body's report in which the Government is invited, in consultation with the social partners, to take the necessary measures in order to:

(iii) *ensure, by all necessary means, the effective monitoring of the application in practice of laws and regulations on occupational safety and health and the working environment, through an adequate and appropriate system of labour inspection, in compliance of Article 9 of Convention No. 155, in order to reduce the risk that accidents such as the accident in Pasta de Conchos occur in the future;*

(iv) *monitor closely the organization and effective operation of its system of labour inspection taking due account of the Labour Administration Recommendation, 1978 (No. 158), including its Paragraph 26(1).*

...

(d) *review the potential that the Labour Inspection Convention, 1947 (No. 81), provides to support the measures the Government is taking in order to strengthen the application of its laws and regulations in the area of occupational safety and health in mines.*

The Committee notes that according to the Government, the Federal Labour Inspectorate has carried out special labour inspection operations, and in January 2007 a programme was devised and a total of 52 inspections were conducted in 26 workplaces showing a rate of compliance with standards of safety and health and general conditions of work of 86.08 per cent. It also notes that since the entry into force of NOM-032-STPS-2008 on 23 March 2009, a special operation has been started up for underground coalmines and by 30 June 2009, 11 such mines had been inspected and 1,113 safety and health measures had been ordered. In order to improve the functioning of the labour inspectorates, a training course was held and inspectors have been provided with personal protection equipment. The Government also indicates that in line with the provisions of the Labour Administration Recommendation, 1978, (No. 158), the General Directorate of Federal Labour Inspection carried out visits to every one of the federal delegations in order to ascertain that inspection policies, guidelines and criteria are being properly applied. The Committee points out that the Governing Body's recommendations on the labour inspection system stem from the findings in paragraphs 75–85 of the Governing Body's report on the accident in the

Pasta de Conchos mine which cost 65 miners their lives, where the Governing Body found that the labour inspectorate had failed to satisfy itself that the defects noted had been set right (lighting, dusting, risk plans, etc.). The Committee notes that paragraph 99(b)(iii) and (iv), the application of which it is examining, and 99(d), refers to measures the Government should adopt in consultation with the social partners, and observes that the Government's report contains no indication of any such consultation. ***It accordingly asks the Government to continue to provide information on the measures taken – in consultation with the social partners – pursuant to paragraph 99(b)(iii), (iv) and (d) of the abovementioned recommendations, and also on the following matters, likewise in consultation with the social partners:***

- ***its strategy for ensuring that the labour inspectorate improves the monitoring of effective compliance with the recommendations it makes where defects are noted, particularly in the coalmining industry;***
- ***statistical information showing the extent to which the labour inspectorate's recommendations are observed;***
- ***main areas in which NOM-032-STPS-2008 improves on the former standard (NOM-023-STPS-2003) in terms of monitoring and verification with a view to ensuring greater safety for mineworkers;***
- ***extent to which the conformity assessment procedure set forth in paragraph 18 of NOM-032-STPS-2008 is applied, and details of its application in practice;***
- ***an appreciation of the real impact of the measures indicated in terms of improving the situation in the coalmining industry.***

***Furthermore, the Committee asks the Government to provide information on the measures taken in application of the recommendation formulated in paragraph 99(b)(iv) of the Governing Body's report on labour inspection in its next report on the application of the Labour Administration Convention, 1978 (No. 150), to be examined at the Committee's next session.***

## II. Other measures

*Compensation.* The Committee notes that in paragraph 99(c) of its report, the Governing Body invited the Government to:

*(c) ensure, considering the time that has lapsed since the accident, that adequate and effective compensation is paid without further delay, to all the 65 families concerned and that adequate sanctions are imposed on those responsible for this accident.*

The Committee notes that the information supplied by the Government is largely a repetition of the information it sent in reply to the assertions made in the representation which is set out in paragraph 51 of the Governing Body's report. The Committee also refers to the report's conclusions, paragraph 93, according to which:

Concerning the assistance and compensation due and paid to the families of the deceased miners, the Committee notes that there appears to be a significant discrepancy between the compensation allegedly offered by IMMSA immediately after the accident (750,000 pesos per family) and the compensation agreed upon between IMMSA and the STPS. The Government stated that a total amount of 5,250,000 pesos, corresponding to the benefits due, was deposited by IMMSA with the JFCA on 18 February 2008 to be distributed among the beneficiaries according to their individual entitlement and that PROFEDET would make the necessary arrangements for the corresponding payments to be made immediately. The Committee notes that, according to the Government, 51 families of the dead miners were to receive a total compensation of 5,250,000 pesos without prejudice to their pursuit of legal action. This amount was extended to include all 65 families. The Government did not, however, provide specific information concerning the basis for, or the elements taken into account in, arriving at that sum. The Committee requests further information to be provided by the Government to the Committee of Experts on the Application of Standards on the modalities for determining the compensation provided to the 65 families of the deceased miners and expects the Government to ensure that all the 65 families receive adequate and effective compensation in accordance with national law.

***The Committee accordingly asks the Government to provide detailed information on:***

### ***(1) Compensation to be paid by the Industrial Minera Mexico SA (IMMSA):***

- ***the manner in which compensation was determined (for example whether wage supplements were counted and, if so, which);***
- ***the criteria for changing the amount between IMMSA's first offer, which was equivalent to 10 years' pay according to paragraph 26 of the report, and the later sum, which was lower;***
- ***the manner in which compensation was provided for the 14 families concerning which the Government provides no information and the status of the claims under way regarding compensation to the 65 families.***

***(2) State support and assistance. Information on any support and assistance by the State for the 65 families of the miners who lost their lives, such as that referred to in paragraph 26 of the report (accommodation, grants for education up to degree level for children and monthly allowance).***



## Indigenous and Tribal Peoples Convention, 1989 (No. 169)

### Peru

(Ratification: 1994)

The Committee takes note of the discussion that took place in the Conference Committee on the Application of Standards in June 2009 and the conclusions of the Conference Committee. It also notes the observations of 23 July 2009 by the General Confederation of Workers of Peru (CGTP), which were sent to the Government on 31 August 2009. The CGTP's observations were prepared with input from the Inter-Ethnic Association for the Development of the Peruvian Rainforest (AIDESEP), the National Coordinating Committee for Communities Affected by Mining (CONACAMI), the National Agrarian Confederation (CNA), the Peasant Farmers' Confederation of Peru (CCP), and non-governmental organizations belonging to the Indigenous Peoples Working Group of the National Coordinating Committee on Human Rights. The Committee further recalls that in its previous observation it did not address the whole of the Government's report because of its late arrival. It will accordingly examine it as appropriate in this observation, together with the latest report.

The Committee notes that the Conference Committee indicated that the Committee has raised concerns in comments it has been making for years about persistent problems in applying the Convention in a number of areas, and went on to express grave concern at the incidents in Bagua and urge all parties to refrain from violence. It observed that the present situation in the country was linked to the adoption of legislative decrees relating to the exploitation of natural resources on lands traditionally occupied by indigenous peoples, and urged the Government immediately to establish a dialogue with indigenous peoples' representative institutions in a climate of mutual trust and respect. It called on the Government to establish mechanisms for dialogue as required by the Convention in order to ensure systematic and effective consultation and participation. It further urged the Government to remove the ambiguities in the legislation as to the identification of the peoples covered by it, and to take the necessary steps to bring national law and practice into line with the Convention. In this connection, the Conference Committee asked the Government to elaborate a plan of action in consultation with the representative institutions of the indigenous peoples.

The Committee shares the **grave concerns** of the Conference Committee about the incidents in Bagua in June 2009 and considers that they are related to the adoption, without consultation or participation, of decrees affecting the rights of peoples covered by the Convention to their lands and natural resources. The Committee notes that both the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the United Nations Committee on the Elimination of Racial Discrimination have likewise expressed such concern at the situation of the indigenous peoples in Peru (see respectively, A/HRC/12/34/Add.8, 18 August 2009, and CERD/C/PER/CO/14-17, 31 August 2009). The Committee recalls that the Conference Committee called on the Government to make further efforts to guarantee indigenous peoples' human rights and fundamental freedoms without discrimination in accordance with its obligations under the Convention. The Committee is of the view that a prompt and impartial inquiry into the events in Bagua is essential to ensuring a climate of mutual trust and respect between the parties, a prerequisite for establishing genuine dialogue in the search for agreed solutions, as the Convention requires. **The Committee accordingly urges the Government to take the necessary steps to have the incidents of June 2009 in Bagua effectively and impartially investigated, and to provide specific information on the matter.**

*Article 1 of the Convention. Peoples covered by the Convention.* The Committee notes that in its report the Government states, as it did during the discussion in the Conference Committee, that a draft Framework Act on Indigenous or Original Peoples of Peru has been prepared, which sets out a definition of indigenous or original peoples, with a view to removing ambiguities from the national legislation regarding identification of the peoples covered. The Committee notes that section 3 of the draft contains such a definition, whereas section 2 states that indigenous or original peoples of Peru include "the so-called peasant communities and native communities; as well as indigenous people in a situation of isolation and a situation of initial contact; it likewise applies to those who identify themselves as descendants of the ancestral cultures settled in Peru's coastal, mountain and rainforest areas". The Committee notes that, although the definition in section 3 of the draft reproduces the objective elements of the Convention's definition, it makes no reference, unlike section 2, to the fundamental criterion of self-identification. The Committee also notes that the objective elements of the definition in the abovementioned draft include the criterion that these peoples "are in possession of an area of land", which does not appear in the Convention. The Committee would point out in this connection that *Article 13* of the Convention stresses the special importance for these peoples of the cultures and spiritual values of "their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use". The Committee also draws the Government's attention to the fact that *Article 14(1)* of the Convention, and in particular the expression "the lands which they traditionally occupy", has to be read in conjunction with *Article 14(3)* on land claims, in that the Convention likewise covers situations in which indigenous and tribal peoples have recently lost occupation of their lands or have been recently expelled from them. **The Committee accordingly urges the Government, in consultation with the indigenous peoples, to align the definition in the draft Framework Law on Indigenous or Original Peoples of Peru with the Convention. Please also supply information on the manner in which effective consultation and participation is ensured with indigenous peoples in the preparation of the abovementioned draft. Furthermore, the Committee again asks the Government to provide information on the measures taken to ensure that all those covered by Article 1 of the Convention are likewise covered by all provisions of the new legislation and enjoy the rights set forth therein on an equal footing.**

*Article 2 and 6. Coordinated and systematic action and consultation. Plan of action.* With regard to the Conference Committee's request for a plan of action to be drawn up in consultation with the representative institutions of indigenous peoples, the Committee notes the Government's statement that proposed guidelines have been submitted for the development of a plan of action aimed at responding to the main observations put forward by the ILO's supervisory bodies. Although the report affirms that the plan of action must be formulated in collaboration with the representatives of indigenous peoples, the Committee notes that there is no information on the manner in which participation of the indigenous peoples in this process is to be established, and that a "meeting with the representatives of the indigenous organizations" is envisaged with regard to the implementation phase of the abovementioned plan.

The Committee also notes that several bodies have been set up whose purpose, according to the Government's report, is to establish dialogue with the indigenous peoples of the Amazonian and Andean areas. The Committee notes that, in March 2009, a Bureau for Ongoing Dialogue between the State and the Indigenous Peoples of the Amazonian Area of Peru was established and that, according to section 2 of Supreme Decree No.

002-2009-MIMBES establishing the Bureau, it “may” (*podrá*) include representatives of indigenous peoples. It also notes the Multisectoral Committee to deal with indigenous problems in the Amazonian area (Supreme Decree No. 031-2009-PCM of 19 May 2009), and observes that the minutes of the opening and first ordinary session of the Committee make no mention of indigenous representatives. It further notes the Bureau for Comprehensive Development of Andean Peoples (RS 133-2009-PCM, of 24 June 2009), the Bureau for Dialogue on the Comprehensive Development of Andean Peoples in Extreme Poverty (RS 135-2009-PCM of 26 June 2009) and the National Coordinating Group for the Development of Amazonian Peoples, which is responsible for formulating a comprehensive sustainable development plan for these peoples (Supreme Resolution No. 117-2009-PCM of 26 June 2009). With regard to the latter body, the Committee notes that it set up four working group to work on the composition of the Commission of Inquiry into the Bagua incidents, the revision of the legislative decrees, mechanisms for consultation and a national development plan for the Amazon region. The Committee likewise notes the concern expressed by the People’s Ombudsperson about the status of the dialogue process established within the abovementioned Group.

The Committee has insufficient information to assess the level of participation ensured for indigenous peoples in the various bodies mentioned above. It nonetheless considers that the information supplied appears to indicate that, at least in some cases, the participation of indigenous peoples through their legitimate representatives and dialogue between the parties is not effective. The Committee also expresses **concern** that the proliferation of bodies with mandates that sometimes overlap may hamper the development of a coordinated and systematic response to the problems of protecting and ensuring the rights of indigenous peoples established in the Convention. **The Committee urges the Government to ensure full and effective participation and consultation of the indigenous peoples through their representative institutions in the preparation of the abovementioned plan of action, in accordance with Articles 2 and 6 of the Convention, so as to address in a coordinated and systematic manner outstanding problems concerning the protection of the rights of the peoples covered by the Convention, and to align law and practice with the Convention. It also asks the Government to provide information on this matter and on the work of the various bodies mentioned above, indicating how the participation of the peoples concerned and the coordination of the activities of these bodies are ensured, as well as coordination between the work of these bodies and the preparation of the plan of action. Please provide a copy of the plan of action as soon as it is finalized.**

**Articles 2 and 33. INDEPA.** The Committee refers to its previous observation, in which it noted the CGTP’s assertion that the National Institute of Andean, Amazonian and Afro-Peruvian Peoples (INDEPA) lacked real authority. The Committee notes from the CGTP’s 2009 communication that although the administrative autonomy of INDEPA has been restored, indigenous participation in its Governing Council has not been re-established and no concerted policies have been developed on any issues affecting the indigenous peoples. The CGTP further asserts that there is no forum for cooperation on such policies. The Committee notes the Government’s statement that Ministerial Resolution No. 277-2009-MIMDES establishes a sectoral committee responsible for drafting new “regulations on the organization and functions of INDEPA”. The Committee notes that the sectoral committee is composed of the Vice-Minister for Social Development of the Ministry for Women and Social Development (MIMDES), the Executive President of INDEPA and the Director-General of the General Office of Planning and Budget of MIMDES, and that it has the authority to invite specialists and representatives from various institutions in the public and the private sectors. The Committee notes that the abovementioned Resolution contains no express reference to the participation of indigenous peoples. It further notes that the reform of INDEPA is likewise envisaged in the guiding framework for development of the abovementioned plan of action. The Committee reminds the Government that indigenous peoples must participate in designing mechanisms for dialogue and recalls the concerns raised previously about coordination between the various bodies and activities. **The Committee urges the Government to ensure effective participation by the representative institutions of indigenous peoples in the design and implementation of mechanisms for dialogue and the other mechanisms needed for the coordinated and systematic administration of programmes affecting indigenous peoples, including the reform of INDEPA. It also asks the Government to ensure that such mechanisms have the necessary resources to perform their functions properly and have independence and real influence in the decision-making process. Please provide information on the measures taken in this regard.**

**Articles 6 and 17. Consultation and legislation.** In its previous observation, noting that Legislative Decrees Nos 1015 and 1073 were adopted without consultation, the Committee expressed concern that communications are still being received alleging a lack of prior consultation on the measures provided for in **Articles 6 and 17(2)** of the Convention, and urged the Government to take steps without further delay, with the participation of the indigenous peoples, to devise appropriate mechanisms for participation and consultation. The Committee notes that in its communication of 2009 the CGTP states that no mechanisms have been established for prior consultation, so the indigenous peoples are unable to have a say in specific decisions that affect them. The Committee notes that Legislative Decrees Nos 1015 and 1073 setting conditions for disposing of communal land were repealed by Act No. 29261 of September 2008, and that Legislative Decrees Nos 1090 and 1064 approving, respectively, the Forests and Wild Fauna Act and the Legal Regime for the Exploitation of Lands for Agrarian Use were repealed by Act No. 29382 of June 2009. The Committee notes that, according to the Government, the working groups set up within the National Coordinating Group for the Development of Amazonian Peoples have responsibility for revising the legislative decrees and dealing with the issue of prior consultation. The Committee understands, however, that the issue of consultation is likewise addressed in the draft Framework Act on Indigenous or Original Peoples of Peru. It also takes note of a Bill on consultation, No. 3370/2008-DP of 6 July 2009, submitted to Congress by the People’s Ombudsperson. **The Committee stresses the need for indigenous and tribal peoples to participate and be consulted before the adoption of legislative or administrative measures likely to affect them directly, including in the drafting of provisions on consultation processes, as well as the need for provisions on consultation to reflect among other things the elements set forth in Articles 6, 7, 15 and 17(2), of the Convention. The Committee also refers the Government to its previous comments on the need for a coordinated and systematic approach. It urges the Government to establish, with the participation of the peoples concerned, the mechanisms for participation and consultation required by the Convention. It also asks it to send information on the manner in which it ensures that the peoples concerned participate in and are consulted about the formulation of provisions governing consultation. It requests the Government to provide information on any progress made in this regard. The Committee reminds the Government that the Conference Committee welcomed the Government’s request for technical assistance and encourages it to pursue this course.**

**Articles 2, 6, 7, 15 and 33.** In its previous observation, the Committee noted that the communications received referred to many serious situations of conflict connected with a dramatic increase in the exploitation of natural resources on lands traditionally occupied by indigenous peoples, without participation or consultation. The Committee notes that, in its communication of 2009, the CGTP refers to a statement by the People’s Ombudsperson to the effect that there has been an increase in social and environmental conflicts in the country and that they are concentrated in indigenous areas and are related to access and control of natural resources. The CGTP asserts that the Peruvian State persists with a “top-down” approach, imposing its

projects in the Amazonian and Andean areas. It asserts that development policies lack sufficient guarantees to protect the environment for the indigenous peoples and that the Ministry of Environment lacks the authority to intervene in energy and mining policies. It refers to a ruling by the Constitutional Court (file No. 03343-2007-PA-TC), in proceedings brought by the regional government of San Martín against various petroleum enterprises and the Ministry of Energy and Mines regarding hydrocarbon projects being carried out in a regional conservation area. In its ruling, taking account of the provisions of the Convention, the Court reaffirmed the right of indigenous peoples to be consulted before the start-up of any project that might affect them, and also referred to article 2(19) of the Constitution which requires the State to protect ethnic and cultural plurality in the Nation (paragraph 28). The CGTP furthermore refers to a number of “emblematic instances” of exploration and exploitation of natural resources affecting indigenous peoples, such as the Cacataibo people, who live in voluntary isolation, the Awajun and Wampí peoples and the communities of Chumbivilcas province.

The Committee notes the Government’s statement that the Peruvian State construes consultation as “processes whereby points of view are exchanged” and has held a series of socialization workshops. It also notes that the Government refers to Decree No. 012-2008-MEM (regulations on citizens’ participation in hydrocarbon activities), according to which the purpose of consultation is “to reach better understanding of the scope of the project and its benefits”, which is much narrower than what the Convention provides.

The Committee wishes to point out that *Article 6* of the Convention provides that the consultations shall be undertaken with the objective of achieving agreement or consent to the proposed measures. Although *Article 6* of the Convention does not require consensus in the process of prior consultation, it does require, as the Committee underlined in its general observation of 2008 on the Convention, the form and content of consultation procedures and mechanisms to allow the full expression of the viewpoints of the peoples concerned, “so that they may be able to affect the outcome and a consensus could be achieved”. The Committee wishes to underscore that the Convention requires a genuine dialogue to be established between the parties concerned to facilitate the quest for agreed solutions, and emphasizes that, if these requirements are met, consultation can play a decisive role in the prevention and settlement of disputes. The Committee further points out that meetings solely for the purpose of information or socialization do not meet the requirements of the Convention.

The Committee considers that Supreme Decree No. 020-2008-EM regulating citizens’ participation in the mining subsector has similar limitations. Noting that the Decree envisages the possibility of citizens’ participation after a mining licence has been granted, the Committee is of the view that it does not meet the requirements of the Convention. ***The Committee urges the Government to take the necessary steps to bring national law and practice into line with Articles 2, 6, 7 and 15 of the Convention, taking into account the right of the peoples covered by the Convention to decide on their own priorities and participate in national and regional development plans and programmes. Recalling that the Conference Committee welcomed the Government’s request for technical assistance, the Committee encourages the Government to pursue that course. It also asks it to:***

***(i) suspend the exploration and exploitation of natural resources which are affecting the peoples covered by the Convention until such time as the participation and consultation of the peoples concerned is ensured through their representative institutions in a climate of full respect and trust, in accordance with Articles 6, 7 and 15 of the Convention;***

***(ii) provide further information on the measures taken, in cooperation with the indigenous peoples, to protect and preserve the environment of the territories they inhabit, in accordance with Article 7(4) of the Convention, including information on coordination between the Energy and Mining Investment Supervisory Body (OSINERGMIN) of the Ministry of Energy and Mines and the Environmental Evaluation and Control Agency (OEFA) of the Ministry of Environment; and***

***(iii) provide a copy of Supreme Decree No. 002-2009-MINAM of 26 January 2009, regulating the participation and consultation of citizens in environmental matters.***

With regard to the benefits of extraction activities, the Committee notes the information supplied by the Government concerning a system of mining royalties and a mining tax. It also notes that in its communication of 2009, the CGTP indicates that this system allows the benefits to be distributed within the state apparatus with no benefits going directly to the communities affected. ***The Committee requests the Government to provide information on the specific measures taken to ensure that the peoples concerned participate in the benefits accruing from the exploitation of natural resources in their lands and receive fair compensation for any damage they may sustain as a result of such activities.***

*Article 14. Legislative Decree No. 994.* The Committee notes the observations made by the CGTP in its communication of 2009 concerning Legislative Decree No. 994 “which promotes private investment in irrigation projects to broaden the agricultural horizon”. The Committee notes in particular that the abovementioned Decree lays down a special regime for promoting private investment in irrigation projects on unused land (*tierras eriazas*) with agricultural potential belonging to the State. The Committee notes that section 3 of the Decree establishes as state property all *tierras eriazas* with agricultural potential other than such lands for which a title for private or communal ownership is entered in the public records. The Committee notes with **concern** that this provision does not establish the rights of indigenous peoples over traditional lands where there is no official title of ownership. The Committee recalls that, in accordance with the Convention, traditional occupation confers a right to the land regardless of whether or not such right has been recognized and that, consequently, *Article 14* of the Convention protects not only the lands over which the peoples concerned already have title of ownership but also the lands they traditionally occupy. ***The Committee urges the Government to take the necessary steps to determine the lands that the peoples concerned traditionally occupy and to guarantee effective protection of their rights of ownership and possession, including through effective access to appropriate procedures for settling their land claims. Please provide information on the measures adopted to this end.***

*Article 31. Educational measures.* In its previous comments, the Committee expressed its concern at a number of statements which could give rise to prejudice or misconceptions regarding indigenous peoples. In this regard, the Committee expresses **concern** at the CGTP’s statement in its communication of 2009 that a discriminatory and aggressive attitude towards indigenous peoples on the part of the public authority continues to be noted. ***The Committee urges the Government to take educational measures as a matter of urgency in all sectors of the national community so as to eliminate any prejudice there may be about the peoples covered by the Convention, in accordance with Article 31.***

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

*[The Government is asked to reply in detail to the present comments in 2010.]*

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

### Burundi

(Ratification: 2002)

The Committee notes with **regret** that the Government's report has not been received. It must therefore repeat its previous observation which read as follows:

*Article 3 of the Convention. Worst forms of child labour. Clause (a). Forced recruitment of children for use in armed conflict.* In its comments under Convention No. 29, the Committee noted previously that the Committee on the Rights of the Child, in its concluding observations on the initial report of the Government (CRC/C/15/Add.133, October 2000), expressed concern at the use of children by the State as soldiers or helpers in camps or in obtaining information. The Committee on the Rights of the Child also expressed concern at the low minimum age for recruitment to the armed forces and at the widespread recruitment of children by opposition armed forces and the sexual exploitation of children by members of the armed forces. Moreover, the Committee of Experts noted that in March 2003 the International Trade Union Confederation (ITUC) made comments on the application of the Convention confirming the use of child soldiers by the armed forces.

The Committee noted that, in its comments, the COSYBU indicates that armed conflicts persist, maintained by the *Partie pour la libération du peuple Hutu/Forces nationales pour la libération of Agathon Rwaswa* (PALIPEHUTU/FNL) and that children continue to be enrolled. It also noted the information provided by the Government in reply to COSYBU's comments according to which, following the signature of the Arusha Peace and Reconciliation Agreement in August 2000 and the Comprehensive Ceasefire Agreement signed with the *Conseil national pour la défense de la démocratie/Forces pour la défense de la démocratie* (CNDD/FDD) of Pierre Nkurunziza, the phenomenon of children being used in armed conflict has almost ended and the integration of these children into social and economic life is continuing. The Government added that the forced recruitment of children for use in armed conflict is the worst form of child labour observed most commonly in Burundi. However, considering the relative calm that was being experienced over most of the national territory, it had launched the implementation of a vast programme for the demobilization and reintegration of former combatants through three organizations, namely: the National Commission for Demobilization, Reinsertion and Reintegration (CNDRR), the National Structure for Child Soldiers (SEN) and the ILO–IPEC project on the "Prevention and reintegration of children involved in armed conflicts: An interregional programme". Furthermore, according to the Government, all children had been demobilized except those used by the armed movement FNL (*Front national de libération*) of Agathon Rwaswa, which has not yet laid down its arms.

The Committee noted that, in his Report on Children and Armed Conflicts in Burundi of 27 October 2006 (S/2006/851), the United Nations Secretary-General indicated that, despite the substantial progress achieved in addressing the grave violations of children's rights, violations are still occurring and the competent authorities have not always conducted criminal investigations nor punished those responsible. During the period from August 2005 to September 2006, the United Nations Operation in Burundi (UNOB) identified over 300 cases of child victims of grave violations, perpetrated mainly by members of the FNL and FND troops, including the murder and mutilation of children, serious sexual violence and the recruitment and use of children in armed groups and forces, with an increase of this latter violation being noted (paragraph 25). The Secretary-General added that the authorities have not yet adopted national legislation to criminalize the recruitment and use of child soldiers (paragraph 36). Furthermore, according to the information contained in the Report of the Secretary-General of 27 October 2006, a ceasefire agreement was signed between the Government and Agathon Rwaswa's FNL, the last active rebel movement, on 7 September 2006 (paragraph 5). Nevertheless, in his ninth report on the United Nations Operation in Burundi of 18 December 2006 (S/2006/994), the Secretary-General indicated that the implementation of the Comprehensive Ceasefire Agreement had remained stalled since its signature (paragraphs 1 and 2).

The Committee noted that, in the information provided under Convention No. 29, the Government indicated that the minimum age for enrolment in the armed forces of Burundi *has been increased from 16 to 18 years*. It also noted that, according to the information contained on the Internet site of the Special Representative of the Secretary-General for Children and Armed Conflict ([www.un.org/children/conflict/english/home6.html](http://www.un.org/children/conflict/english/home6.html)), following her visit to the country, the Government of Burundi had made progress in the protection of children affected by conflict. In this respect, the Committee noted that the Penal Code had been amended to bring its provisions into harmony with the international instruments on human rights ratified by Burundi and that the proposed changes include provisions relating to the protection of children and against war crimes. The Penal Code now provides that the recruitment of children **under 16 years of age** in armed conflicts constitutes a war crime. The Committee reminds the Government that under *Article 3(a)* of the Convention, the forced or compulsory recruitment of children **under 18 years of age** for use in armed conflict is considered to be one of the worst forms of child labour. **It therefore once again requests the Government to take measures as a matter of urgency to amend the national legislation and prohibit the forced recruitment of young persons under 18 years of age for use in armed conflict, either in the national armed forces or in rebel groups, and to provide information in this respect.**

The Committee noted that, despite the measures adopted by the Government, the forced recruitment of children for use in armed conflicts still occurs and that the situation in Burundi remains fragile. It expressed great concern at the current situation, particularly since the persistence of this worst form of child labour gives rise to other violations of the rights of the child, such as the murder and mutilation of children and sexual violence. **In this respect, the Committee refers to the Report of the Secretary-General on Children and Armed Conflict in Burundi and once again requests the Government to take all the necessary measures to continue negotiations with a view to reaching a definitive peace agreement, putting an end unconditionally to the recruitment of children and undertaking the immediate and complete demobilization of all children. Finally, with reference to the Security Council which, in resolution 1612 of 26 July 2005, recalls "the responsibilities of States to end impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes and other egregious crimes perpetrated against children", the Committee once again urges the Government to ensure that sufficiently effective and dissuasive penalties are imposed on persons found guilty of enrolling or using young persons under 18 years of age in armed conflict.**

*Clause (b). Use, procuring or offering of children for prostitution.* In its communication, the COSYBU indicated that the extreme poverty of the population encourages parents to allow their children to engage in prostitution. In its report, the Government indicated that cases of the use of children for prostitution have been reported in the popular districts of the municipality of Bujumbura (Bwiza and Buyenzi). However, the juvenile police reacted

rapidly and eradicated this phenomenon, with penalties being imposed on persons who recruited children for prostitution. The Committee noted that, in the report of 19 September 2006 of the United Nations independent expert on the situation of human rights in Burundi (A/61/360), the Secretary-General indicated that more and more children are victims of sexual violence (paragraph 82). The Committee noted that sections 372 and 373 of the Penal Code penalize the use, procuring or offering of children who are minors for prostitution, even with their consent. The Committee noted that, even though the national legislation prohibits this worst form of child labour, the use, procuring or offering of children for prostitution remains a problem in practice. ***It once again requests the Government to renew its efforts to implement these provisions effectively in practice and to ensure the protection of young persons under 18 years of age against prostitution. The Committee once again requests the Government to provide information in this respect, including reports on the number of convictions. It also requests the Government to indicate whether the national legislation contains provisions criminalizing the client in the event of prostitution.***

*Clause (c). Use, procuring or offering of children for illicit activities. Street children.* In its communication, the COSYBU indicated that the extreme poverty of the population drives parents to allow their children to engage in begging. In his Report on Children and Armed Conflict in Burundi of 27 October 2006 (S/2006/851), the Secretary-General indicated that UNOB and its partner child protection agencies have received information on the recruitment of from three to ten male children per month, including street children in Bujumbura Mairie Province (paragraph 25). As the national legislation does not appear to regulate this activity, the Committee expresses ***grave concern*** at the increase in street children who are exposed to numerous risks, including being used or recruited for armed conflict or other illicit activities. It reminds the Government that, in accordance with *Article 1* of the Convention, it is under the obligation to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. ***The Committee once again requests the Government to take the necessary measures to protect street children and to prohibit in the national legislation the use, procuring or offering of children for illicit activities. It also requests the Government to establish penalties for this purpose.***

*Article 7, paragraph 2. Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from these worst forms and providing for their rehabilitation and social integration. Child soldiers.* The Committee noted with interest that the Government is participating in the ILO-IPEC interregional project on the prevention and reintegration of children involved in armed conflict, which also includes the Congo, Rwanda, the Democratic Republic of the Congo, the Philippines, Sri Lanka and Colombia. The objective of the programme is to prevent the recruitment of children in armed conflict, facilitate their removal and ensure their social integration. The Committee noted the detailed information provided by the Government in its report on the measures that it has taken with organizations to prevent the recruitment of children in armed conflict or to remove them from this worst form of child labour. It noted that, in the context of the ILO-IPEC interregional project, over 15 programmes of action have been implemented and that around 1,440 children have been demobilized in the areas covered by the project. The Committee further noted that, in his ninth report on the United Nations Operation in Burundi of 18 December 2006 (S/2006/994), the Secretary-General indicates that, since November 2003, the United Nations project for the demobilization, reintegration and prevention of the recruitment of children associated with armed forces and groups has freed and reintegrated 3,015 children (paragraph 27). It further noted that the National Structure for Child Soldiers is a project for the demobilization, reintegration and prevention of the recruitment of child soldiers which has been in operation since 2003. In the context of this programme, 1,932 children had been demobilized.

The Committee noted that the Ministry of National Solidarity, Human Rights and Gender has signed a memorandum of understanding with the Executive Secretariat of the NCDRR. In the context of this agreement, measures are adopted at different levels to raise the awareness of the various target groups with regard to the problem of recruitment (members of military forces, combatants, parents, young persons, the civil administration, civil society, NGOs and politicians) and to institutionalize training on the rights and protection of the child in armed conflicts within the training structures of the national army. Furthermore, children who had been demobilized and were exposed to the risk of being recruited once again are monitored. The Committee encouraged the Government to continue collaborating with the various bodies involved in the process of disarmament, demobilization and reintegration with a view to removing children from armed forces and groups. ***It once again requests the Government to provide information on the impact of the measures adopted in the context of the implementation of the ILO-IPEC interregional programme on the prevention and reintegration of children involved in armed conflict with a view to preventing children from being enrolled in armed conflict and to remove them from this worst form of child labour. The Committee also requests the Government to provide information on the time-bound measures adopted for the rehabilitation and social integration of children who are in practice removed from armed forces or groups.***

*Sexual exploitation. Considering that a number of children are the victims of sexual exploitation as noted under Article 3(b), the Committee requests the Government to take the necessary measures to remove young persons under 18 years of age from prostitution. It also requests the Government to envisage measures to ensure the rehabilitation and social integration of children removed from this worst form of child labour.*

*Clause (c). Ensuring access to free basic education and vocational training for all children removed from the worst forms of child labour.* The Committee took note of the information provided by the Government to the effect that, during the 2004–05 school year, a total of 485 former child soldiers were reintegrated into primary school, 99 were oriented towards secondary school, 79 in technical training centres and 74 in training from craft workers. ***It once again strongly encourages the Government to pursue its efforts to provide access to basic education or vocational training to children removed from armed conflict. The Committee requests the Government to continue providing information on this subject.***

*Clause (d). Children at special risk. Street children.* The Committee noted that in his report of 23 September 2005 (E/CN.4/2006/109), the United Nations independent expert on the human rights situation in Burundi indicates that the situation of children in the country remains extremely worrying. Children are affected not only by the continuing conflict, but also by the deteriorating economic situation (paragraph 55). According to some estimates, there are over 3,000 street children in the country. It also noted that, in the report of 19 September 2006 of the independent expert on the situation of human rights in Burundi (A/61/360), the Secretary-General indicates that the phenomenon of street children is on the rise in Bujumbura and that a programme aimed at curbing the trend has been elaborated and includes aspects relating to prevention, assistance and reintegration (paragraph 79). ***Recalling that street children are particularly exposed to the worst forms of child labour, the Committee once again encourages the Government to pursue its efforts to protect them from these worst forms. It also requests the Government to provide information on the measures adopted in the context of the programme to bring an end to this phenomenon, particularly with regard to measures for their rehabilitation and social integration.***

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

***The Committee hopes that the Government will make every effort to take the necessary action in the very near future.***

## Morocco

***(Ratification: 2001)***

*Article 3 of the Convention and Part V of the report form. Worst forms of child labour and application of the Convention in practice. Clauses (a) and (d). Forced or compulsory labour and hazardous work. Domestic work of children.* In its previous comments, the Committee noted information from the International Trade Union Confederation (ITUC) to the effect that domestic work by children under conditions of servitude is common practice in the country, with parents selling their children, sometimes as young as six years of age, to work as domestic servants. The ITUC also stated that some 50,000 children, mainly girls, are working as domestic servants. Of these, about 13,000 girls under the age of 15 are employed as servants in Casablanca; 80 per cent of them come from rural areas and are illiterate; 70 per cent are under the age of 12; and 25 per cent under the age of 10. The Committee noted that section 10 of the Labour Code prohibits forced labour. It further noted that section 467-2 of the Penal Code prohibits the forced labour of children under 15 years of age. It also observed that a bill on domestic work had been adopted and was in the process of validation. The bill sets the minimum age for admission to this type of employment at 15 years, establishes the conditions of work, and provides for supervisory measures and penalties.

The Committee notes that, according to the Government, the bill on domestic work is still in the process of adoption. The Government also states that the Dahir of 24 December 2004 establishing a list of hazardous types of work is to be updated in the course of 2010 so as to reflect the intent of the Worst Forms of Child Labour Convention, 1999 (No. 182). The Committee also notes the Government's statement that the Ministry for Social Development, Family and Solidarity (MDFS), in collaboration with ILO-IPEC organized a training course in 2008 for NGOs involved in the protection of children in the towns of Tahanaout, Fez, Safi, Casablanca, Kenitra, Khouribga, Taza and Agadir, identified as key areas, focusing on the supply and demand of domestic work by children and geared to building institutional capacity for more effective action in combating domestic work by little girls. Lastly, the Committee notes the Government's statement that the MDFS is planning to conduct an inquiry in the course of 2010 into the situation of little girls engaged in domestic work in Casablanca.

While taking due note of the steps taken by the Government, the Committee must again point out that according to *Article 3(a) and (d)* of the Convention, work or employment in conditions that approximate slavery or are hazardous are among the worst forms of child labour and are therefore to be eliminated as a matter of urgency, in accordance with *Article 1*. ***The Committee therefore urges the Government to take the necessary steps to ensure that the bill on domestic work is adopted as a matter of urgency. It expresses the hope that the Dahir of 24 December 2004 establishing a list of hazardous types of work will be updated to include domestic work by children under the age of 18 in conditions that approximate slavery or are hazardous. Furthermore, the Committee once again requests the Government to step up its efforts and take the necessary measures to ensure, as a matter of urgency, that the forced labour of children under 18 years of age in domestic work and the employment of such children in hazardous work shall be prosecuted and punished by sufficiently effective and dissuasive sanctions. Lastly, it requests the Government to provide a copy of the inquiry into the situation of little girls engaged in domestic work in Casablanca and to send information on the application of the provisions governing these worst forms of child labour, including statistics on the number and nature of the infringements reported, the investigations conducted, prosecutions, convictions and penal sanctions imposed.***

*Article 7, paragraph 2. Effective and time-bound measures. Clauses (a) and (b). Preventing children from being engaged in the worst forms of child labour and removing them from these worst forms, and ensuring their rehabilitation and social integration. Child prostitution and sex tourism.* In its previous comments, the Committee expressed concern at the persistence of child prostitution and sex tourism involving young Moroccans and immigrants, particularly boys, despite an amendment made to the Penal Code in 2003 to introduce sex tourism as a criminal offence. It noted that, according to the Government, as part of the National Action Plan for Children (PANE) for the decade 2006–16, a preliminary study on problems relating to the sexual exploitation of children was carried out in February 2007 with a view to framing a national strategy to prevent and combat such exploitation.

The Committee notes the information sent by the Government to the effect that child protection units have been set up in Casablanca and Marrakesh to provide better medical, psychological and legal assistance for children who have been the victims of violence or ill-treatment, including children who have suffered from sexual or economic exploitation. The Committee nonetheless observes that the Government provides no information on the results of the preliminary study on problems relating to the sexual exploitation of children, or on the preparation of the national strategy to prevent and combat the sexual exploitation of children, a concern shared by the Committee on the Elimination of All Forms of Discrimination Against Women in its concluding observations of 8 April 2008 (CEDAW/C/MAR/CO/4, paragraph 22). ***The Committee accordingly requests the Government to take immediate, effective and time-bound measures to ensure that the national strategy to prevent and combat the sexual exploitation of children is adopted and that it includes measures to: (a) prevent children from falling victim to prostitution, particularly in the context of sex tourism; and (b) provide the necessary and appropriate assistance for the removal of children from this worst form of child labour and ensure their rehabilitation and social integration. The Committee again requests the Government to provide information on progress made in this regard.***

*Clause (d). Children at special risk. Child domestic workers.* In its previous comments, the Committee noted that according to the ITUC, the physical and sexual abuse of young girls working as housemaids (*petites bonnes*), is among the most serious problems confronting Moroccan children. The Committee noted that a national programme to combat the use of little girls as housemaids (INQAD) had been adopted as part of the PANE.

The Committee notes the information sent by the Government to the effect that as part of its Strategic Plan 2008–12 and following implementation of the INQAD programme, the MSDF plans to organize a second nationwide awareness-raising campaign to combat domestic work by little girls, and to prepare regional action plans. The Committee notes that to this end, as part of the Multisectoral Programme to combat gender-based violence by empowering women and girls in Morocco implemented in collaboration with the UNDP, ILO-IPEC has started up an action programme to combat domestic work by girls in the Marrakesh–Tensift–El Haouz region for the period from 1

January 2009 to 31 December 2010. The programme is to benefit 1,000 school children to discourage them from dropping out of school; 100 school girls under 15 years of age from very poor families for whom the risk of drop-out is high are also to benefit from this awareness-raising; 30 girls under 15 years of age are to be removed from domestic work and rehabilitated and socially reintegrated; 20 girls aged between 15 and 17 are to be withdrawn from domestic work in which conditions are hazardous and which are among the worst forms of child labour; and 50 girl domestic servants aged between 15 and 17 years working in conditions that are acceptable will nonetheless have both their living and their working conditions improved. While taking due note of the measures taken by the Government to combat domestic work by children, the Committee notes that this form of labour remains a very serious scourge in Morocco. ***It accordingly requests the Government to redouble its efforts to protect these children, in particular against economic and sexual exploitation, and requests it to continue to provide information on progress made in this area, in terms of the number of children under 18 years of age prevented from engaging in or removed from worst forms of child labour in the domestic work sector.***

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

***[The Government is asked to supply full particulars to the Conference at its 99th Session and to reply in detail to the present comments in 2010.]***

## **Uzbekistan**

***(Ratification: 2008)***

The Committee notes the Government's first report. It also notes the communication of the International Organisation of Employers (IOE) dated 26 August 2009.

*Articles 3 and 7, paragraph 1, of the Convention. Worst forms of child labour and sanctions. Clauses (a) and (d). Forced or compulsory labour in cotton production and hazardous work.* In its comments under the Abolition of Forced Labour Convention (No. 105), the Committee had previously noted the observations made by the Council of the Trade Unions Confederation of Uzbekistan, communicated by the Government with its 2004 report, which contained allegations concerning practices of the mobilization and use of labour for purposes of economic development in agriculture (cotton production), in which public sector workers, school children and university students are involved. In this regard, the Committee notes that the IOE confirms that the legal framework against the use of forced labour exists in Uzbekistan but that, despite this fact, there are continued reports by non-governmental organizations and the media denouncing the systemic and persistent use of forced labour, including forced child labour, in the cotton fields of Uzbekistan.

The Committee notes the allegation of the IOE that the mass mobilization of children was one of the characteristics of cotton production during the Soviet regime. Referring to several reports, the IOE indicates that, every year, hundreds of thousands of Uzbek school children are forced by the Government of Uzbekistan to work in the national harvest for up to three months. Estimates of the number of children forced to participate in the cotton harvest range from half a million to 1.5 million school children in grades 5 to 11. The IOE further reports that forced labour has a substantial negative impact upon the education of the country's rural school children. Rural children are said to lag behind their urban peers in schooling, due to participation in the cotton harvest.

In this regard, the Committee notes that, in its concluding observations of 24 January 2006 (E/C.12/UZB/CO/1, paragraph 20), the Committee on Economic, Social and Cultural Rights expressed its concern about the persistent reports on the situation of school-age children obliged to participate in the cotton harvest every year who, for that reason, do not attend school during this period. The Committee also notes the concern expressed by the Committee on the Rights of the Child, in its concluding observations of 2 June 2006 (CRC/C/UZB/CO/2, paragraphs 64–65), about the involvement of the very many school-age children in the harvesting of cotton, which results in serious health problems such as intestinal and respiratory infections, meningitis and hepatitis. The Committee on the Rights of the Child therefore urged the Government to take all the necessary measures to ensure that the involvement of school-aged children in cotton harvesting is in full compliance with the international child labour standards, inter alia, in terms of their age, their working hours, their working conditions, their education and their health.

The Committee notes the Government's information that article 37 of the Constitution of Uzbekistan directly prohibits any compulsory labour and that article 45 of the Constitution contains state guarantees of protection of the rights and interests of children. The Committee notes that section 7 of the Labour Code prohibits forced labour, i.e. the obligation to perform work under menace of applying any penalty (including as a means to maintain labour discipline). It further notes that section 138 of the Criminal Code provides that the forceful illegal deprivation of liberty shall be punished with a fine of up to 50 minimum monthly wages or correctional labour or imprisonment of up to three years. The same action committed with the placement of a victim in conditions endangering their life or health shall be punished with imprisonment from three to five years. Furthermore, the Committee notes that, pursuant to section 241 of the Labour Code prohibiting the employment of persons under 18 years of age in work in unfavourable conditions and work which may harm their health, safety or morality, the Ministry of Labour and Social Protection (MoLSP) and the Ministry of Health, in consultation with the social partners, adopted the "List of occupations with unfavourable working conditions in which it is forbidden to employ persons under 18 years of age" of 30 May 2001, which provides that children under 18 years of age are forbidden from watering and gathering cotton by hand. In this regard, the Committee notes that section 49 of the Administrative Responsibility Code provides that an infraction of labour and occupational safety legislation shall entail a fine of from two to five times the minimum wage.

The Committee expresses its **serious concern** at the situation of children who, every year, are taken from school for up to three months and made to work in the cotton fields in hazardous conditions. It observes that, although national legislation appears to prohibit forced labour and hazardous work in cotton production, this remains a serious issue of concern in practice. The Committee refers to the Universal Periodic Review of Uzbekistan of 9 March 2009 (A/HRC/10/83, paragraph 106(8) and (27)), in which, in response to the recommendations that Uzbekistan do its utmost to eliminate forced child labour, intensify its efforts to effectively implement the national legislation and stop the practice of sending school-age children to participate in the harvesting of cotton, the Government indicated that measures are already being implemented or have already been implemented and will further be considered. In this regard, the Committee recalls that, by virtue of *Article 3(a) and (d)* of the Convention, forced labour and hazardous work are considered as worst forms of child labour and that, by virtue of *Article 1* of the Convention, member States are required to take immediate and effective



measures to secure the prohibition and elimination of the worst forms of child labour, as a matter of urgency. Furthermore, the Committee recalls that, by virtue of *Article 7(1)*, of the Convention, ratifying countries are required to ensure the effective implementation and enforcement of the provisions giving effect to the Convention, including through the provision and application of penal sanctions.

***The Committee therefore strongly urges the Government to take effective and time-bound measures to eradicate the forced labour of, or hazardous work by, children under 18 years in cotton production, as a matter of urgency. In this regard, it requests the Government to take immediate measures to ensure that thorough investigations and robust prosecutions of offenders are carried out and that effective and sufficiently dissuasive sanctions are imposed in practice. It requests the Government to provide information on the progress made in this regard in its next report.***

*Article 6. Action programmes. National Action Plan (NPA) for the application of ILO Conventions Nos 138 and 182.* The Committee notes that, according to the IOE, in September 2008, the Uzbek Prime Minister signed a decree that bans child labour in cotton plantations in Uzbekistan and approves a NPA to eradicate child labour. In this regard, the Committee notes that the NPA for the application of ILO Conventions Nos 138 and 182 includes the following paragraphs on activities specifically regarding the forced labour of children, in particular in the agricultural sector:

(a) Monitoring and control of the prohibition of the use of pupils of schools of general education, vocational colleges and academic lyceums, in forced labour (paragraph 12).

(b) Public control of the prohibition of the use of forced child labour in territories of self-governing bodies of citizens (paragraph 14).

(c) Establishing a working group to monitor locally the prohibition of the use of forced labour in cotton picking of pupils in schools of general education, including public schools, and submitting analytical information to the Cabinet on the results of this monitoring (paragraph 20).

(d) Acceptance of a joint statement on the inadmissibility of the use of forced child labour in agricultural works by the Association of Farm Entities, the Council of Federation of trade unions in Uzbekistan and the MoLSP (paragraph 29).

(e) Informing farmers on matters relating to the prohibition of violating legislation on the engagement of children in agricultural works (paragraph 33).

While noting the measures enumerated in the framework of the NPA for the application of ILO Conventions Nos 138 and 182, the Committee notes the allegation of the IOE according to which it remains uncertain if the implementation of these recently adopted measures will be sufficient to address the deeply rooted practice of forced child labour in the cotton fields. ***The Committee urges the Government to take immediate measures to ensure that the activities envisaged in the abovementioned NPA pertaining to the prohibition and elimination of the use of forced child labour in the agricultural sector are effectively implemented, as a matter of urgency, and to provide information on the results achieved.***

***In this regard, the Committee invites the Government to avail itself of ILO technical assistance on the assessment to be made on the effective implementation of the NPA for the application of ILO Conventions Nos 138 and 182.***

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

***[The Government is asked to supply full particulars to the Conference at its 99th Session and to reply in detail to the present comments in 2010.]***



REPORT OF THE COMMITTEE ON THE  
APPLICATION OF STANDARDS

OBSERVATIONS AND INFORMATION CONCERNING  
PARTICULAR COUNTRIES





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

### Report of the Committee on the Application of Standards

#### PART TWO

#### OBSERVATIONS AND INFORMATION CONCERNING PARTICULAR COUNTRIES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*(d) Written information received up to the end of the meeting of the Committee on the Application of Standards<sup>1</sup>*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### MAURITANIA (ratification: 1961)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Conclusions**

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

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

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

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

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

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

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

### **MYANMAR (ratification: 1955)**

See Part Three.

### **SUDAN (ratification: 1957)**

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

### Conclusions

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

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

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

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

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

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

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

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**BELARUS (ratification: 1956)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### Conclusions

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

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

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

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

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

### CAMBODIA (ratification: 1999)

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

### **Conclusions**

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

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

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

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

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

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

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

### **CANADA (ratification: 1972)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Conclusions**

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

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

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

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

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

### **EGYPT (ratification: 1957)**

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

### **Conclusions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

### **Conclusions**

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

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

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

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

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



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

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

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

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

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

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

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

#### MYANMAR (ratification: 1955)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Conclusions**

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

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

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

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

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

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

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

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

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

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

### **SWAZILAND (ratification: 1978)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Conclusions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

### Conclusions

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

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

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

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

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

*Bolivarian Republic of Venezuela*

*(ratification: 1982)*

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

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

### **BOLIVARIAN REPUBLIC OF VENEZUELA** (ratification: 1982)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Conclusions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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#### Protection of Wages Convention, 1949 (No. 95)

##### UKRAINE (ratification: 1961)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### Conclusions

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

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

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

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

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

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

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

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

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

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

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COSTA RICA (ratification: 1960)

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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



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

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

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

### Conclusions

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

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

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

### GEORGIA (ratification: 1993)

The Government provided the following written information.

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

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

- the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98);
- the current status of labour legislation;
- how to promote tripartism and building consensus in a tripartite context.

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

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

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

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

Georgia (ratification: 1993)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Recalling the fundamental provisions of the Convention, the Worker members emphasized that the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), together formed the architecture for effective social dialogue organized with a view to social progress and going beyond a purely economic approach based on deregulation. In 2008, this Committee had concluded that a tripartite round table should examine the difficulties facing the country in relation to social dialogue and could, with ILO technical assistance, facilitate progress in the promotion of collective bargaining and the protection of the right to organize in both law and practice. The ILO had provided technical assistance to employers' and workers' organizations and the Government with a view to facilitating tripartite dialogue on the revision of national legislation in light of the conclusions adopted in 2008 by the Committee. A tripartite round table had also been organized on the application of Conventions Nos 87 and 98 in Georgia. However, no legislative changes had yet been adopted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Conclusions**

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

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

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

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

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### **Equal Remuneration Convention, 1951 (No. 100)**

#### **INDIA (ratification: 1958)**

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

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

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

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

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

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

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

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

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

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

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

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



trained and gender-sensitized officers within the Labour Department.

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

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

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

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

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

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

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

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

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



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

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

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

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

### Conclusions

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

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

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

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

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

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

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### Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

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#### CZECH REPUBLIC (ratification: 1993)

A Government representative indicated that his Government welcomed the opportunity to discuss the application of the Convention in this Committee, in particular with respect to issues related to the situation of the Roma in the labour market, the anti-discrimination legislation and Act No. 451 of 1991 (the Screening Act). With regard to the situation of the Roma in the labour market, he assured the Committee that the 2008 conclusions of this Committee had been taken seriously by his Government,

which had taken a series of measures at the European and national levels. At the European level, inclusion of the Roma had been a priority during the Czech Republic's presidency of the Council of the European Union (EU) in 2009. Under its leadership the "European Platform for Roma Integration" (the Platform) had been adopted with the aim of facilitating coordination of national and EU policies on Roma social inclusion and exchanging good practices between Member States, Roma civil society and international organizations dealing with Roma issues. In February 2009, in the context of the Platform, 12 Common Basic Principles on Roma Inclusion were adopted and the European Commission and Member States had been invited to take these into account when designing and implementing policies to promote inclusion of the Roma, as well as policies to defend fundamental rights, uphold gender equality, combat discrimination, poverty and social exclusion, and to ensure access to education, housing, health, employment, social services, justice, sports and culture. The action that had been taken demonstrated the serious effort of the Czech Government to improve the situation of the Roma – not only in the Czech Republic but also elsewhere in Europe. He indicated that further details would be provided to the Committee of Experts.

With regard to measures taken at the national level, the speaker particularly highlighted the mid-term "national strategy on Roma integration for the period 2010–13" (the Strategy) adopted in December 2009. The Strategy provided for specific action regarding the effectiveness of the employment services and social systems, support to socially responsive businesses and persons from socially excluded communities, the adoption of strategies of local labour markets in socially excluded areas and the fight against illegal employment. It had resulted particularly from a joint study carried out by the Government and the World Bank in October 2008, confirming that the unfavourable position of part of the Roma population in the labour market was a consequence of several interrelated factors. There was therefore a need to focus on employment of disadvantaged persons, children and youth and to develop and verify tools and methods that could be used by public employment services through pilot projects. In addition, a special agency for social inclusion in Roma localities had been established in January 2008 and a national reform programme adopted in October 2008. The agency currently operated on a pilot basis and had been active in 2009 in 12 towns and regions in 2009; broadening its coverage to another 20 towns in the course of 2010 and 2011 was being envisaged. In the period from 2010 to 2012, the agency would be implementing a project focusing on the support of social integration in selected Roma localities, during which various types of activities and policies on social integration would be evaluated prior to and after the intervention of the agency. This would become the basis for the national policy of social integration in Roma localities. As unemployment of the socially excluded persons, including the Roma, continued to be a problem particularly during the present economic recession, specific steps had also been taken aimed at increasing employability and employment of target groups of disadvantaged workers. In 2009, a special programme on social economy was set up with the aim of assisting socially excluded persons and persons threatened by social exclusion – including national and ethnic minorities – to enter the labour market and reintegrate into the society. He further emphasized the need for long-term measures, which were being taken in order to improve the situation of Roma in the labour market, including with respect to access to education of children from socially excluded environments, including the Roma. In this context, a national action plan of inclusive education would be adopted

with a view to ensuring the creation of a school system providing education responsive to the individual needs of all children, curbing artificial social barriers and creating an optimal educational environment regardless of the economic, social or ethnic background of its pupils. Finally, the project on ethnically friendly enterprises would be expanded to the whole country and the project on "Roma Employment" would be the subject of a peer review seminar in autumn 2010 within the Mutual Learning Programme under the European Employment Strategy. He concluded by stating that the information provided to the Committee clearly indicated the ongoing and comprehensive attention of the Government to the inclusion of the Roma population.

Turning to the Anti-Discrimination Act, his Government was pleased to inform the Committee that it had been adopted in June 2009 and had come into effect in September of that year. The new Act prohibits direct and indirect discrimination not only in the areas of employment and labour relations, including freedom of association, but also in the areas of health, education, housing, social and other services. It prohibits discrimination on the grounds of race, ethnic origin, sex, nationality, sexual orientation, age, disability, religion, belief or world view, and his Government considered that it addressed, as such, all the grounds listed in Article 1(1)(a) of the Convention. The Act further provides for judicial protection of people discriminated against and entrusts the monitoring of non-discrimination to the Office of the Public Defender of Rights. While the latest statistics of the Ministry of Justice indicated there had not been any jurisprudence based on the application of the Act, the Office of the Public Defender of Rights had already dealt with several cases of alleged discrimination based on nationality concerning access to services, to employment and to health services. The perceived gap in protection against discrimination after the adoption of the new Labour Code in 2006 had thus been closed and his Government believed that a high level of protection against discrimination in employment and occupation covering all the grounds listed in the Convention was now ensured.

Finally, concerning the Screening Act, he recalled the position presented by his Government to this Committee in 2008 and indicated that revising or repealing the Screening Act was a politically sensitive matter. The caretaker Government was not in a position to address this issue and revisions of this Act could be considered in the context of the new regulation on public service administration. The new Government established after the recent elections in May 2010 would certainly take a decision in this respect and the conclusions of this Committee would be brought to its attention.

**The Worker members** recalled the conclusions adopted by the Committee in 2008. The Committee had taken note of the efforts made to adopt a new law against discrimination that offered protection against employment discrimination. The Committee had urged the Government to ensure that the new legislation covered all aspects mentioned in Article 1(1)(a) of the Convention, namely race, colour, sex, religion, political opinion, national extraction and social origin and to guarantee the implementation of effective application and monitoring mechanisms. The Committee had also requested the Government to ensure that other grounds of discrimination, provided for in Article 1(1)(b) of the Convention, which had not been included in the 2006 Labour Code, be included in the new legislation. The Committee had also insisted on the involvement of the social partners in drafting the new law and had requested the Government to adopt the revised law as soon as possible. While the Government's efforts to promote social and economic integration of the Roma were greatly appreciated, the Committee had stressed that

it was vital that the measures taken lead to objectively verifiable improvements of their situation in practice. The Committee had requested the adoption of concrete measures for evaluating and monitoring the situation of the Roma concerning their employment, occupation and unemployment, namely through the gathering and analysis of appropriate data. Furthermore, the Committee had requested the Government to amend or repeal certain provisions of the Screening Act, which constituted discrimination based on political opinion which were in contradiction with the Convention.

The Government had been asked to submit a report in 2008 containing information on these points. However, no report had been received from the Government since the June 2008 Conference session, despite the promises made by a Government representative before this Committee. From the communication by the Czech-Moravian Confederation of Trade Unions it appeared that their efforts to request the Prime Minister to include on the agenda of the national tripartite body, the issues raised in the conclusions of this Committee, had not produced concrete results.

The Czech Republic is a member of the EU and the concepts and definitions in Convention No. 111 were quite similar to those enshrined in the Directive on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (Directive 2006/54/EC). The Government had agreed to incorporate these into national law when the Czech Republic acceded to the EU. In addition, the European Commission had condemned several times all forms of violence against the Roma and requested the governments of all Member States to guarantee the safety of all persons within their territory. A recent document of the Commission recalled once again the special responsibility of the EU and its Member States towards the Roma, who constitute the most important ethnic minority in Europe.

In conclusion, the Worker members considered that it was too easy for the Government to promise once again to submit a report to the next session of the Committee of Experts. In his declaration, the Government representative had made several references to documents of the EU and to the web site of the European Commission concerning the situation of the Roma, but had said almost nothing about what the Government really intended to do.

**The Employer members** recalled that this case had previously been examined by this Committee eight times since 1990. During the last discussion in 2008, the Government had indicated that it would provide the information requested in its next report. This information, requested by the Committee in its conclusions of 2008, related to the anti-discrimination legislation, the measures taken in relation to the discrimination of the Roma and the amendment or repeal of the Screening Act. The Employer members expressed serious concern regarding the Government's failure to submit the requested reports.

Referring to the Government's information concerning the adoption of the Anti-Discrimination Act, the Employer members noted with regret that this information had not been provided in advance of the Conference. Without the full information regarding the substance and application of the Anti-Discrimination Act and the Labour Code, it was not possible to have a full discussion. The Government was urged to provide this information in time for the next session of the Committee of Experts. Turning to the issue of the Roma people and employment, the Employer members recalled that in 2008 the Committee had urged the Government to take measures to develop improved means to assess and monitor this situation. The Government's information on measures taken to address the situation of the Roma was encouraging. However, the

Employer members expressed concern that this information had not been provided in advance and at the resistance to data collection on this subject.

On the subject of the Screening Act, the Employer members recalled that the Government had previously indicated a willingness to take measures to repeal or amend this legislation. Acknowledging the Government's indication that the previous Government had no political mandate to change the Screening Act, the Employer members reminded the Government that it was necessary to repeal or amend this legislation, to bring it in conformity with the Convention. Emphasizing the seriousness of this case, the Employer members urged the Government to address its failure to comply with its reporting obligations and to bring its law and practice into conformity with the requirements of Convention No. 111.

**The Worker member of the Czech Republic** expressed regret that, for the past two years, reports on the application of the Convention had not been sent by the Government, despite the specific request made by the Committee following its discussion of the case in 2008. He expressed support for the comments of the Committee of Experts concerning the case and stated that little had changed since 2008. While certain programmes and measures had been adopted and implemented to promote equal access of the Roma population to education, training and employment and to promote social inclusion, it was difficult to assess any real improvement, especially given the context of the economic crisis, where high unemployment rates persisted and the relevant statistical data was lacking. Turning to the new Anti-Discrimination Act, he noted that this legislation did not provide explicit protection against discrimination based on the grounds of family responsibilities, marital and family status, political or other convictions, membership of, or activity in, political parties or movements and membership in trade unions or employers' organizations. Moreover, the new Anti-Discrimination Act did not provide for the strong involvement of the State in the protection of victims of discrimination through the Office of the Public Defender of Rights. This Office could only provide advice and could not assist individual victims of discrimination in bringing complaints and obtaining redress. Therefore, there was a need to improve the new anti-discrimination legislation, in addition to repealing the Screening Act.

**The Worker member of Hungary** underlined the seriousness of the case. The case concerned a fundamental Convention and was marked by the Government's failure to fulfil its reporting obligations and to take action on the conclusions adopted by this Committee in 2008. These conclusions urged the Government to take measures with regard to three specific issues: to remedy the withdrawal of previously available protection against discrimination on a number of additional grounds; to develop improved means to assess and monitor the situation of the Roma population in employment and occupation; and to repeal the Screening Act. Discrimination against the Roma population was a region-wide problem without an easy solution. However, the Government's failure to comply with its reporting obligations could not be excused. Recalling that Article 2 of the Convention required ratifying member States to undertake a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation, she urged the Government to respect the conclusions of this Committee and the Committee of Experts. Following meaningful consultation with the social partners and members of the Roma population and with ILO technical assistance, national legislation and practice should be brought into conformity with the Convention.

**The Government representative** apologized for not having submitted the report. The report was currently being

finalized and would be submitted in time. With regard to the other issues raised in the debate, he stated that the conclusions of the Committee would immediately be brought to the attention of the new Cabinet, once it assumed governmental responsibility.

The **Worker members** indicated that the findings had not changed with respect to the points raised by the Committee of Experts in its observation: the Government was failing to give effect to the Convention and continued to do so. The Government's persistent silence was both a matter of concern and was incomprehensible. This situation challenged the work and credibility of the ILO supervisory bodies. The conclusions that the Committee adopted on the case would need to take into account the Government's repeated negligence and the need to protect the rights of workers. Pragmatism was needed in this respect. As the inclusion of the Committee's conclusions in a special paragraph was a very serious matter, the Worker members had decided not to request this measure on the present occasion and to leave the Government one last chance. However, the Government would have to agree to receive a technical assistance mission with a view to providing replies to the specific questions raised by the Committee in its conclusions in 2008 and to establish a plan of action with a time frame. Three issues needed to be addressed and required a three-stage response. In the first place, in the month of September 2010, so that it could be examined by the Committee of Experts at its next session, the legislation needed to be amended to give effect to Article 1(1)(a) of the Convention. Secondly, the legislation would have to be amended so as to reintegrate protection against the additional grounds of discrimination envisaged in Article 1(1)(b) of the Convention. The Government could find inspiration in this respect in European legislation, which it had to transpose into its national legislation in any case as a Member State of the EU. In parallel, a working group on the improvement of the situation of the Roma would need to be established, possibly under the aegis of the ILO and the European Commission. The Roma were in practice the largest ethnic minority in the region and the same problems arose in other Central and Eastern European countries. Cooperation between the ILO and European institutions in this field would therefore be very positive. The working group should gather statistics and establish a time frame for action, and the information should be made available for the 2011 session of the Committee of Experts. Finally, the Screening Act would have to be amended or repealed as rapidly as possible, and in any case before the next session of the Conference.

The **Employer members** reaffirmed the importance of this fundamental Convention and noted that there was little tangible proof of progress in this case. The Employer members therefore urged the Government to ensure adequate non-discrimination protection in national legislation and to provide a full report to the Committee of Experts in this respect. It was difficult to assess the progress with regard to the situation of the Roma. The Employer members requested that information be provided to the Committee of Experts on the situation of the Roma with regard to non-discrimination in employment and occupation, on the number of victims of discrimination, and on the number of discrimination cases that had been addressed by the Government. The continued existence of the Screening Act was disappointing and the Government was urged to bring the Act into full conformity with the Convention, possibly with ILO technical assistance.

### **Conclusions**

The Committee noted the information provided by the Government representative and the discussion that followed. It noted that it had addressed this case on a number of occa-

sions, most recently in June 2008. It also noted that there were still outstanding issues with regard to the follow-up to representations under article 24 of the ILO Constitution (November 1991 and June 1994) regarding Act No. 451 of 1991 (the Screening Act). It noted further that the Committee of Experts and this Committee had raised issues relating to the situation of the Roma in employment and occupation, and the development of new anti-discrimination legislation, including the need to hold consultations with the representative employers' and workers' organizations and other appropriate bodies with a view to maintaining the previous level of legislative protection against discrimination pursuant to Article 1(1)(b) of the Convention. The Committee observed that the Committee of Experts had noted with regret that since the case had been discussed in the Conference Committee in 2008, no report had been received from the Government. The Committee of Experts had expressed concern that its previous comments and the Conference conclusions might not yet have been discussed in an appropriate manner at the national level.

The Committee noted the Government's indication that the **Anti-Discrimination Act**, adopted in June 2009, and which had entered into force on 1 September 2009, covered direct and indirect discrimination on the basis of race, ethnic origin, nationality, sex, sexual orientation, age, disability, religion, belief and world view. The Committee also noted the information provided by the Government on the range of measures taken to promote social and economic inclusion of the Roma, including those taken in the context of the European Platform for Roma Integration; the adoption of a new mid-term National Strategy on Roma Integration for 2010–13; the establishment of a special agency for social inclusion of Roma localities; and a special programme on social economy. The Committee also noted the Government's indication that repealing the Screening Act was a politically sensitive matter which the caretaker Government was not in a position to address, and that any revision of the Act might be considered in the context of the new regulation under consideration on the public service administration.

The Committee expressed serious concern that since the Conference discussion in 2008, the Government had failed to supply reports on this Convention, despite previous assurances given.

The Committee, noting the information on the adoption of the new **Anti-Discrimination Act** and the commitment made by the Government to provide full information to the Committee of Experts, urged it to do so in time for its examination by the Committee of Experts at its forthcoming session. This would enable the Committee of Experts to assess whether the new legislation provided adequate protection against discrimination on all the grounds enumerated in Article 1(1)(a) of the Convention, as well as effective enforcement and monitoring mechanisms, and to ensure that the level of protection previously provided would not be decreased, in particular with respect to discrimination on the basis of family responsibilities, marital or family status or membership or activity in political parties, trade unions or employers' organizations.

While noting that steps had been taken aimed at the social inclusion of the Roma, the Committee remained concerned that measures had not yet led to verifiable improvements for the Roma in employment and occupation. It, therefore, again urged the Government to take measures to develop improved means to monitor the situation of the Roma, including through the collection and analysis of appropriate data, with a view to demonstrating the achievement of real progress with respect to equal access of the Roma to education, training, employment and occupation.

With regard to the Screening Act, the Committee recalled its position and that of the Committee of Experts that the provisions of the Act violated the principle of non-discrimination on the basis of political opinion, contrary to

the Convention, and strongly urged the Government to amend or repeal the Act without further delay. The Committee urged the Government to accept an ILO technical assistance mission in order to enable it to bring its law and practice into conformity with the Convention without further delay.

The Committee requested the Government to provide full information on all the issues raised by this Committee and the Committee of Experts in a report to be submitted for examination at the forthcoming session of the Committee of Experts, so that real progress could be recorded by the Committee of Experts in the very near future.

#### ISLAMIC REPUBLIC OF IRAN (ratification: 1964)

A Government representative noted at the outset that his statement consisted of a brief summary of a full and extensive report submitted to the Office and he apologized for not submitting the report in time. The Government was striving to ensure the implementation of the fundamental principles and rights at work through positive interaction with the social partners and the International Labour Office. In order to bring existing laws and regulations into conformity with the provisions of the Convention, the Government had reviewed some of the controversial national legislation. With regard to the amendments to existing laws so as to promote freedom of association, the Ministry of Labour, together with the social partners, had reviewed the long disputed provisions in Chapter 6 of the Labour Law concerning workers' and employers' organizations, and a bill amending the Labour Law had been submitted for adoption to the Cabinet. The Bill focused on the promotion of free trade union rights and recognized the freedom of workers and employers to form their associations at the workplace or by profession, thereby removing some of the obstacles. With regard to amendments to the laws and regulations in contradiction with the provisions of Convention No. 111, the Ministry of Labour had introduced a bill to the Cabinet aiming to ensure close monitoring of the implementation of the respective ILO provisions by the three branches of Government. The Cabinet had issued a directive by virtue of which the Ministries of Justice and Labour were mandated with presenting to the Cabinet the national laws and regulations that were in contradiction with Convention No. 111. The directive also provided for the establishment of a committee to supervise the proper application of ILO standards.

With regard to the National Equality Policy, the Iranian Judiciary had embarked on a series of actions to counter discrimination and administrative malpractices in the workplace, which included: (1) a joint project with the United Nations Development Programme (UNDP) for the promotion of human rights and social justice among religious, racial and ethnic minorities through training workshops for provincial judicial authorities with considerable participation by minorities; (2) the establishment of Special Minority Courts and Dispute Settlement Councils to address the complaints and concerns of minorities in the context of their own religious laws and social values; and (3) the establishment of a Committee on "Women's Legal Studies and Non-Discrimination", which would assist in upgrading the skills of women judges, women in judicial positions and in the police force. As a result of holding regular training and empowerment courses for women judges, the contribution of women to the judiciary and its subsidiary organs had increased considerably and he provided a series of statistics on the distribution of women in the judiciary. Women's participation in political life had also increased considerably. Women were Members of Parliament, occupied the post of Vice-President and Minister of Health and other high posts in numerous ministries, provincial and county administrations, and municipi-

pal authorities. The ratio of women involved in political positions in Government during the period ending in the first quarter of 2010 had increased by 3.25 per cent compared with the same period in 2008.

With specific reference to section 1117 of the Civil Code, the Parliament and the Judiciary had officially indicated that it was in effect null and void. On the issue of equal family benefit payments for men and women, he indicated that according to the Iranian Social Security Organization, section 86 of the Social Security Act had now been amended to ensure that both men and women enjoyed equal family benefits, even if a couple worked in the same workplace. In order to improve women's employment, he noted that of the 1,180,000 small and medium-sized enterprises (SMEs) projects which had been awarded bank loans and grants, 230,000 projects were SMEs initiated by women entrepreneurs. Based on an agreement between the Government and industry in 2009, over 48,000 women university graduates had been recruited upon completion of their vocational training programmes. The Government had also recently adopted a bill on home-based jobs providing for the access of women to credit and equipment to start home-based businesses. With regard to the protection of civil and citizenry rights, in recent years the Judiciary had attentively identified rules and regulations that expressly or implicitly contradicted such rights and had annulled them. In the years 2008 and 2009, 6,500 complaints concerning the infringement of citizenry rights had been addressed on their merits, in 412 cases of which the judges were found to be at fault.

With reference to the alleged discrimination against racial and native minorities, the Government wished to emphasize that no laws or regulations discriminated against or hindered the access of minorities to high government posts and the Government was ready to receive and examine any substantiated complaints in this regard. He provided the latest statistics demonstrating that high government positions in provinces with the highest number of minorities were always occupied by people from the same minority. Moreover, he informed the Committee that, with regard to the dispute among the Iranian employers' associations, it had been agreed on 14 April 2010, with the good offices of the Government, to continue negotiations for the establishment of a Confederation of Employers' Union encompassing all the various employers' organizations existing in the country. The Government respected fundamental principles and continued to strive to meet the ILO's recommendations and observations. However, to be successful, the Government's efforts needed to be supported by ILO technical cooperation.

**The Employer members** recalled that this case had been discussed 14 times in the past 20 years. On a positive note, they indicated that they had just been advised by the Iranian Confederation of Employers' Associations that the judiciary and the Government had recognized this organization as the representative employers' organization, in conformity with the principles of freedom of association.

They recalled that, while the Committee had noted in 2009 certain improvements in the areas of education, vocational training and employment of women, it had remained concerned about the lack of evidence of real progress regarding the situation of women in the labour market. The Employer members noted with regret that the Government had not submitted its reports in time for the Committee of Experts' consideration. However, the Government provided a report for the Committee of Experts' consideration in May 2010, which apparently provided a range of information regarding measures to implement the Convention. From the information provided today by the Government, it should be noted that a bill on the prohibition of discrimination in employment and education has

been submitted to the Cabinet of Ministers for further consideration, a copy of which had been submitted to the ILO. Also, the Charter of Women's Rights had been replaced by the Family Support Act, which was approved in 2009. Furthermore, a committee had been established in April 2010 which was in charge of identifying all legal regulations that could be in conflict with the Convention. Clearly a great deal of information had been provided by the Government representative before the Committee, which needed to be carefully considered by the Committee of Experts; it was not yet possible to determine whether the Government was making real progress in compliance with Convention No. 111. The Employer members were hopeful that the Government had repealed or amended all legislation restricting women's employment, including regarding the role of female judges, the obligatory dress code, the right of a husband to object to his wife's profession, the discriminatory application of social security legislation and the restrictions in law and practice on women being hired after the age of 40. Finally, they welcomed the fact that the Government was willing to accept ILO technical assistance.

The Worker members recalled the Government's commitment in 2006 to review all relevant legislation that was discriminatory for women within a four year period and stated that it was now time to assess the results of the Government's action. They also recalled the Committee's midterm review in 2008 of the Government's actions, which had noted with disappointment the absence of progress and had urged the Government to take urgent action on all outstanding issues. Against this background, the Worker members considered that having received some written information, though at a very late stage, was an improvement compared to previous years; however, they still regretted that, due to such late reporting, the Committee was not in a position to examine and evaluate the information provided.

While acknowledging that the Government had finally transmitted a copy of the Bill on the comprehensive prohibition of discrimination in employment and education, they observed, first, that they had not had an opportunity to examine the Bill in any detail, and second, that the Bill was said to have been submitted to the Cabinet of Ministers, which was exactly where it had been two years ago. In addition, it was difficult to know whether the Charter of Citizenry and other documents requested by the Committee had in fact been communicated to the Office. Similarly, no conclusion could be reached as to whether the replacement of the Charter of Women's Rights by the Family Support Act meant an improvement in terms of the implementation of Convention No. 111.

With regard to section 1117 of the Civil Code, which permitted a husband to bring a case to court if he objected to his wife taking a job contrary to the interest of the family or to the wife's prestige, the Government contended that by virtue of section 18 of the Family Protection Law, section 1117 had been automatically abolished and courts were no longer authorized to receive claims under this provision. The Worker members believed, however, that the situation had remained practically unchanged compared to the discussion in 2006 on the same point. The existence of this section continued to have a negative impact on the employment of women. With regard to the dress code, the existence of which the Government continued to deny, the Worker members considered that there had been no new developments.

Referring to the Government's indication that in April 2010, a Committee was set up to identify all legal regulations potentially in conflict with the Convention, the Worker members had in principle no objection to a Committee studying legal provisions which were inconsistent with the requirements of the Convention. They

considered, however, that the announced establishment of the new Committee could not replace actual efforts to amend existing laws and regulations that had already been identified as being in violation of Convention No. 111 for a long time.

Concerning women's access to the labour market, and whilst it was not known whether the statistical information that the Government had provided showed any improvement regarding the access to the labour market, the Worker members maintained that the overall participation rate of women was still not more than 20 per cent, with women holding the most vulnerable and low paid positions. The legal barrier for women to be employed above the age of 35 – even if it had been increased to 40 – still existed, thus preventing women from working about half of their productive life. With respect to the overrepresentation of women in precarious and temporary jobs, gender discrimination in social security entitlements and access of working women to childcare facilities, they had hoped that the Government would present new information including measures taken to address these inequalities, and they were deeply disappointed not to have received such information.

Turning to the issue of discrimination of religious minorities, the Worker members expressed the view that the situation for the Baha'i was in fact deteriorating. Apart from the very specific instances previously presented, the Worker members now had a list of more than 30 cases of people being dismissed or being forced to close their shops. In a recent and particularly illustrative instance, in November 2009, officers from the Office of Health in Khomein told the owner of an optical store that he had two weeks to close his shop, following a nationwide order to eventually close all optical shops owned by Baha'i.

As for ethnic minorities, the Worker members shared the concern of the Committee of Experts regarding the employment situation of the Azeris, the Kurds and the Turks. It was noted that those members of ethnic minority groups who criticized the discrimination against them risked losing their jobs, freedom and even their lives. This happened to 35-year-old Farzad Kamangar, a Kurdish teacher and trade unionist who was executed one month ago.

Regarding the social dialogue situation in the country, the Worker members deplored that, instead of creating a safe environment for workers in which they could establish trade unions to defend their fundamental rights, the Government was creating an atmosphere of crisis that prevented a dialogue regarding issues related to Convention No. 111. Although they welcomed the recent release of four leaders of the Haft Tappeh Sugar workers' union, the Worker members remained very concerned about the safety, health and well-being of other trade union leaders who were still imprisoned, including Mansour Osanloo.

In conclusion, the Worker members regretted that the Government's late written submission could make no contribution to the Committee's discussion and stated that, based on the little information that was made available, no real progress had been made.

The Employer member of the Islamic Republic of Iran updated the Committee concerning social dialogue in the country, which was referred to in the last paragraph of the observation of the Committee of Experts and on which the Conference Committee had expressed its deep concern in 2009. The Government had ordered the dissolution of the Iranian Confederation of Employers' Associations (ICEA) in an effort to create a parallel organization of employers, despite the fact that such dissolution would be possible only through a judicial order. The ICEA therefore had taken the case to court for the annulment of the Government's order. While the Government and the parallel organization had filed their petition, the court ruled

that the dissolution order was annulled. She indicated that, despite this positive development, the ICEA was willing to create one inclusive employers' organization through a nationwide election to be held in July 2010, as agreed during meetings with the Government, which were also attended by the parallel organization. She asked the ILO and the International Organization of Employers (IOE) to provide assistance to ensure a free and fair election. She looked forward to the establishment of an umbrella employers' organization to defend legitimate rights and interests of all Iranian employers.

**The Worker member of the Islamic Republic of Iran** expressed the need for ILO cooperation and technical assistance for Iranian workers' associations who were comprised of different ethnic, religious and tribal groups working in various sectors of the economy, in order to remove all forms of discriminatory practices. Due to the economic and financial crises, many enterprises had gone insolvent. As a result, workers were suffering from low wages, unemployment and underemployment. The country's financial sector was also experiencing difficulties due to international pressure and sanctions causing the rise in transaction costs and the worsening of the living standards of workers. This resulted in capital shortage affecting the operation of SMEs. He urged the ILO and the International Trade Union Confederation (ITUC) to examine closely the situation and for the ILO to provide technical cooperation and assistance. In doing so, he hoped that workers would not face discrimination for their cooperation with the ILO and relevant institutions. He appreciated the recent steps taken by the Government to amend the Labour Law concerning freedom of association. He wished to see further steps taken to amend legal provisions on temporary contracts and to extend the social safety net. He stressed that the workers' organizations in the Islamic Republic of Iran pursued, by and large, similar objectives and they all deserved to be given legitimacy and opportunities to benefit from the ILO's technical cooperation.

**The Worker member of Zimbabwe** expressed his deep concern over the continuing and extensive discrimination against women in the Islamic Republic of Iran. Women continued to face significant barriers in achieving equal access to the labour market and decent work. Although the Government had made some progress in recent years to reduce the gender gap in education, and women now outnumbered men in entering university, these achievements had not been translated into higher rates of female participation in the labour market. When women graduated from university, they were one third less likely to find work compared to men. Only 3.5 million Iranian women were salaried workers, compared to 23.5 million men. Increasing numbers of women were employed on temporary contracts, which meant irregular incomes, little or no job security or income security, and a lack of social protection. Women employed in small enterprises or in export processing zones were exempted from all protections afforded by national labour law. Women were also disproportionately represented in occupations perceived as "women's work", such as carpet weaving, teaching and educational assistance, agriculture, clerical work and health care. The UNDP's Gender Empowerment Measure, which measured the extent to which women take an active part in economic and political life, ranked the Islamic Republic of Iran 103rd out of 109 countries. Despite the repeated requests by the Committee of Experts to provide detailed labour market statistics of women and men in different economic sectors and by level of employment, the Government had failed to provide this information. He urged the Government to provide these statistics, as well as the results of policies to achieve equality at work. The objectives of Convention No. 111 could not be realized

without an environment in which workers were free to organize. He called on the Government to respect its obligations under the Convention and as an ILO member State, to guarantee the right of all workers to be free from discrimination and to end the marginalization of women at work.

**The Government member of Canada** regretted that the Government had not submitted a report on the application of the Convention in 2009. Her Government continued to be concerned with regard to discrimination in employment and occupation against women, and religious and ethnic minorities. National law continued to discriminate against women, and women's participation in decision making was apparently decreasing. Women's rights movement activists were harassed and often detained, including organizers of the "million signature campaign" and members of the "Green movement". Despite international efforts, discrimination against religious and ethnic minorities persisted. Members of the Baha'i faith continued to be denied employment, government benefits and access to higher education. Seven members of the Baha'i leadership remained in detention and eight members of their community were detained in February 2010. For years, the Baha'i community had been subjected to persecution, discrimination and detention. The discussion of this case was marked by the recurrent lack of information requested from the Government. She urged the Government to bring its national legislation and practice into conformity with the Convention and to cooperate fully and respond substantively and in a timely manner to the numerous requests for information made by the supervisory bodies.

**The Worker member of Pakistan** indicated that upon ratification of the Convention, the Islamic Republic of Iran had taken on the obligation to bring its legislation into conformity with the Convention. The Government had acknowledged in its report that there remained a long way to go to empower women in practice. He noted the constructive dialogue between the Government and the Committee of Experts concerning legislative, administrative and other measures taken. In particular, he shared the view of the Committee of Experts that the principle of equality of opportunity for women in employment, wages and education had to be realized, especially in rural areas. He urged the Government to take measures to implement the recommendations made by the Committee of Experts, as women had a role to play in their families and with their partners, and their economic and social wellbeing was important for society as a whole.

**The Government member of Belarus** recognized the concrete measures reported by the Government of the Islamic Republic of Iran with respect to, for example, empowerment of women in their access to education and vocational training and the rights of ethnic and religious minorities. He invited the Committee to build on these positive developments and to support the country for its effort made in cooperation with the ILO.

**The Worker member of France** indicated that the Committee of Experts had recalled the commitments that the Government had made during the 2008 session of the Conference which had not been met to date. In 2006, the Government had committed itself to changing the laws that hindered women's access to employment, despite their qualifications and academic training, in the fields where the access of women was not prohibited. Only 16 per cent of Iranian women were employed. Section 1117 of the Civil Code still allowed a husband to oppose his wife's employment. The Government claimed that the section was repealed by section 18 of the Family Protection Law, but did not explain how this alleged abrogation was achieved in practice and failed to provide the requested documents. Women remained in a permanent



situation of legal inferiority, and the numerous administrative rules (restrictive criteria of age) limited their right to access to employment or to perform certain functions in the judiciary. In the judiciary they were mostly called upon to be social assistants, or to be a judge on matrimonial cases or cases involving juveniles. He also noted that the Committee of Experts had referred to discrimination against women in the social security legislation. Finally, laws, rules and practices that discriminated against women in employment and occupation had to be effectively abrogated and abolished, and law and practice had to be brought into line with Convention No. 111.

**The Worker member of Malaysia** noted that regional ethnic groups in the Islamic Republic of Iran were poorer, less educated, less employed and less represented in decision-making positions than Persian citizens. The Government had to address this issue seriously. Many reports had shown that the Government had failed to provide equal economic, cultural and linguistic rights to ethnic and religious groups such as the Balochs, Southern Azerbaijanis, Ahwaz, Turkmen and Kurds. These populations were not minorities within their respective region and represented over 30 per cent of the total population. Failure to provide access to quality education to all ethnic groups resulted in discrimination in accessing decent jobs. Although provided by the Constitution, teaching in "tribal languages" was not carried out in practice. As a result, dropout rates were very high. The provinces of Balochistan and Khuzestan experienced low school enrolment, poverty, illiteracy and unemployment. Every Government should provide equal rights to education for all children and adults regardless of their ethnic or religious background. After the 2005 elections, thousands of ethnic minority civil servants were dismissed. Members of ethnic groups had been arrested and their rights to freedom of expression and assembly had therefore been violated. She regretted that organizations and individuals that aimed to promote the rights and interests of regional ethnic groups were often treated as criminal groups. Iranian teacher unionists had been intimidated and detained, mistreated and even executed after having protested against discrimination of teachers. Recently, the Iranian Kurdish teacher and unionist Farzad Kamangar, who advocated for the rights of Iranian Kurds, had been executed although his case had still not been reviewed by the Supreme Court. Mr Kamangar was a member of the Iranian Teachers' Trade Association affiliated to Education International. His case had been decided in secrecy in two minutes and without his lawyer or himself being able to challenge the allegations. Teachers and all workers advocating for social justice, equal rights to education and employment, and rights for women should be heard, fairly treated and given the opportunity to address problems through proper negotiation channels.

**The Government representative** wished to clarify that certain statements with regard, in particular, to the geographical location of cited regions were not entirely correct. The national equality policy, which included the prohibition of discrimination based on ethnic origin or religious background, was of paramount importance for the Government, which was abiding by the requirements of ILO Conventions. The Iranian Constitution enshrined equal treatment, and no ethnic, religious or otherwise minority was discriminated against in law or in practice. The Baha'i presently enjoyed the best living conditions since their founding, and the Government assured that no segregation based on religion, ethnic origin or social background was taking place. The non-recognition of the alleged status of the Baha'i as a religious minority did not imply the denial of rights and freedoms. The Baha'i enjoyed full citizenry rights, were free to practice their religion and to conduct high-level educational courses, as con-

firmed by the UN Special Rapporteur on freedom of religion or belief.

The equal treatment of women was reflected by the fact that their participation rate in education had increased by 2,200 per cent since 1976 and that today 65 per cent of university students were women. In recognition of certain shortcomings, the Government had put into place empowerment and enabling programmes which had been described before. Social security coverage had been extended to women in rural areas. Forty per cent of the country's highly specialized physicians were female, and women had established more than 7,000 non-governmental organizations (NGOs).

Recalling the statement made by the Worker member of the Islamic Republic of Iran, who had indicated that the Minister of Labour had intervened in a dispute, which otherwise could have resulted in its consideration by the Conference Committee, he highlighted the importance that the Minister attributed to the principles of freedom of association and social dialogue. With regard to the imprisonment of union activists, the Government would do its utmost, for example, through the mechanism of pardon or amnesty, to enable their release. As to Farzad Kamangar, he contested the allegations that his case had been considered by the court for two minutes, and assured the Committee that the case had been heard for four years and all legal remedies had been exhausted.

**The Employer members** emphasized that they remained cautiously hopeful in this serious case, which had been considered for many years by the Committee of Experts and the Conference Committee had repeatedly expressed concerns about non-compliance with the Convention, urging the Government to take immediate action to ensure full application in law and in practice, and expressed regret regarding the lack of progress in this respect. The Employer members expected that the aforementioned issues in relation to the employment of women had already been or would be addressed in the near future, including the repeal of section 1117 of the Civil Code and the abrogation or amendment of legislation restricting the role of female judges, imposing a dress code, instituting discriminatory application of social security provisions and establishing barriers to the employment of women above the age of 40. The equal access of women to the labour market, including senior-level positions, should also be improved. The Employer members noted that the Government had provided detailed information in its report on all the issues raised by the Conference Committee and the Committee of Experts in its recent observation. Being aware of the longstanding difficulties of member States in respect of compliance with this Convention, the Employer members remained cautiously hopeful and would be deeply disappointed if the measures taken or envisaged by the Government did not remove the restrictions on women's employment. The progress achieved in connection with freedom of association with regard to the recognition of workers' and employers' organizations was duly noted and the continuous engagement of the social partners encouraged. In conclusion, the Employer members welcomed the Government's acceptance of an ILO tripartite technical assistance mission to the Islamic Republic of Iran.

**The Worker members** concluded that nothing had changed, four years after the Government's commitment to bring national law and practice into conformity with the Convention. The information supplied by the Government was not convincing and could have been provided in writing at an earlier stage. The Worker members had little confidence that the Government would indeed revise the labour law so as to guarantee freedom of trade unions fully. They expressed their disappointment with regard to the lack of progress. Access of women and reli-



gious and ethnic minorities to the labour market had not improved, and their situation remained deplorable as they faced discrimination. Independent trade unions were unable to function, and their leaders were imprisoned. Despite the lengthy report supplied by the Government after the deadline for submission of reports, the Worker members were still of the view that the Government had not fulfilled its reporting obligations for the past four years and regretted that such demeanour rather illustrated its disrespect for the ILO supervisory mechanism. As regards the Government's willingness to accept technical assistance in amending legislation and regarding other issues related to the implementation of the Convention, the Worker members believed that, under the current circumstances of restrictions in the functioning of trade unions and the absence of social dialogue, such assistance was not possible and could not be effective. Noting that the Government was prepared to accept a tripartite ILO mission to the country, they requested that its terms of reference should refer to the implementation issues relating to this Convention and that the mission take place in a time frame allowing for the mission report to be discussed at the next Conference. Finally, the Worker members requested that the conclusions of the Committee be included in a special paragraph of the Committee's report.

### Conclusions

The Committee noted the statement provided by the Government representative and the discussion that followed. The Committee noted that it had examined this case on numerous occasions, most recently in 2008 and 2009, and recalled the detailed conclusions it had adopted in this regard. It noted that the Committee of Experts, referring to the Conference conclusions, continued to raise a wide range of concerns, in particular regarding the situation of women in the labour market, discriminatory laws, regulations and practices, the situation of unrecognized religious minorities, in particular the Baha'i, and ethnic minorities, dispute resolution, and the social dialogue situation in the country.

The Committee noted the information provided by the Government on the bills regarding the following: the revision of Chapter 6 of the Labour Law; monitoring of the implementation of ILO provisions; prohibition of discrimination in employment and occupation; and home-based jobs. Information was also provided on the establishment of a Committee mandated to identify national laws and regulations in conflict with the Convention, training of judicial authorities, establishment of special minority courts and dispute settlement councils and the establishment of a Committee on Women and Legal Studies and Non-discrimination. Information, including some statistics, was also provided on women in the judiciary, Parliament and government positions, and women entrepreneurs.

While noting that the Government had recently submitted a report for examination by the Committee of Experts at its 2010 session, it expressed disappointment that this report had not been submitted in time to be examined by the Committee of Experts during its session in 2009. The late submission of this report made it difficult for the Committee to assess whether any real progress had been made. The Committee hoped that the Committee of Experts would be able to find evidence of progress regarding the range of outstanding issues, including evidence based on detailed statistical information.

The Committee, while acknowledging that certain advances appeared to have been made, remained concerned that, despite the commitment made by the Government in 2006 to bring all the relevant legislation and practice into line with the Convention by 2010, many outstanding issues raised by the Committee of Experts remained unanswered. The Committee urged the Government to amend the discriminatory laws and regulations, and to bring the practice

into line with the Convention, including regarding the role of female judges, the obligatory dress code, the application of social security regulations, hiring of women over 40, and women's access to the labour market, in particular to senior-level positions. Noting that article 1117 of the Civil Code had not been expressly repealed, and that there were indications that the provision continued to have a negative effect on women's employment opportunities, the Committee requested the Government to take steps to repeal the article, and to promote public awareness of the right of women to pursue freely any job or profession. Further, the Committee urged the Government to implement policies aimed at promoting the inclusion of women in the labour market and decent work for women. The Committee also urged the Government to take decisive action to combat discrimination against ethnic and unrecognized religious minorities, in particular the Baha'i.

The Committee noted concerns regarding the imprisonment of trade union officials. The Committee and the Committee of Experts previously raised concerns that in the context of the lack of freedom of workers' organizations, meaningful social dialogue regarding issues related to the implementation of Convention No. 111 would not be possible.

The Committee urged the Government to accept an ILO high-level mission. It hoped that in the context of that mission, the implementation of Convention No. 111 would be addressed as well as freedom of association principles. The Committee requested the Government to ensure that the Committee of Experts would have full and verifiable information before it to examine at its forthcoming session, and hoped that real progress in the implementation of Convention No. 111 could be recorded in the very near future.

### RUSSIAN FEDERATION (ratification: 1961)

The Government provided the following written information.

#### *Articles 2 and 5. Equality between women and men and special protection measures*

In accordance with article 37 of the Constitution of the Russian Federation, labour is free and everyone has the right freely to make use of his or her different aptitudes for work and choose a form of activity and occupation. Every person has the right to work in conditions that meet safety and health requirements. In addition, under section 3 of the Labour Code, everyone must have equal opportunities to exercise their rights at work. No one may be restricted in those rights and freedoms or obtain any advantage, irrespective of sex, race, colour, nationality, language, origins, property, family, social or occupational status, age, place of residence, religious beliefs, political convictions, membership or non-membership of public associations, or any other circumstance not connected with the worker's personal qualities. Moreover, section 212 of the Labour Code requires employers to ensure safe and healthy working conditions for workers, both for men and for women. However, section 3 of the Labour Code provides that distinctions, exclusions, preferences or restrictions on workers' rights that arise from federal law requirements in connection with the nature of the work, or reflect the concern of the State to assist those in need of greater social and legal protection, are not deemed to be discrimination.

The above provisions are implemented through the Labour Code with various special allowances and guarantees for women and other social groups in need of additional social protection. For example, section 253 of the Labour Code restricts the employment of women in heavy work and work in harmful or hazardous working conditions, and in underground work, except for light (non-physical) duties or work in connection with sanitary and domestic

services. Employment of women to perform work involving the manual lifting and moving of heavy loads above a maximum limit is also prohibited. To this end, Government Order (*postanovlenie*) No. 162 of 25 February 2000 “approving the official List of tasks involving heavy work and work in harmful working conditions in which the employment of women is prohibited [hereinafter “the List”] was adopted.

Work by women is governed both by generally applicable provisions of labour legislation and by special provisions adopted to reflect their particular psychological and physiological characteristics and other socially significant factors. The Constitution of the Russian Federation, in accordance with the objectives of a State committed to social welfare, ensures protection of workers and of their health, support for mothers (article 7), the right to work in conditions that meet safety and health requirements (article 37(3)), and the right to health protection (article 41(1)). Maternity enjoys state protection (article 38(1)). The Labour Code (section 11(6)) contains special provisions relating to the employment of women.

Thus the employment of women in areas covered by the aforementioned List is conditional on the creation of safe working conditions. The List restricts the right of employers to employ women if safe working conditions have not been ensured, but not the right of women to carry out work in difficult, harmful or dangerous conditions. According to point 1 of the notes to the List, employers may decide to employ women in occupations or tasks included in the List provided that they ensure safe working conditions and that this is confirmed and certified through workplace inspections by the state labour inspection authorities and the public health authorities of the administrative territories of the Russian Federation. The restrictions apply as a rule not to particular occupations as a whole but only to specific types of work associated with a given occupation. The 456 specialized types of work in the 38 branches contained in the List represent only 4 per cent of all occupations and only about 2 per cent of all forms of economic activity. As applied to actual employment, these restrictions concern an even smaller proportion of workers and represent a fraction of one per cent of overall employment. Thus, where there are objective data to indicate that a woman working in an occupation on the List is exposed more than men to the potential effect of specific harmful factors, then prohibiting her employment in such work does not constitute discrimination inasmuch as it follows from the necessity of extra care with regard to her health, protection of which is guaranteed under the Constitution of the Russian Federation and international standards.

In order to allow a review of existing systems of protection and measures to ensure equal opportunity for women and men and equal protection of safety and health, work is being done to introduce an occupational risk management system at every work place and to involve the main social partners (State, employers and workers) in that system. The creation of an occupational risk management system should become the basis of an occupational safety and health management system for protecting workers at work. The aim of this should be to eliminate risks, or at least reduce them as far as possible, and raise the level of protection of all workers, irrespective of their gender. With that purpose in mind, a working group which includes representatives of all the social partners has drawn up a draft federal law to amend the Labour Code, in particular the definition of “occupational risk”, the establishment of the rights and obligations of parties to employment relationships linked to occupational risk management, and the establishment of a procedure for organizing work on the prevention of occupational illnesses and occupational rehabilitation of workers.

Public monitoring and examination of the components of the system for evaluating and managing occupational risks involves all the parties and representative bodies concerned in the development and planning of measures aimed at modernizing the current system of worker protection and social insurance, and in the examination of draft laws and regulations and trial implementation of decisions that have been adopted. In all this, the Coordination Committee for the Development and Implementation of a Programme of Action to improve Occupational Safety and Health, set up under the auspices of the Ministry of Health and Social Development, plays an important part, as does the Coordination Council for Small and Medium-Sized Enterprises, and self-regulated bodies.

#### *Application of anti-discrimination provisions of the Labour Code*

The rights of citizens in the Russian Federation who have suffered discrimination at work are protected exclusively by the courts. The Labour Code does not provide for the possibility of representations to the federal labour inspection authority, since that authority is not required, and has no authority, to exercise a jurisdictional function which is reserved for the courts. In addition, any moral harm caused by discrimination is a matter for compensation, and decisions concerning compensation can be taken only by courts.

On the other hand, in all cases in which workers make representations on discrimination at work to the Federal Labour and Employment Service and its regional departments, the state labour inspection authorities in the regions provide consultation sessions with workers and give clear guidance as to procedures for applying to the courts in connection with discrimination. Consultations are also arranged by the state labour inspection authorities for workers and employers on issues of observance of labour legislation and other laws and regulations containing labour law provisions, including those concerning discrimination.

#### *Articles 2 and 3. Equality of opportunity and treatment of men and women*

According to data from the Federal State Statistics Service (Rosstat), the number of working women in 2009 was 34,226,000 (49.4 per cent of the total working population in the Russian Federation, counted by main job), broken down into the different branches of the economy as follows:

- agriculture and forestry, hunting, fishing and fish breeding: 2,192,000;
- mining and quarrying: 279,000;
- manufacturing: 4,346,000;
- construction: 852,000;
- wholesale and retail trade, repair of vehicles and personal and household goods, hotels and restaurants: 7,691,000;
- transport and communications: 1,828,000;
- financial activities: 2,729,000;
- public administration and defence, compulsory social security: 2,171,000;
- education: 5,284,000;
- health care: 4,376,000;
- other economic activities: 1,827,000.

The number of working men was 35,059,000 in 2009, broken down into the different branches of the economy as follows:

- agriculture and forestry, hunting, fishing and fish breeding: 3,648,000;
- mining and quarrying: 1,098,000;

- manufacturing: 6,160,000;
- construction: 4,054,000;
- wholesale and retail trade, repair of vehicles and personal and household goods, hotels and restaurants: 4,293,000;
- transport and communications: 4,698,000;
- financial activities: 2,981,000;
- public administration and defence, compulsory social security: 3,387,000;
- education: 1,222,000;
- health care: 1,103,000;
- other economic activities: 832,000.

As at the end of March 2010, the employment rate (the share of the total population aged 15 to 72 that is employed) was 61.2 per cent. Men accounted for 66.4 per cent and women 56.7 per cent of the total. Women's share of employment was 49.2 per cent.

*Compliance with labour legislation with regard to women's employment in the Russian Federation in 2009*

In 2009, measures to identify and redress violations of women's labour rights were carried out under the Action Plan of the Federal Service for Labour and Employment on inspection and supervision of compliance with labour legislation and other laws and regulations containing labour law provisions. A total of 3,818 inspections were thus carried out in order to inspect and supervise compliance with labour legislation related to women, during which 13,578 violations of labour legislation were identified and eliminated.

Where violations of labour legislation were found, employers were issued instructions (over 2,100 issued), administrative penalties were imposed on officials guilty of violations (over 1,600 fines were issued, totalling over 3,892,500 roubles). Over 2,000 employment contracts were concluded with women on the orders of state labour inspectors, and over 500 orders of dismissal of such workers were revoked.

In order to prevent violations of the labour rights of pregnant women and those on child care leave until the child reaches the age of three, the state labour inspectorates in the constituent units of the Russian Federation provide information and consultations to the parties to the employment relationship, including through telephone hotlines, web sites and the media. In addition, they have been instructed to give priority to handling complaints from pregnant women and those with children under the age of 3.

In addition, before the Committee, a **Government representative** recalled the provisions of the Constitution as well as those of the Labour Code that guaranteed the principle of non-discrimination in employment and the right to work in conditions that met safety and health requirements. He specified, however, that restrictions arising from federal law requirements in connection with the nature of the work, or reflecting the concern of the State to assist those in need of greater protection, were not deemed to be discrimination. As for Government Resolution No. 162 of 25 February 2000 approving the official list of tasks involving heavy work and work in harmful working conditions in which the employment of women is prohibited, it had been adopted in order to give effect to section 253 of the Labour Code which restricted the employment of women in heavy work, work in harmful or hazardous working conditions and in underground work. He noted that 456 specialized types of work in the 38 branches contained in the list represented only 4 per cent of all occupations and only about 2 per cent of all forms of economic activity. He added that, according to the Annex of Resolution No. 162, employers were allowed to

employ women in occupations or tasks included in the list, provided that they ensured safe working conditions and that this was confirmed and certified through workplace inspections by the state labour inspection authorities and the public health authorities of the administrative territories of the Russian Federation.

Referring to the ongoing work for the review of existing systems of protection and measures to ensure equal opportunity for women and men, the speaker indicated that the intention was to introduce an occupational risk-management system at every workplace and to involve the social partners in that system. The objective was to eliminate or reduce risks and to raise the level of protection of all workers, irrespective of gender. To this end, a tripartite working group had prepared draft legislation amending the Labour Code, especially in matters related to occupational risk management, prevention of occupational illnesses and occupational rehabilitation of workers.

Turning to the question of the extra-judicial settlement of anti-discrimination claims, the speaker explained that the labour legislation did not provide for the possibility of anti-discrimination complaints to be filed with the labour inspection authorities as these authorities could not exercise judicial functions. In addition, compensation for moral damages for those who had suffered discrimination in employment could only be awarded by court decision. However, the labour inspection authorities and the Federal Labour and Employment Service and its regional departments provided guidance to workers concerning the procedure for filing court cases on discrimination.

Concerning women's representation in the labour market, the speaker referred to the detailed statistical information provided by the Government in its written submission. He drew attention to the fact that statistics differed according to the sectors: whereas in the construction and mining sectors there were four times fewer women than men, in the health and education sectors, the situation was the opposite. Finally, he referred to labour inspection results for 2009 according to which 3,818 inspections were carried out, 13,578 violations of women's labour rights were identified, and fines totalling over 3 million roubles had been imposed.

**The Worker members** enumerated the various points mentioned in the observation of the Committee of Experts and the relevant Articles of the Convention. With regard to equality between men and women and positive action measures, the Labour Code prohibited discrimination and established the principle that reasonable adaptation of working conditions or regulations in order to accommodate workers' specific circumstances or needs did not constitute discrimination. That approach was understandable, but when "specific circumstances" applied to women workers as a whole, it became an abuse. Such was the case of Resolution No. 162, about which the Committee of Experts had expressed concern and which effectively prohibited women from entering 456 occupations in 38 sectors of the economy. The Committee of Experts did not agree with the arguments presented by the Government to justify the intended objective of the Resolution and had expressed doubt as to whether adequate measures were being taken within the framework of the Resolution to ensure application of the policy of equal working conditions for men and women. In that regard, the Worker members underlined that, legally, the approach embodied in Resolution No. 162 did not coincide with the concept of positive action, and that the Resolution went beyond the meaning of Article 5 of the Convention. Furthermore, it seemed that, under the guise of protecting women, no overall consideration was given to the improvement of occupational safety and health conditions for all workers.

The Worker members also noted the lack of genuine information provided by the Government, not only on pro-

ceedings before the civil courts and the outcome thereof, given that plaintiffs could no longer petition the labour inspectorate, but also on statistics and measures to ensure that men and women could access employment on an equal footing, in view of the highly segregated nature of the Russian labour market.

Lastly, with regard to equal opportunities for and treatment of ethnic minorities and indigenous peoples, the Worker members emphasized that, while Russians made up 80 per cent of the population, the Federation contained many other ethnic groups. The Government's recognition that problems existed in that sphere, particularly in terms of the preferential treatment accorded by certain republics within the Federation to individuals belonging to the dominant ethnic group, was welcomed. Although the Constitution forbade discrimination, genuine and reliable measures should be taken to monitor implementation of the Labour Code and solve the issue of equal opportunity for and treatment of ethnic minorities and indigenous populations in the field of employment swiftly and unequivocally.

The Government should take into account universally recognized and accepted legal concepts concerning equality and non-discrimination and compare them in good faith to domestic legislation in order to find a satisfactory solution that respected the principles of non-discrimination set out in Convention No. 111. In respect of any cases of discrimination identified, the Government should adopt simple and effective protection measures in the event of unfavourable treatment, ensure compensation for victims, and introduce rules concerning the burden of proof in order to add to the promotional measures already planned. One possible solution would be to create bodies responsible for promoting and monitoring application of the principle of equality of treatment in employment and occupation and assisting victims. In addition, such bodies could monitor statistics on discrimination observed in the labour market.

**The Employer members** thanked the Government for the information it provided to the Committee. They recalled that the Committee of Experts had made six observations with respect to this case which was being examined for the first time by the Conference Committee. They urged the Government, if it had not already done so, to provide all the necessary information addressing the issues raised by the Committee of Experts.

The Employer members further recalled that Resolution No. 162 excluded women from being employed in 456 occupations in 38 sectors of the economy. While noting the Government's explanations, the Employer members stated that the Resolution raised many issues regarding equality of opportunity in employment and occupation of men and women, and that special measures for women that were based on stereotyped perceptions regarding their capacity and role in society violated the principle of equality of opportunity and treatment. Thus, the exclusion of women from work or employment on the basis that it involved hazardous or dangerous working conditions creating equal risks for men and women likely went beyond the permissible bounds of Convention No. 111. They were concerned that the impact of such regulations could hinder both women's equality in the labour market and progress in ensuring that men and women had safe work environments.

Recalling the Committee of Experts' observation that employment of women appeared to be concentrated in clerical occupations while women were underrepresented in senior positions, the Employer members urged the Government to take the necessary measures to ensure equal employment opportunities, strengthen the legal framework and amend Resolution No. 162. They also called for information on measures taken in this respect,

including statistical information on the distribution of men and women in different sectors and industries and level of responsibility. Finally, they requested that the Government continue to provide information on the measures taken to promote and ensure equality of opportunity and treatment of ethnic minorities and indigenous peoples through promotional measures and an appropriate legal framework in this respect.

**The Employer member of the Russian Federation** aligned herself with the statement of the Government representative and expressed the view that women needed special protection in cases of work in harmful or hazardous working conditions and that such protection could not be deemed discriminatory. With reference to Resolution No. 162 of 2000, she indicated that the text permitted employers to employ women in tasks included in the list of prohibited occupations on condition that they ensured safe working conditions and that this was certified by the state labour inspection authorities. Risk assessments were carried out at every workplace to ensure equal protection of safety and health standards for both women and men. She concluded by reiterating that, in the view of the employers of her country, Resolution No. 162 could not be considered discriminatory in nature.

**The Worker member of the Russian Federation** confirmed that there was a prohibition against women's employment in certain occupations, but that this related to the protection of women's reproductive health. As regards the possibility of filing anti-discrimination complaints only with the courts, he noted that it was very difficult to prove any such claim. The legislation should therefore be amended in this respect so that labour inspectors were given the opportunity to investigate cases of discrimination in employment and occupation.

**The Government member of Uzbekistan** stated that the issue of gender equality was one that was very important and topical to the Government of the Russian Federation. It was necessary to highlight that, as regards the application of Convention No. 111, the Russian Federation had provided the appropriate legal basis and framework for compliance, and ensured equality of opportunity for all, including the opportunity of employment in appropriate conditions. The Government sought to provide safe working conditions for both men and women and laws on gender equality had been adopted and implemented. Restricting access to certain types of work was not discriminatory. He expressed support for measures aimed at ensuring special protection for women workers. Government had provided a strong system of penalties to prevent and punish violations, including fines and administrative sanctions, thus ensuring that existing laws and administrative procedures were complied with in practice. He concluded by stating that the Government had given a clear picture with respect to the application of the Convention and that gender equality was fully applied both in law and in practice.

**The Government representative** thanked those speakers who participated in the discussion and indicated that his Government would take all the views expressed into account. The various legislative acts, including Resolution No. 162, were seeking to improve the economic and social situation in the country. He added that the Resolution had not been recently drafted, but rather was a legal text that had existed for a long time, and therefore expressed surprise at the timing of the discussion.

**The Employer members** stated that the prohibition of women working in certain occupations should be repealed, as this prohibition violated the principle of equality of opportunity in employment and occupation of men and women. They expressed the view that, despite the Government's intention of protecting women from hazardous work, Resolution No. 162 hindered women's

equality in the labour market; women should be entitled to exercise free choice with respect to a decision to seek employment in those industries or not. They further observed that it would be unfortunate if the Resolution's impact was to limit progress in ensuring that both women and men were provided a safe work environment, regardless of the industry or occupation, and they held that the conclusions should reflect these concerns.

The Worker members noted the written information provided by the Government and emphasized that certain positive elements in the case could have served to show the Government's goodwill. However, in his response, by refusing to amend Resolution No. 162, the Government representative had shown the obstinacy of the approach adopted. It needed to be emphasized that there was no possible excuse for refusing to give effect to universally recognized and accepted legal concepts in the field of equality and non-discrimination, although there might still exist problems of a technical nature or related to human resources issues which were preventing a solution being found to the complex issue of non-discrimination and Convention No. 111. The question needed to be addressed with the social partners and, if necessary, with ILO assistance.

For that purpose, the Worker members proposed the establishment of a tripartite committee to revise and supplement the national legislation, with the following mandate: to introduce into the Labour Code complete and simple provisions to give effect to the concepts and procedures envisaged in the Convention for the benefit of workers from ethnic minorities; to provide for the effective compensation of victims and rules to facilitate the burden of proof; to take measures and undertake awareness-raising campaigns on the issue of discrimination and its prohibition; to establish bodies with the role of promoting and monitoring the implementation of the principle of equality of treatment in employment and occupation; and to entrust these bodies with the implementation of procedures to assist victims, in collaboration with the social partners. The Worker members called on the Government to provide information for the Committee of Experts' session in 2011 on the establishment of this tripartite committee and the results achieved.

### Conclusions

The Committee noted the oral and written information provided by the Government representative and the discussion that followed. It noted that the Committee of Experts had raised concerns regarding Resolution No. 162 of 25 February 2000, excluding women from being employed in 456 occupations and 38 branches of industry, and section 253 of the Labour Code which provides that the employment of women in arduous work and work in harmful or dangerous conditions shall be limited. The Committee of Experts had also raised issues with respect to the enforcement of the non-discrimination provisions in the Labour Code, occupational gender segregation in the labour market, and the need to promote and ensure gender equality and equality of opportunity and treatment of ethnic minorities.

The Committee noted the statistical information provided by the Government on the representation of women and men in the different branches of the economy in 2009. It also noted the information regarding the legislation on non-discrimination and safe and healthy working conditions, and the reasons it was considered that the employment of women in certain areas should be made conditional upon the creation of safe working conditions, certified by the inspection authorities and the public health authorities. The Government also provided information on the steps being taken to review the existing system of safety and health protection, including the introduction of a workplace occupational risk management system involving the social partners. The

Committee also noted the measures taken under the Action Plan of the Federal Service for Labour and Employment, and the role of the labour inspection authorities in providing guidance and consultation on legislation and procedures regarding non-discrimination.

The Committee noted that Resolution No. 162 and section 253 of the Labour Code went beyond protecting women's reproductive health and broadly restricted their access to occupations and sectors that involved equal health and safety risks to men and women. The Committee urged the Government to take steps to revise section 253 of the Labour Code and Resolution No. 162 to ensure that any limitations on the work that could be undertaken by women was not based on stereotyped perceptions regarding their capacity and role in society and was strictly limited to measures to protect maternity. The Committee asked the Government to ensure that the planned review of the existing system of health and safety protection addressed the need to provide a safe and healthy working environment for both men and women, and one that would not lead to measures hindering women's participation in the labour market. Noting the highly gender segregated labour market, the Committee asked the Government to take measures to address the legal and practical barriers to women's access to the broadest possible range of sectors and industries, as well as at all levels of responsibility.

The Committee urged the Government to take measures, through tripartite consultation, to ensure non-discrimination and promote equality of opportunity and treatment in employment and occupation for all groups protected under the Convention, including ethnic minorities. Such measures should include strengthening the legal framework. The legal framework should address direct and indirect discrimination and the burden of proof, and provide for effective remedies in discrimination cases. The strengthening and establishment of appropriate mechanisms to promote, analyse and monitor equality of opportunity and treatment in employment and occupation should also be part of these measures.

The Committee requested the Government to include in its report to the Committee of Experts at its next session complete information replying to all the matters raised by this Committee and the Committee of Experts, including relevant statistical information disaggregated by sex.

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### Employment Policy Convention, 1964 (No. 122)

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#### THAILAND (ratification: 1969).

The Government provided the following written information.

In accordance with the present policy to mitigate the impact of the economic crisis on workers and employment, the Government has adopted the Economic Stimulus and Recovery Package, which is in line with the Global Jobs Pact, with the aim of reviving the Thai economy and protecting the least fortunate and the poorest in the country by building a better social safety net for the most vulnerable groups. On 6 May 2009, the Cabinet approved several cross-cutting projects under the Strengthening Thai or Thaikhemkhaeng Action Plan, which are being mainstreamed into the national policies and programmes of all relevant ministries. With regard to employment promotion, the Ministry of Labour (MoL) has carried out many different projects, including: the projects on hiring volunteer graduates and the expansion of vocational guidance for youth in the border provinces in the south; the project on labour market promotion in the Middle East countries, Africa and Malaysia for employment promotion in the bordering Southern Provinces; the project on skills development to increase employability; and

the project on the development and promotion of self-employment.

*Articles 1 and 2. Employment and social policy: reaching out to workers in the informal economy and the coordination of employment policy measures with unemployment benefits*

The Government has provided protection to all workers in the country. Workers in the informal economy and the self-employed can gain access to the social insurance system in accordance with the law on a voluntary basis. The MoL plans to publicize and seeks to convince workers in the informal economy to apply to become insured persons. With regard to benefits, measures are being improved to respond to the needs of informal workers and the law is being revised to expand the coverage of benefits and to increase the categories of workers able to gain access to the social security system. The MoL also provides services to unemployed insured persons with a view to employment promotion, for example, through employment services, vocational guidance and skills training.

#### *Employment promotion measures*

Pursuant to the Tenth National Economic and Social Development Plan 2007–11 “human beings are the center of development” which, through capacity and skill development, in line with labour demand they should be able to enter the world of work and competitiveness; life-long learning is promoted in Thai society; labour productivity is enhanced; and the opportunity to access social services for the elderly, disabled and vulnerable is accelerated. Everyone benefits from free compulsory education for 15 years and student loans have provided greater opportunities at the vocational and undergraduate levels. More people can gain access to informal education and life-long learning. Workers at all levels are being equipped with knowledge and standard skills in line with the ever-changing technology and labour market.

*The human potential development scheme.* Human resource development schemes provide access to life-long learning and enhance the educational quality of everyone, as well as improving labour productivity through skills training and skills standard testing. The Department of Skill Development (DSD) has provided: pre-employment training for inexperienced young and adult jobseekers, with 16,183 people attending training in 2009; skills upgrading training for workers currently in the labour market, with 164,704 people attending courses in 2009; skills standard testing with the aim of categorizing the skills levels of workers, with 51,746 successful applicants for skills testing in 2009; and entrepreneurship training for those interested and workers in various enterprises, with 22,733 enterprises and 4,271,594 workers participating in such training in 2009, in addition to another 90,715 interested persons from the general public.

*Social protection measures.* During fiscal year 2010, the MoL, through the Department of Labour Protection and Welfare (DLPW), has taken measures to mitigate the suffering and assist employees and their families so as to help them maintain their jobs and to aid those laid off during the crisis. Two projects have been carried out: the project on the fund to prevent, resolve and assist those in the labour sector affected by the world economic crisis which has provided welfare funds to 364 employees; and the project on the prevention and resolution of dismissals, which has just begun to operate.

*Upgrading national competitiveness.* The DSD has joined the World Skills Contest with the aim of promoting the skills of Thai youth and publicizing the skills capacity of Thai workers to the world community. Thai Labour Standard (TLS 8001-2003) has been adopted in support of

all types of establishments, especially those that are export oriented, for implementation on a voluntary basis, with the aim of improving labour administration and making it more systematic in accordance with international labour standards with a view to improving the living standards of workers and enhancing the sustainable development of business. As of 2009, there are 175 establishments with TLS 8001-2003 certification.

*Restructuring sustainable development in rural and urban areas.* Strategies have been developed to provide guidance to regions, groups of provinces and provinces for the sustainable development of rural and urban areas. In particular, a project has been implemented to strengthen the potential of the unemployed to add economic and social value to the community (the Tonkla-Archeap Project), under which 419,658 unemployed and interested persons have been trained, with 163,538 trainees being recycled to enter self-employment. The results include a fall in migration from rural to urban areas, the promotion of employment and an increase in income generation for rural people.

#### *Matching labour supply and demand*

The Department of Employment (DOE) has developed an online labour market information system to help those seeking and offering labour through the provision of labour market information, including news on the Thai economy and investment. The online system includes: domestic employment (e-service) and the online labour market information system through the DOE's web site, comprising a regional journal and basic information for the provinces. During fiscal year 2009, there were 382,752 vacancies and 3,037,305 jobseekers, of whom 275,573 were placed in jobs.

#### *Linking skills development measures and the labour market*

The Labour Market Information Centres located throughout the country have provided assistance through labour market schemes, including: the enhancement of the labour market information database; the establishment of a workforce registry system; and the enlargement of labour market information networks to villages. The DSD has conducted pre-employment training to prepare newcomers to the labour market.

*Cooperation between the MoL and the Ministry of Education to reinforce educational and skills training measures.* The National Committee on Skill Development Coordination and Labour Development, led by the Prime Minister and comprising representatives from the relevant ministries, including the Ministry of Education and the MoL, is responsible for formulating human resource development policies to consolidate skills development and educational schemes, as well as monitoring implementation. In 2009, in this context, training was provided for 6,905 unemployed persons and skills upgrading courses for 339,176 part-time and full-time workers in enterprises.

*Measures to increase the ratio of women in the labour market.* In the context of the DSD project on “women's empowerment”, training courses were provided for chefs, child and elderly carers, office clerks, waitresses, housekeepers and fashion designers. During the course of 2009, there were a total of 323,339 trainees in DSD courses, of whom 150,543 were women.

*Training for persons with disabilities.* In 2009, the DSD conducted skills training for 321 persons with disabilities, of which 93 are employed. The Office of Social Security (OSS) has provided rehabilitation and vocational training for 197 persons with disabilities and 191 are employed.

*Preventing abuse in the recruitment of migrant workers*

Since 2004, under the supervision of the Illegal Migrant Worker Administrative Committee, seven strategies have been defined with the objective of the legal employment of foreign workers. The first phase involved the registration of illegal workers from Cambodia, the Lao People's Democratic Republic and Myanmar, who will be allowed to stay temporarily and work in the country for no longer than one year while awaiting repatriation. The total number of foreign workers' work permits renewed was 932,255, of whom 812,984 are from Myanmar, 62,792 from the Lao People's Democratic Republic and 56,476 from Cambodia. Such permits will expire on 28 February 2011. The second phase consisted of the modification of the status of registered foreign workers to that of legal migrant workers. The countries of origin are required to verify the nationalities of these foreign workers, after which they issue a certificate of verification of nationality or a passport. The workers then have to apply for a visa from the Thai authorities so that they can then apply for a work permit. As of 27 April 2010, the total number of foreign workers whose nationalities have been verified is 200,610, including 71,390 from Myanmar, 58,430 from the Lao People's Democratic Republic and 70,790 from Cambodia. The third phase consisted of the recruitment of foreign workers in accordance with the Memorandum of Understanding signed between the Thai Government and the Governments of Myanmar, the Lao People's Democratic Republic and Cambodia. As of 27 April 2010, there are 110,776 foreign workers from these countries allowed to work in Thailand, including 20,092 from Myanmar, 49,036 from the Lao People's Democratic Republic and 41,711 from Cambodia.

*Workers in the rural sector and the informal economy*

The Basic Economy Fund has allocated support for development projects for 80,000 villages nationwide. At the same time, the MoL, in cooperation with the Ministry of Agriculture and Cooperatives, has signed an agreement to assist workers who wish to return to agricultural occupations. Unemployed persons who so wish and are selected will be allocated land for agricultural work. The DOE has implemented projects to promote employment for groups of workers in the informal economy in the areas of: the promotion and development of home-based work, under which 4,248 persons were trained in 2009; job creation for the unemployed through the creation of self-employed activities, covering 3,488 persons in 2009; and the provision of loans at low interest rates of not more than 200,000 baht (THB) or US\$6,200 to organized groups of homeworkers of five or more persons.

With a view to improving the protection of workers in the informal economy, a working group has been established covering all the relevant agencies of the MoL. There are currently laws protecting homeworkers and workers in agriculture. The working group is establishing the framework and drafting the ministerial regulation on the protection of domestic workers, including provisions on holidays, the right to maternity leave, the minimum wage and occupational safety and health. On 3 March 2010, the House of Representatives approved the Labour Protection for Homeworkers Bill, which is now before the Senate.

In addition, before the Committee, a **Government representative** underlined the firm intention of her Government to comply with the Convention, the provisions of which had always been used in formulating policies and measures to promote employment in the country. To mitigate the impact of the economic crisis on workers and employment, her Government had adopted the Economic Stimulus and Recovery Package – which was in line with

the Global Jobs Pact – with the aim of reviving the Thai economy and protecting the least fortunate and poorest in the country by building a better social safety net for the most vulnerable groups. On 6 March 2010, a Resolution had been adopted by the Cabinet of Ministers to approve several cross-cutting projects under the Strengthening Thai or Thaikhemkhaeng Action Plan, which were being mainstreamed in national policies and programmes of all relevant ministries. Several projects were also being carried out by the Ministry of Labour regarding expansion of vocational guidance for youth, labour market and employment promotion, skills development, and development and promotion of the self-employed.

Turning to the points raised by the Committee of Experts regarding measures to reach out to workers in the informal economy and the coordination of employment policy measures with unemployment benefits, she stated that informal economy workers and the self-employed could gain access to the social insurance system on a voluntary basis. The law was being revised to expand coverage of benefits and to increase the categories of workers who could gain access to the social security system. Services were also provided to unemployed insured persons with a view to employment promotion. Regarding employment promotion measures, she highlighted the importance given to skills development and life-long learning under the Tenth National Economic and Social Development Plan for 2007–11, and the fact that under the present Government policy everyone had an opportunity to attend free compulsory education up to the age of 15 years. The student loan provided for enhancing opportunity of access to education at vocational and undergraduate levels. More people could access informal education and life-long learning. Through the Human Potential Development Scheme, human resource development schemes provided adequate access to life-long learning, enhanced educational quality, and improved labour productivity through skills training and skills standard testing. The Department of Skills Development had also undertaken activities in the areas of pre-employment training, skills-upgrading training, skills standard testing and entrepreneurship training. With respect to social protection, the Government had been taking measures to mitigate the suffering and had assisted workers and families so as to help them maintain their jobs and to aid those that had been laid off during the crisis. Measures had also been taken to upgrade national competitiveness, such as the Thai Labour Standard (TLS 8001-2003) which had been adopted in support of all types of establishments, especially those that were export oriented, and was to be implemented on a voluntary basis. As of 2009, there were 175 establishments with TLS 8001-2003 certification. Strategies were also being developed to provide guidance to regions and provinces for sustainable development in rural and urban areas. Of particular interest was the project to strengthen the potential of the unemployed to add economic and social value in the community (Tonkla-Archeap Project), under which 419,658 unemployed and interested people had been trained. This had resulted in the decrease of rural–urban migration and an increase in income generation of rural people.

With respect to linking skills development measures and the labour market, labour market information centres located throughout the country had provided assistance through labour market schemes. The National Committee on Skill Development Coordination and Labour Development was responsible for formulating human resource development policies to consolidate skills development and educational schemes. Measures had also been taken to increase the ratio of women in the labour market through the project on “women's empowerment”. On the issue of migrant workers, she explained how the Govern-



ment's active employment policy was preventing abuse in the recruitment of migrant workers in Thailand, through the registration of foreign illegal workers, especially those coming from Cambodia, the Lao People's Democratic Republic and Myanmar. Registered foreign workers could, after their nationalities had been verified, modify their status of registered foreign worker into that of legal migrant worker.

Lastly, with respect to workers in the rural sector and the informal economy, the Basic Economy Fund had allocated support for development projects nationwide and the Ministry of Labour had signed an agreement to assist workers who wished to return to agricultural occupations. Projects were being implemented to promote employment of workers in the informal economy, including home-based workers, through the provision of loans at low interest rates. The Government was also looking into establishing a framework and drafting a regulation on the protection of domestic workers, and on 3 March 2010, the House of Representatives had approved the Labour Protection of Homeworkers Bill, which was now before the Senate.

**The Worker members** thanked the Government representative for the information provided, which was particularly valuable as the Government had not provided a report on the application of the Convention since 2007. Unfortunately, the information provided in writing had only been communicated to the members of the Committee that day. The Worker members were very attentive to Convention No. 122, which was a priority Convention and envisaged the means of guaranteeing workers the possibility to benefit from their right to work. The discussion that had been held in the Conference Committee on the General Survey on the employment instruments, which was continuing in the Committee for the Recurrent Discussion on Employment, had confirmed the importance of employment policy in promoting and facilitating full, productive and freely chosen employment, as well as decent work.

The first point raised in the observation of the Committee of Experts concerned employment policy and social protection. The Committee of Experts had emphasized that 15,500,000 workers in the informal economy were not covered by unemployment benefits. That number had further risen with the economic and financial crisis. In this respect, the Worker members referred to paragraph 22 of the Global Jobs Pact which emphasized, among other matters, that it was necessary to address informality to achieve the transition to formal employment. It was only in this way that workers would be able to enjoy all their rights in the field of social protection.

The Committee of Experts had also raised the question of coordinating employment policy with poverty reduction. The Worker members took due note of the efforts made by the Government in relation to the training of jobseekers and access to credit through cooperative funds. However, the question that arose concerned the extent to which these efforts formed part of a broader employment policy intended to achieve a significant reduction in poverty in the country. The Government needed to intensify its efforts in this field. The Worker members added that they did not have precise information on the measures that the Government indicated it had taken to give effect to the conclusions adopted by the Conference Committee in 2006 on migrant workers, and they endorsed the request made by the Committee of Experts to the Government to report in detail on the impact of the action taken within the framework of an active employment policy to prevent abuse in the recruitment of labour and the exploitation of migrant workers in Thailand. They also urged the Government to ensure the systematic inclusion of a social clause in the bilateral agreements concluded with

neighbouring countries with a view to guaranteeing full respect of the rights of migrant workers.

The Worker members also observed that the participation rate of women in the labour market was very low, particularly in the formal economy. They welcomed the measures taken by the Government to raise this rate. However, much still remained to be done and the Government would need to intensify its efforts in this field and provide information on the real impact of the measures adopted. In addition, the Worker members called on the Government to provide data on the impact of the measures taken to promote the participation of persons with disabilities in the labour market, including statistics on the number of persons with disabilities who had completed a training programme and had found employment, so that the Committee of Experts could follow developments in the situation.

Finally, the Worker members emphasized the great importance of Article 3 of the Convention respecting the consultation of representatives of the persons affected by the measures to be taken, and in particular, representatives of employers and workers, in relation to employment policies with a view to taking fully into account their experience and views and securing their full cooperation in formulating and enlisting support for these policies. They noted the Government's indication that all the parties concerned would be involved in the employment policy, but requested the Government to provide further information on this subject.

**The Employer members** observed that the Convention was a priority Convention of particular importance for governance and that the Government had not provided the information that had been requested by the Committee of Experts ever since 2007. The Government had submitted written information to the Conference Committee only very recently. Consequently, it was not possible to examine the case properly, as the Committee of Experts had not been in a position to make its valuable contribution to the discussion between the workers and the employers.

The information provided by the Government basically covered three points. First, the Economic Stimulus and Recovery Package would, in accordance with the Global Jobs Pact, revive the economy and protect the poor by means of a social network. The Government had thus given its approval to cross-cutting projects. Second, under the country's social and employment policy, workers in the informal economy would be covered by a social security system that would afford them social protection that had previously not existed. Third, the promotion of employment under the Tenth National Economic and Social Development Plan for 2007–11 placed people at the centre of development and established a link between training for workers and the demand for labour.

Human development was important, especially in terms of life-long training, improvements in the quality of education, and the productivity of labour. Social protection measures were also essential in times of crisis so as to avoid dismissals. Workers had to adapt their skills to the supply of, and demand for, labour in order to help those who were looking for work or had jobs to offer. In this respect, the information provided by the Government mentioned the National Committee on Skills Development Coordination and Labour Development, which was preparing training and education programmes, a project for working women, training for workers with disabilities and development measures for the rural sector.

The Employer members noted that one of the principal objectives of the Convention was that each member should declare and pursue an active policy designed to promote full, productive and freely chosen employment. That policy was to be pursued by methods that were appropriate to national conditions and practices, and in con-



sultation with the social partners. In its General Survey, the Committee of Experts expressed the view that there were three fundamental steps to achieving full employment: (1) making a political commitment in this regard; (2) building the institutions necessary to ensure the realization of full employment; and (3) supporting and promoting training of workers and promoting the development of small and medium-sized enterprises (SMEs). An entrepreneurial culture needed to be developed as part of the country's employment policies in order to promote the development of enterprises and the creation of jobs. What was called for was not an analysis of the legislation in terms of the Convention but a more general analysis to determine whether the employment and market policies were in accordance with its provisions. The value of the information requested from the Government, which needed to be provided sufficiently in advance, would depend on the extent to which it related to the effectiveness of the country's active employment policies.

**The Employer member of Thailand** underlined that the Thai Government had provided several consultation forums for social partners during the current crisis. Employers' organizations in the country were cooperating with the Government to find solutions to these problems. Enterprises affected by the financial crisis had been participating in the Tonkla-Archeap Project, which allowed employers to send their surplus labour for skills training, with the financial support of the Government. This had allowed employees to maintain an income. Participating enterprises had signed a Memorandum of Understanding with the Government not to lay off their employees for a minimum period of one year with governmental assistance. The Government had also provided low-interest loans to enterprises with a lack of liquid assets who had agreed not to lay off their employees for a minimum period of one year. The speaker expressed support for the Government's efforts to overcome the crisis and achieve decent work in the country.

**The Worker member of Argentina** stated that, in this case, the strategies implemented in order to apply the Convention, not only had not produced results until then, but had also produced serious inconveniences. The Ministry of Labour, with the cooperation of the University of Chulalongkorn, had carried out studies related to the impact of free trade treaties in seven industrial sectors. According to these studies, highly competitive practices associated with free trade treaties led to precariousness as a result of favouring economic criteria aimed at reasons for competitiveness over parameters that dealt with worker protection and decent employment. There was a lack of information on the studies carried out by the Government of Thailand to avoid those negative effects, and on the corrective measures adopted. The consequences had become worse owing to the crisis. In that sense, it was necessary to evaluate strategies in light of the Global Jobs Pact. Those strategies should not necessarily result in adjustment, decreased wages or recessive policies, as there were other alternative models that were being applied and that had produced success in other countries with different histories and productive models. Those experiences showed that there was a different way to achieve the adjustment required for dealing with the crisis, namely through the harmonious development of national economic processes so as to protect decent employment, create new jobs and increase social protection; all of that under a tripartite framework for dialogue. The countries that implemented policies that took into account human beings as the centre of economic activity, as proposed in the strategies of the Global Jobs Pact, had obtained highly positive results. The steps taken in Argentina took into consideration a basic axiom: that of the virtuous growth cycle of an economy, which taught us that higher salaries

produced greater domestic consumption, which in turn produced greater production with a resulting increase in employment. These were worthy alternatives to adjustment and loss of decent jobs that respected ILO goals and protected the human condition. Those measures were a demonstration of the viability of the Global Jobs Pact and, therefore, of possible application in the case of Thailand.

**The Worker member of Germany** said that as well as making a valuable contribution in the international arena, for example through the Global Jobs Pact, the ILO could also exert an influence at national level. To that end, it should, however, always have detailed information available concerning the current labour market situation in its member States. Yet, the Government of Thailand had not provided the required information on its employment policy in recent years. Cooperation was necessary, particularly in the current context of economic and financial crisis. The crisis had allowed certain employers in Thailand to dismiss trade unionists and to recruit workers on temporary contracts in their place. Fear of dismissal and the weaknesses of labour legislation prevented unionization in many places. Unfortunately, Thailand had still not ratified Conventions Nos 87 and 98.

During the first three months of 2010, Thailand's gross domestic product had grown by 12 per cent. According to the Government, that increase had resulted from exports, banking sector stability, and its monetary and fiscal policies. It was difficult to be certain, however, given the lack of available data. What was certain, though, was that a large number of poor people, principally in the informal economy, were not benefiting from the Government's aid programme, and that social inequalities, to which migrants were particularly vulnerable, remained prominent in the country. Furthermore, despite attempts to shape a social policy, an in-depth reform of labour legislation had yet to be undertaken. The speaker strongly urged the Government of Thailand to cooperate with the ILO and all its member States during the current crisis. Joint work was needed to ensure that, throughout the world, positive measures were taken to promote widespread job creation. Lastly, the speaker urged the Government to show transparency in its policies and to communicate information to the ILO, under Convention No. 122, on recent trends in its labour market.

**The Worker member of Indonesia** was disappointed that the Government of Thailand had not provided detailed information on efforts made to meet its obligations under the Convention with respect to migrant workers. In 2006, the Committee, when discussing the case, had already emphasized the importance of an active employment policy to promote the effective integration of migrant workers in the labour market and to prevent their abuse and exploitation. There were more than two million migrant workers in Thailand, representing 5 to 10 per cent of the labour force and contributing approximately 1.25 per cent to the GDP in 2005. They worked primarily in the agriculture, fishing, construction, manufacturing and services sector. Most migrants were undocumented and had fled the repressive regime in Burma. They were vulnerable to exploitation and violation of their rights, in particular with respect to wages, working time and occupational safety and health. In addition, they faced obstacles to forming trade unions and accessing social protection. Undocumented workers were even at a higher risk of being victims of trafficking and slavery. Migration policies and programmes should be put in place, in consultation with social partners, to acknowledge the existence of large numbers of workers, both in a regular and irregular situation, and to respond to their rights and needs. The registration schemes already in place could help formalize irregular migration flows. However, the existing schemes were too restrictive, costly and difficult to use. The na-

tional verification process for migrant workers had created confusion and insecurity, in particular for stateless persons from Burma. Migration policies had to be carefully formulated and implemented in compliance with Convention No. 122, thereby taking into account the interaction between migration and labour laws. The Government was urged to report in detail next year on the efforts made to improve the status of migrant workers in the labour market.

**The Worker member of Brazil** recalled that the Government of Thailand had not complied with its obligation to provide reports on the application of the Convention since 2007. That constituted an obstacle to the proper functioning of the ILO supervisory system. The information provided by the Government in writing in was not sufficient to demonstrate its commitment. Convention No. 122 had been of the greatest importance since the beginning of the economic and financial crisis. The Thai economy was closely linked to that of the United States, Europe and Japan, which were still suffering from the effects of the crisis. The Thai GDP had fallen by 2.49 per cent in 2009 and, according to the available information, it appeared that unemployment would rise over the next two quarters. The number of workers in the informal economy, which already accounted for 70 per cent of the active population, was liable to rise as a result, as it acted as a shock absorber for workers who lost their jobs. As workers in the informal economy were not covered by social security, the phenomenon would result in a rise in social exclusion. He considered that the social protection system needed to be universal. The primary objective of the Convention, which was the promotion of full, productive and freely chosen employment, therefore remained very difficult to attain, at least for workers in the informal economy.

Referring to the objectives established in the Decent Work Country Programme for the period 2010–11, he emphasized that the information provided by the Government hardly covered the measures adopted in that context, with the exception of the efforts made to include workers in the informal economy in the social security system, which was totally unsatisfactory. He also referred to the conclusions concerning decent work and the informal economy adopted by the Conference in 2002, which placed emphasis on the priority that needed to be given, among others, to the following aspects: “removing obstacles to, including those in the legal and institutional framework, the realization of all the fundamental principles and rights at work” and identifying “the obstacles to application of the most relevant labour standards for workers in the informal economy and assist the tripartite constituents in developing laws, policies, and institutions that would implement these standards”. Unfortunately, none of these issues appeared in the Decent Work Country Programme for Thailand.

In conclusion, he hoped that the Committee would request that the Government of Thailand provide detailed and up to date information on the employment situation in the country and on the application of the Convention, as well as on the implementation of the Decent Work Country Programme. It would then be possible to envisage the possibility of the ILO offering technical cooperation for the improvement of working conditions in the informal economy.

**The Government representative** welcomed the recommendations from the Worker and Employer members. These would be taken into consideration to improve the situation. More specific information and more documentation would be submitted in the Government’s next report to the Committee of Experts.

**The Worker members** noted with satisfaction the efforts made by the Government in the area of employment policy. Referring to the conclusions adopted by the Commit-

tee on the Recurrent Discussion on Employment, they invited the Government to pursue its efforts so as to formulate an employment policy which would create decent, productive and freely chosen jobs. Such an employment policy should focus on the most vulnerable groups, especially women, migrant workers, and persons with disabilities. Bilateral agreements should include a social clause which would guarantee the rights of migrant workers. They called upon the Government to formulate additional training and skills development programmes, especially in the rural sector and informal economy, and encouraged it to base itself on the principles and recommendations contained in the Global Jobs Pact so as to resolve the problems confronting the country with respect to the labour market. The Worker members requested the Government to provide more detailed information on all the measures taken in this regard, and on the results achieved. Finally, they recommended the Government to associate fully the representatives of workers including migrant workers and workers in the informal economy, in its employment policy.

**The Employer members** thanked the Government for the information provided but, nevertheless, expressed regret that the report requested by the Committee of Experts had not been supplied at the right time or in the right format, which would have made it possible to examine the case in greater depth. The Government had demonstrated its political will to apply the Convention. Active employment policies had to respond to supply and demand in the labour market. As such, it should be borne in mind that recent years had seen employment being generated by SMEs. The Government should therefore continue supporting sustainable enterprises, particularly SMEs. Promoting a business culture and taking measures that made it easier to start an enterprise, as set out in the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), were valuable means of integrating more workers into the formal economy. To that end, consideration should be given to including them in active employment policies. It was also necessary for the Government to continue including occupational training initiatives and educational policies that responded to the needs of the labour market in its active employment policies. It should also continue holding consultations with the social partners on every policy formulated to promote full, productive and freely chosen employment, which would facilitate evaluation as to whether those policies were effective and appropriate.

## **Conclusions**

**The Committee** took note of the oral and written information provided by the Government representative, as well as the discussion that followed. The Committee noted that the Committee of Experts’ observations in 2008 and 2009 raised issues related to the coordination of employment policy measures with unemployment benefits, in particular for workers in the informal economy; the prioritization of employment in the framework of a coordinated economic and social policy and the labour market measures adopted for vulnerable categories of workers.

**The Committee** noted the Government’s indication that it had adopted an economic stimulus and recovery package in line with the Global Jobs Pact, with the aim of reviving the Thai economy and protecting the poorest in the country by building a better safety net for the most vulnerable groups. It also noted the information by the Government that it had implemented human resources development schemes which provided adequate access to lifelong learning, sought to enhance the overall quality of education and improve the national competitiveness. In 2010, the Department of Labour Protection and Welfare had taken measures to mitigate the

impact of layoffs on workers and their families affected by the crisis.

Noting the information provided by the Government concerning the Tenth National Economic and Social Development Plan for the period 2007–11, the Committee requested the Government to provide further information on the results achieved in terms of generation of decent, productive and freely chosen employment, as well as on the measures taken to include the most vulnerable categories of workers in the labour market, such as workers with disabilities, rural women, as well as workers in the informal economy. The Committee also stressed the importance of promoting an enterprise culture, entrepreneurial initiatives and small and medium-sized enterprises, in line with the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189).

The Committee further noted the information regarding the measures taken for registering alien workers with the goal of ensuring their legal employment. It recalled that the protection of migrant workers had already been a matter of concern in the tripartite discussion held in June 2006. The Committee requested the Government to take particular action within the framework of an active employment policy to implement appropriate measures which would prevent abuse in the recruitment and the exploitation of migrant workers in Thailand.

The Committee recalled, as required by Article 3 of the Convention, that consultation with the social partners was essential both at the earliest stages of policy formulation and during the implementation process as this enabled governments to take fully into account their experience and views. The Committee invited the Government to report in detail on how tripartite mechanisms had contributed to the formulation of a specific employment policy and to the implementation of an active labour market measure in order to overcome the crisis and ensure a sustainable recovery.

The Committee requested the Government to provide the information on the elements above to the Committee of Experts for its forthcoming session.

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**Minimum Age Convention, 1973 (No. 138)**

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**CENTRAL AFRICAN REPUBLIC (ratification: 2000)**

The Worker members recalled that the Central African Republic, in the same way as other African countries, was confronted with a serious problem of child soldiers and of forced recruitment for armed conflict. According to the United Nations Children's Fund (UNICEF), in 2007 over one half of children between the ages of 5 and 14 were engaged in work for employers or as apprentices (especially boys), as family helps or in the informal economy (particularly girls), or on their own account, particularly in the diamond sector. In view of this scourge, a new Labour Code had been adopted in January 2009, but the implementing texts had still not been prepared. Moreover, the Committee of Experts had noted certain discrepancies between the new Labour Code and the provisions of the Convention. For example, the new Labour Code only applied to domestic workers, but not to own account workers, whereas in practice most children worked in the informal economy. The new Labour Code also provided that children could not work in an enterprise before the age of 14 years, unless an exception was granted by the Minister after seeking the opinion of the National Labour Council. But what were these exceptions? Moreover, no list of the hazardous jobs or types of work prohibited for children under 18 years of age had yet been published. Finally, employers were now required to keep up to date a register of all the persons and all the contracts in their enterprise, although certain could obtain an exemption by ministerial order, contrary to the provisions of the Con-

vention. The Worker members recalled that, although school was compulsory in the Central African Republic from 5 to 15 years of age and that an action plan had been adopted in 2005 with a view to increasing school attendance, UNICEF figures showed little change in the school attendance rate. In this respect, they recalled that a low rate of school attendance and a high rate of child labour would ensure that the country remained under-developed. The promotion of school attendance and the prohibition of child labour therefore needed to go hand in hand and would be mutually reinforcing.

The Employer members wished to record their disappointment that the Government was not in attendance at the discussion, highlighting that Convention No. 138 was a fundamental Convention ratified by the Government of the Central African Republic in 2000. This was the first examination of the case, and the Conference Committee was considering the first observation of the Committee of Experts, which had been double-footnoted as being extremely serious. Given the time that had elapsed since ratification, the Employer members would have been keen to learn the steps undertaken to give effect to the Convention, and in particular to Article 1, namely to pursue a national policy aimed at the abolition of child labour and to raise progressively the minimum age for admission to employment.

They recalled that the Committee of Experts had indicated in 2004 that, according to UNICEF, 64 per cent of children in the Central African Republic between the ages of 5 and 14 were working in 2000. For several years, the Government's report had either not been received or did not reply to the comments, and in 2008 the Committee of Experts had expressed the hope that the Labour Code to be adopted would take into account its requests. In 2008, it had noted that the 2003 government study undertaken in conjunction with UNICEF on the situation of working children was still being approved. In 2009, the Committee had noted with interest that the new Labour Code establishing a minimum age of 14 years now also covered domestic workers, regulated apprenticeships and imposed penalties. However, the Labour Code exempted, contrary to Article 9(3) of the Convention, certain categories of establishments from the requirement for the keeping of registers of employees of less than 18 years by employers.

The Employer members, with reference to the explicit request by the Committee of Experts for the Government to supply full details, including statistical information, to the Conference Committee, once again expressed deep regret at the Government's absence.

The Worker member of the Central African Republic recalled that section 259 of Act No. 09.004 of January 2009 issuing the Labour Code set the minimum age for admission to employment at 14 years. However, despite the existence of this provision, many children under 14 years of age continued to be employed in diamond and gold worksites, in catering, agriculture (particularly in cotton and coffee plantations), car washing and street hawking. The Government had not yet adopted the implementing texts of the new Labour Code and no measures had therefore been taken in practice to require those employing children under 14 years of age to comply with its provisions.

She also commented on the application of the Worst Forms of Child Labour Convention, 1999 (No. 182), by the Central African Republic and drew the Government's attention to the forced recruitment of young persons and the sexual exploitation of young girls by the armed uprisings that were rife in the country and, in more general terms, the phenomenon of child soldiers enrolled in these armed groups.

The Worker member of Senegal recalled that the Labour Code prohibited the employment of children under the

age of 14. However, since no implementing texts had been adopted to give effect to the Labour Code, child labour was still very widespread in several economic sectors, such as fishing, diamond mining and domestic work. In rural areas especially, children as young as seven regularly performed agricultural work, usually alongside their parents, or worked for their teachers, who made them work on farms on the pretext of teaching them to work the land and raise cattle. The Labour Code did not define the worst forms of child labour and, although it prohibited persons under the age of 18 from engaging in dangerous or night work, a large number of children continued to perform work of that type. Children were also the victims of trafficking, both inside the country and to and from Cameroon and Nigeria, where they were usually victims of domestic servitude, sexual exploitation or forced labour in shops. The Government did not have the resources to ensure effective compliance with the laws on child labour, as there were too few labour inspectors and their resources were limited. The resources of the labour inspectorate would need to be increased so that it could take action to combat child labour.

The Worker members stressed that the Central African Republic had made efforts to restrict child labour by adopting a new Labour Code, which set the minimum age for admission to employment at 14 years. However, there were significant shortcomings in the Labour Code, which did not cover children in the informal economy or in the diamond mining sector. Nor did it specify the hazardous types of work prohibited for persons under 18 years of age. In practice, the results were still too limited, particularly in view of the absence of measures to apply the Labour Code. In addition, the action plan for education for all was far from achieving its goal of providing every child with basic education. For that reason, the Government should be urged to create action programmes as soon as possible and to adopt the measures required to improve, expand and make the education system more effective. ILO technical assistance could be useful for that purpose.

The Employer members emphasized that the Central African Republic was registered with the Conference and that this serious double-footnoted case involved a fundamental Convention. Regretting the Government's absence from the discussion and considering that an appropriate explanation was due in this regard, the Employer members called for the conclusions of the Committee to be included in a special paragraph of the Committee's report.

The Worker members agreed with the inclusion of this case in a special paragraph, as the Government had not appeared before the Committee.

### **Conclusions**

The Chairperson invited the Government representative to participate in the discussion. However, in the absence of the delegation of the Central African Republic, which was duly accredited and registered before the Conference, he referred to the working methods of the Committee, which it had adopted in document D.1. He stated that the Committee could discuss the substance of those cases regarding governments registered and present at the Conference who decided not to appear before it.

The Committee noted the information contained in the report of the Committee of Experts relating to discrepancies between national legislation and practice and Convention No. 138, in respect of the absence of a determination of hazardous types of work to be prohibited to persons under 18 years and the keeping of registers by employers, the absence of a national policy designed to ensure the effective abolition of child labour, the large number of children under the minimum age who were self-employed or who worked in the informal economy, the low school enrolment rates and high

school drop-out rates and the weak enforcement of the Convention.

The Committee expressed deep regret at the absence of the Government before the Committee.

The Committee took note with serious concern of the information presented to it concerning the high number of children between the ages of 5 and 14 who worked in various sectors of the economy including in gold and diamond work-sites, agriculture, cotton and coffee plantations, fishing, as street vendors, restaurants and washing cars. It further noted with grave concern the information regarding the trafficking of children and their forced recruitment in armed conflict, as well as the deplorable conditions experienced by child soldiers, both boys and girls.

Noting the legislative discrepancies between the Labour Code of 2009 and Convention No. 138, the Committee firmly hoped that the necessary provisions would soon be adopted to determine the types of hazardous work to be prohibited for children under 18 years of age and to ensure the keeping of registers by employers indicating the names and ages or dates of birth of persons employed by them or working for them under 18 years of age.

The Committee also noted with serious concern that in practice, a high number of children under the age of 14 increasingly worked in the informal economy, often in hazardous work. It urged the Government to intensify its efforts to improve the situation, notably by developing a national policy to ensure the effective abolition of child labour and an action programme to combat child labour. It further requested the Government to ensure the effective implementation of the new Labour Code. In this regard, it called on the Government to strengthen the capacity and reach of the labour inspectorate and to ensure that regular visits, including unannounced visits, were carried out so that penalties were imposed on persons found to be in breach of the Convention.

The Committee noted with concern that low school enrolment and high drop-out rates continued to prevail for a large number of children. Underlining the importance of free, universal and compulsory formal education to preventing and combating child labour, the Committee strongly urged the Government to develop and enhance the education system, including by taking the necessary measures, within the framework of the Plan of Action on Education for All, to ensure access to free basic education for all children under the minimum age, with special attention to the situation of girls.

The Committee requested the Government to provide comprehensive information in its report, when it was next due, on the manner in which the Convention was applied in practice, including, in particular, statistical data on the number of children working in the informal economy, their ages, gender, sectors of activity, extracts from the reports of inspection services and information on the number and nature of contraventions reported and penalties applied.

Finally, the Committee asked the Government to avail itself of ILO technical assistance with a view to giving effect to the Convention in law and in practice as a matter of urgency.

The Committee decided to include its conclusions in a special paragraph of its report.

A Government representative regretted that the Government delegation of the Central African Republic had been absent during the discussion of the application of the Convention by his country. This absence has been due to a lack of communication and did not in any event constitute a desire not to take part in the discussion. He presented his Government's excuses for the inconvenience and indicated that every effort would be made to provide the documents and responses to the concerns of the Conference Committee.

Recalling that the Central African Republic had ratified the eight fundamental Conventions, had joined the support project for the implementation of the 1998 Declaration (PAMODEC) and had participated in an ILO subregional workshop on the preparation of reports for Convention No. 138, he reiterated his Government's willingness to work for the implementation of this Convention in the interests of the children of the Central African Republic.

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**Occupational Safety and Health Convention, 1981 (No. 155)**

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**MEXICO (ratification: 1984)**

A Government representative informed the Committee of the series of programmes that were being implemented by the Mexican Government with a view to ensuring good occupational safety and health conditions for all workers, which was one of its priorities. Referring to the information contained in the report submitted to the Committee of Experts in 2009, he wanted to clarify certain aspects of the statements made by the Committee of Experts in its observation. It was necessary to carry out a comprehensive tripartite diagnosis on safety and health conditions in the coal sector in order to be able to develop a new framework of regulations to protect workers in so dangerous a sector.

He recalled that Mexican Official Standard NOM-032-STPS-2008 concerning safety in underground coalmines had entered into force on March 2009, following a long process of discussion within tripartite committees. Some months before the standard in question had entered into force, the public authorities had publicized its content at all coalmines and a tripartite subcommittee had been established to assess and review its implementation. In addition, workers, employers and labour inspectors had been offered training courses both in Coahuila and in other departments with a view to ensuring its appropriate implementation. A guide on how to evaluate compliance with the Official Standard in practice had also been developed.

With regard to labour inspection measures to ensure appropriate observance of the standard in question, an operation had been launched to inspect all underground coalmines. He emphasized that every inspection visit lasted five days, inspectors followed a specific inspection protocol and the inspections were followed up. The objective of the inspections was to bring about concrete changes and ensure that employers rectified any deficiencies that had been identified, rather than just being punitive in character. In the course of 2009, the inspections had covered 4,627 workers in the coal sector. They had resulted in orders to carry out 1,711 technical measures, of which 313 had been implemented immediately and voluntarily by the employers. A number of worksites had been shut down for refusing to implement the measures required by the inspectors.

With regard to the possible discrepancy in the amount of compensation payable following the Pasta de Conchos mine accident, he indicated that the sum of 750,000 pesos (MXN) per family had been paid in compensation by the company, in addition to the payment of a further MXN80,000, and triple wage rates for each worker's family over a period of 14 months. Of the 65 families eligible for compensation, only 63 had accepted it. The Government considered that the total sums paid were higher than the compensation required by law. Further compensation could also be paid when current legal procedures had been completed.

Although the national labour policy had been planned as far as this year, it allowed for flexible strategies to al-

low action in response to situations as they developed. It would, if necessary, be reviewed in due course.

The Employer members said that it was not the first time that the application of Convention No. 155 by Mexico had been discussed. However, it was the first time it was discussed in the context of preventing occupational risks in the mining sector. The case in question concerned a tragic accident at the Pasta de Conchos mine four years ago in which 65 miners had died. The Employer members expressed their sincere and profound sorrow at what had happened and expressed their solidarity with the families of the miners who had lost their lives. This case had already been examined by the Governing Body following a representation submitted by a number of trade union organizations in Mexico. The Governing Body had adopted in March 2009 the conclusions of the tripartite committee set up for that purpose. They emphasized the need for the ILO supervisory mechanisms to be complementary. The discussion by the Governing Body's tripartite committee had led to a number of important recommendations with regard to many questions relating to the situation in coalmines. The Governing Body entrusted the Committee of Experts with following up on the questions raised in the report and closed the representation procedure.

As a result of the accident, the Government had embarked on a programme of reform with a view to monitoring the application in practice of laws and regulations in a number of mining industry enterprises in the state of Coahuila. One of the most important recommendations made by the Governing Body had been the finalization and adoption of a new regulatory framework for the prevention of occupational risks in the sector, which had led to the Official Standard referred to earlier, and another concerned the need to provide an appropriate and adequate system for labour inspection. The dialogue with the Committee of Experts had been important. One of the most important points was the adoption of the Official Standard in question which was very detailed and had enjoyed a high level of consensus. In relation to this question, the Committee of Experts had shown its satisfaction, and there was clear evidence of progress being made, which should be emphasized. Nevertheless, it was important to ensure full compliance with the Convention by continuing with the regular review of the safety and health situation with particular focus on hazardous activities. The Government had implemented an ambitious programme of action which included measures of value in that area. The Employer members supported the request for additional information made by the Committee of Experts and would allow constant monitoring of the situation.

With regard to the effective application of the new regulatory framework, the Employer members considered the request of the Committee of Experts for additional information to be pertinent. The regulatory framework needed to reinforce the effectiveness of prevention systems, and it was important to know how it was applied in practice. With regard to inspection activities, the Committee of Experts had asked the Government to continue providing information on the follow-up to the deficiencies reported in existing prevention systems, statistical data, as well as information on the new legal framework for improved monitoring following the adoption of the new Official Standard and the real impact of the measures referred to. It was important to enhance dialogue in order to ensure adequate follow-up to the recommendations of the Governing Body.

Lastly, with regard to compensation to the victims, advance payments had been made without prejudice to any ongoing judicial proceedings. While it was important to ensure that compensation was adequate, the changes made in the criteria for assessing compensation levels were a

matter that did not come under the terms of the Convention, and there was insufficient information to allow an adequate assessment to be made. The follow-up to the recommendations of the Governing Body should not include a detailed examination of compensation criteria. In any case it was therefore important for the Government to continue providing information on the matters still pending. The Employer Members concluded by emphasizing that significant progress had been made, and that it was essential to maintain and enhance dialogue by supplying detailed information on the questions still pending.

**The Worker members** recalled that this case concerned the consequences of a serious accident at the Pasta de Conchos mine in 2006 which had cost the lives of 65 miners. In March 2009, the Governing Body had approved a report pursuant to a representation alleging violations of a number of occupational safety and health Conventions. Even before the accident, the federal labour inspectorate had noted deficiencies in that area, but had not ensured that steps were taken to rectify them. The Governing Body had made recommendations and entrusted the follow-up to the Committee of Experts. It had recommended in particular the adoption of a number of measures in consultation with the social partners. The first of those measures was the drawing up and adoption of a new regulatory framework for occupational safety and health in the coal mining industry, in conformity with ILO standards. On that point, a new Official Standard had been adopted at the end of 2008, but workers had not been informed of it and it was not observed by employers. Furthermore, the sanctions which it provided in the event of non-compliance were inadequate. The second measure concerned the periodic review of the situation with regard to the safety and health of workers, with particular attention given to hazardous work activities such as coal mining. In that area, consultative commissions had been at work for some time.

The third series of measures concerned the effective monitoring of the application in practice of laws and regulations through an adequate and appropriate system of labour inspection. The Government had referred to the efforts it had been making in that area, and indicated that following these efforts, the rate of compliance with laws and regulations was 86 per cent. That rate should, however, be 100 per cent in a sector as hazardous as coal mining, but fatal accidents continued to happen in Mexican mines. Since the accident at the Pasta de Conchos mine in 2006, some 41 miners had lost their lives in the same region as a result of safety deficiencies. Official data were not reliable. Sixty per cent of miners were informal workers who enjoyed no social protection. They were not covered by official statistics and the authorities did not keep official records of their deaths. The Mexican Social Security Institute did not carry out inspections in mining areas to verify the status of miners, and the labour inspectorate did not conduct any investigations to identify illegal workplaces. In addition, there was no coordination between the mining, labour and regional government authorities. The problem of inadequate data was one encountered in many countries, as the General Survey on occupational safety health had shown, and the Worker members had recalled in that regard the measures advocated under the ILO plan of action to achieve widespread ratification and effective implementation of the occupational safety and health instruments.

Lastly, the Governing Body had invited the Government to ensure payment of adequate and effective compensation to the 65 families affected by the accident and to ensure that adequate sanctions would be imposed on those responsible. It appeared, however, that the compensation agreed was considerably lower than that initially proposed by the enterprise, and the method of calculation

of the damages was not clear. Furthermore, since the families of informal workers enjoyed no social protection, they had no entitlement to social security benefits, including survivors' benefits, and the families of workers in the formal economy received only low pensions because the official wages of the miners who died were lower than the wages they actually received. In conclusion, the Worker members considered that many clarifications were needed and many measures needed to be taken to follow up the Governing Body's recommendations.

**The Worker member of Mexico** referred to the events that gave rise to the case and emphasized that occupational safety and health were fundamental rights. It was inadmissible that workers lost their lives in the place where they went to make a living. The Government needed to take all possible measures to prevent and protect against occupational accidents and illnesses, especially compliance with the obligation to inspect and monitor workplaces. As did other speakers, he recalled that the Committee of Experts had noted with satisfaction the adoption of Mexican Official Standard NOM-032-STPS-2008 on underground coalmine safety and that many meetings had been held within the National Advisory Committee on Occupational Safety and Hygiene (COCONASHT) in order to prevent risks in the coal mining industry. He supported the call made by the Committee of Experts to the Government to guarantee full compliance with the Convention and to continue the regular review and monitoring of the situation concerning occupational safety and health, paying special attention to dangerous labour activities, such as those in the coal mining industry. He also endorsed the request made by the Committee of Experts for the Government to continue providing information on the measures adopted, in consultation with the social partners, on the strategy to be followed to ensure that the labour inspection improved the monitoring of compliance with the recommendations it made when shortcomings were reported, especially in the coal mining industry, as well as providing statistical information showing the degree of compliance with the recommendations of the labour inspection service and the impact of the new Official Standard in improving the situation in the coal mining industry.

As for compensation, it was unclear how compensation would be set for affected families. He supported the request of the Committee of Experts for the Government to provide more information in that regard and to guarantee that all families received adequate and effective compensation in accordance with national legislation. Finally, he emphasized the great importance of the ILO's adoption of the plan of action to achieve widespread ratification and effective implementation of the occupational safety and health instruments. He expressed the conviction that the promotion of a culture of prevention in the field of occupational safety and health was a basic aspect of improving the protection of those rights.

**The Employer member of Mexico** referred to a procedural matter. The ILO's mandate, first and foremost, was to adopt standards and supervise their implementation, for which purpose it had various supervisory mechanisms at its disposal, governed by their own rules. A distinct supervisory mechanism existed for examining representations submitted under articles 24 and 25 of the Constitution. For its part, the Conference Committee was entrusted with examining individual cases concerning the application of Conventions, in accordance with article 23 of the Constitution and article 7 of the Standing Orders of the Conference. Both were tripartite bodies which adopted conclusions. In the cases of Mexico, a representation against the Government for alleged failure to comply with several Conventions, including Convention No. 155, had been presented and examined. As the Committee of Ex-

perts had indicated in its observation, the situation related to an accident at the Pasta de Conchos coalmine. The tripartite committee had considered, analysed and reached decisions on the representation, and its conclusions and recommendations had been submitted to, and adopted by, the Governing Body. It was therefore necessary to question the need to further review a case that had already been resolved by one of the ILO supervisory mechanisms which pursued the same goals as the Conference Committee with a similar structure. This was a matter of procedure and legal certainty.

The case of Mexico was one of those on which the Committee of Experts had expressed satisfaction at some of the measures that had been taken by the Government, fundamentally the adoption of Official Standard NOM-032-STPS-2008. Following the tragic events, existing acts and regulations on occupational safety and health, particularly in the coal-mining sector, were being reviewed through social dialogue. The new Standard contained exhaustive and numerous provisions on safety conditions and requirements for facilities and operations at underground coalmines in order to prevent risk to those who worked there. It applied throughout the country and in all locations where such work was carried out. The Committee of Experts had confined itself to requesting information, without making any observation on any failure on the part of the Government to implement the Convention, and considered this case as a case of progress. In conclusion, he urged the Government to continue providing information on legislative developments and compliance with the Convention.

**An observer representing the International Trade Union Confederation (ITUC)** indicated that one of the main problems encountered by workers was informality. Approximately 60 per cent of mine workers had a “verbal” contract, and thus lacked social security and did not appear in statistics. There were discrepancies in the information transmitted by different bodies. As a result, not many occupational accidents were officially reported, and the country was considered to be one of the best in terms of safety at the international level, even ahead of countries such as France. This was the result of hiding real information. In reality, each year 300,000 occupational accidents occurred in the country. The situation of mine workers when seeking compensation in the case of occupational accidents was difficult because the burden of proof rested on the victim of the accident or, where appropriate, on the widow of the mineworker. Workplaces which were not declared were not liable to inspection. The lack of labour inspection and its shortcomings resulted in impunity. Furthermore, he emphasized that Official Standard NOM-032-STPS-2008 was unknown at workplaces. It was therefore necessary to disseminate the Standard as widely as possible, to enable workers to rely thereon. Access to the reports of the labour inspectorate should not be confined to employers’ and workers’ organizations, but should be extended to any worker who so wished. In conclusion, he emphasized that this could help in achieving compliance with standards in that sector.

**The Government member of the Bolivarian Republic of Venezuela**, speaking on behalf of the Government members of the Committee, Member States of the Group of Latin American and Caribbean States (GRULAC), emphasized that the Committee of Experts had noted with satisfaction the adoption of the Official Standard NOM-032-STPS-2008, which demonstrated the Government’s commitment to bringing its national legislation into line with the Convention. He also drew attention to the meetings of the national advisory committees on occupation safety and health (COCONASHT), which strengthened understanding between governments and the social partners through social dialogue on issues such as the safety

and health of workers. The observations of the Committee of Experts highlighted the role of the Government in applying the Convention and he expressed the hope that the conclusions adopted by the Conference Committee would reflect the discussions held, without ignoring the new information, figures and arguments presented by the Government. Lastly, he expressed the firm hope that the Committee of Experts would confine itself to the explicit mandate it had received from the Governing Body.

**The Worker member of Brazil** observed that the Committee of Experts had noted the adoption of Official Standard NOM-032-STPS-2008, while requesting the Government to provide information on the effect given in practice to the Standard in consultation with the social partners, in accordance with Articles 4 and 7 of the Convention. It had also requested information on the Government’s strategy for the implementation of an adequate and appropriate system of labour inspection and on the criteria applied for the payment of compensation as a result of the accident in the Pasta de Conchos mine. The accident, which had cost the lives of 65 workers, had been caused by the negligence of the employer, which was the largest mining enterprise in the country, as well as that of the Government. In its report on the representation alleging non-observance by Mexico of several occupational safety and health Conventions, the Governing Body had concluded that the Government had not been capable of ensuring the application of the legislation or of occupational safety, health and working environment requirements through an adequate and appropriate inspection system in accordance with Convention No. 155. Social dialogue and tripartism were necessary for the implementation of the instrument. She referred by way of example to her own country, where mines were subject to joint inspections by the Government authorities, as well as representatives of employers and workers. It was also important to adopt legislative provisions on the liability of the employer in the event of wilful negligence or fault resulting in an occupational accident. In addition, it was necessary to adopt measures to encourage employers to adopt preventive measures. As well as establishing machinery to ensure the application of Convention No. 155, following the adoption of the Official Standard referred to above, the Government should ratify the Safety and Health in Mines Convention, 1995 (No. 176).

**The Worker member of South Africa** emphasized that occupational health and safety was at the essence of decent work. The safety at work of Mexican workers was worrying, and he reaffirmed his solidarity with them. While the Government of Mexico had undertaken some review of the occupational health and safety regulations, workers continued to be subject to hazardous circumstances. Referring to the report of the Governing Body adopted at its session in March 2009 on a representation alleging non-compliance with several Conventions, including Convention No. 155, he said that the conditions which had resulted in the accident in the Pasta de Conchos mine in 2006 had not substantially changed. The Government had also disbursed some of the compensation without full and proper consultation with trade unions. He called upon the Government to undertake a fundamental overhaul of the collective bargaining system to include health and safety at work as a central feature. This required several steps, including bringing an end to employer appointed trade union leaders in mines and the creation of an effective bargaining system that recognized workers and their representative organizations as primary stakeholders with a view to overcoming attempts by the Government to unilaterally impose solutions. It was also necessary to build capacity with regard to the effective monitoring of health and safety standards in mines, with the possible introduction of health and safety stewards in



all workplaces, and to improve the inspection of mines and other workplaces, with full transparency of inspection reports to all workers. Lastly, it was critical to develop legislation that criminalized the failure to observe all health and safety standards, imposed liability on companies for the loss of life, injury or harm following an occupational accident and imposed sufficient penalties to address the situation of impunity.

**The Worker member of Norway** expressed concern at the hazardous working conditions experienced by members of the National Union of Mine and Metal Workers of the Mexican Republic (SNTMMS). Although the main responsibility for regulating the working environment remained with the state authorities, private sector enterprises had an independent responsibility for working conditions in each of their workplaces. Employers had to respect and promote human rights including the creation of decent working conditions and the provision of a living wage to employees. Companies were expected to be familiar with national legislation and international labour standards relating to working conditions. The previous year, the President of the Norwegian Metal Workers had visited Mexico to assess the situation of workers in mining. The President of the union had concluded that investment in the mining company in question constituted a contribution to unethical acts or omissions, and had urged divestment. It was important that the Government of Mexico did all in its power to contribute to a solution of the hazardous working conditions in mines and to compensate the families of dead and injured workers.

**The Worker member of Argentina** said that the case originated in the tragic deaths of 65 workers at the Pasta de Conchos mine in February 2006. An explosion had occurred during the third shift and it had not been possible thus far to recover the workers' bodies. The explosion had occurred as a result of failure by the employers to comply with any of the prevention and safety measures in place in the mine and of inadequate inspection by the labour authorities, a fact noted by the tripartite committee that had examined the representation on the case, of which he had been a member. He emphasized the need for a specific plan for hazardous activities in which the lives of workers were at risk. With regard to the Official Standard which the Government had announced was in force, he noted that, however perfect laws might be, they remained a dead letter if the obligations they imposed were disregarded.

The case showed that no personal or collective protective measures were used in the coalmine, and that no preventive measures were taken at the outset or at the various stages of the work. The Government of Mexico needed to provide information on what had been done by the supervisory authority or on a tripartite basis to safeguard the health and the lives of workers in coalmines, and whether there had been real progress. He considered it important that mechanisms be established to supervise the implementation of prevention and safety standards, ensure inspections in coalmines and their follow-up and streamlining administrative procedures with a view to the effective implementation of appropriate safety measures in coal mining, as well as sanctions where appropriate.

With regard to the matter of compensation, he said that payment had to be made swiftly to ensure fairness and prevent the families of the victims from falling into poverty and exclusion.

He added that he had information concerning smaller pits ("*pocitos*") that were unregistered, had no mining licence and operated under totally informal conditions. He called for the existence of undeclared mines to be recognized, as they violated the fundamental rights of workers and exposed them to potentially mortal risks. He emphasized that the employers alone were responsible for ensuring appropriate safety conditions in the workplace, and

governments were responsible for inspection, monitoring and follow-up to any violations reported. He recalled that in March 2010 the Governing Body approved a plan of action to achieve widespread ratification of Convention No. 155 and its 2002 Protocol, and of Convention No. 187, and that the plan would be extended from 2010 to 2016 and serve as a basic tool at the national and international levels.

He added that between February 2006, when the explosion had occurred at the Pasta de Conchos mine, and the present time, over 40 coalminers had lost their lives as a result of cave-ins or other events that could have been prevented in undeclared mines, which indicated that there were deficiencies in the inspection system. He noted that the workers were in solidarity with the victims' families, and emphasized that occupational safety and health at work was a pillar of decent work and essential for any enterprise. He concluded that workers needed a strong State to monitor and punish unscrupulous employers who placed workers' lives at risk in order to make money.

**The Worker member of the United States** noted that the facts of this case warranted the most serious and careful review by the Conference Committee. Two aspects of the report of the Committee of Experts merited special attention. First, the safety follow-up measures and policies mentioned in the Governing Body's decision of March 2009, pursuant to articles 24 and 25 of the ILO Constitution; and second, the reference made by the Committee of Experts to consultation with the social partners for the effective implementation of such measures and policies.

With regard to the first issue, the Government's own statistics revealed that even with the application of the highly advertised standard NOM-032-STPS-2008, the mortality rate for miners from occupational accidents and diseases in the entire Coahuila area had risen by 200 per cent in 2009. The Mexican Miners and Metalworkers' Union (SNTMMSRM) (*Mineros Union*) had petitioned the Federal Labour Department of the State of Sonora to conduct an emergency inspection of the safety and health conditions at the Cananea mine in 2007. In response, the Federal Labour Department of Sonora had inspected the site in April of that year and had ordered 72 measures be taken to reverse the lethal worksite situation, which had many resemblances to the conditions which had contributed to the tragedy at the Pasta de Conchos site one year earlier. In October 2007, independent organizations of occupational safety and health experts, including the Occupational Safety and Health Support Network and the Occupational Health Service, had found dangerous levels of toxins in the Cananea mine. But over the past three years, both the Secretariat of Labour and Social Welfare (STPS) and the company had effectively disregarded nearly all of these findings.

With regard to the second issue, the Government had attempted to repress one of the most important social partners in this endeavour, the *Mineros Union*. It had done so by withholding legal recognition of the union's leadership, and by conducting a thorough campaign consisting of prosecution, arrest, harassment, defamation and the freezing of union assets, even though many of the criminal charges against the leaders had been continually overturned in the courts. When the *Mineros Union* had gone on strike in the company mines in Cananea, Taxco and Sombrerete in 2007 due to the failure of the Company and the STPS to reverse violations found by both the Federal Labour Department of Sonora and by independent experts, the company had asked the Labour Board to dismiss all of the strikers at Cananea based on the argument that the Company could no longer operate the mine profitably, even though it had publicly offered to rehire the workers if they renounced the union. A Court Order issued on 11 February 2007 had allowed the company to



dismiss the strikers and effectively eliminate the right to strike over the safety and health violations. Tragically, the Government had made good on its earlier threat to dispatch the federal police to the Cananea mine to forcibly remove the strikers on Sunday night on 6 June. It was also noteworthy that since November 2008 the Government had failed to meet with the *Organización Familia Pasta de Conchos*, the most representative organization of the families of the victims. In conclusion, he considered that this evidence certainly did not reveal a Government living up to the Governing Body's recommendation to engage authentically with the relevant social partners to implement the necessary safety and health measures and policies to further compliance with Convention No. 155.

The Employer member of Colombia recalled that he had been a member of the tripartite committee that had examined the representation regarding the case under discussion. He noted certain discrepancies between the report prepared by the tripartite committee and the comments of the Committee of Experts. He indicated that the wording of paragraph 99(f) of the report on the representation indicated "make this report publicly available and close the procedure". He considered that the case had been closed and that there were no new facts, and that the Committee's request for information on "other measures" was therefore irrelevant, as the Governing Body report did not explicitly request the Committee of Experts to follow-up the question of compensation since the Governing Body in its report did not specifically ask the Committee of Experts to follow-up regarding the issue of compensation.

The Government representative said that his Government had appeared before the Conference Committee in good faith, but could not let pass certain statements that were inadmissible. For example, it was unacceptable to claim that new Official Standard No. 032 on safety in underground coalmines had not been disseminated and was not applied. The Standard had been published, activities had been organized and brochures published for its dissemination and for compliance. He had in his possession documents demonstrating the dissemination of the Standard and offered to show them as proof of what he was saying. With regard to application and follow-up, he reaffirmed that many activities had been undertaken for the implementation of the Standard. A tripartite advisory commission was following the matter and organizing numerous activities, studies and thematic groups in relation to those activities. Informal worksites were also being identified, although he had not referred to them previously with a view to keeping to the subject of the Convention. With reference to inspection reports, he gave assurances that they were provided to trade unions and to the joint commission. He also referred to the many activities carried out by the labour inspectorate, which he had already described in his first intervention, and which had led to the identification of defects which had been followed up and remedied. He indicated that accidents also had cultural origins. A diploma on prevention in mines was being prepared and a special telephone number had been established through which workers could contact the labour inspectorate so that it could take immediate action in certain circumstances. Commissions had been established on a broad range of issues related to mining, such as ventilation, electricity, audits and risks.

Returning to the subject of informality, he indicated that this related to the informal nature of the worksite and the informal status of workers. In relation to worksites, the labour inspectorate was undertaking campaigns and, in relation to workers, the social insurance system was also taking action. However, these matters were beyond the scope of the present case and the Government had intended to refer solely to occupational safety and health.

The Employer members thanked the Government of Mexico for the information provided. It was clear that progress had been made, and the Government should continue to provide the Committee of Experts with information on the application of Standard NOM-032-STPS-2008 and on labour inspection activities. They also added that it was important to avoid overlap between two supervisory mechanisms.

The Worker members recalled that the Governing Body had called on the Conference Committee to follow-up on its recommendations so as to reduce the risks of accidents such as the one that had occurred at Pasta de Conchos. The Government should therefore continue to provide detailed and updated information on: (i) any new developments in the periodical review of occupational safety and health in coalmines; (ii) the number and nature of the accidents that occurred in the mining sector; (iii) the implementation of the new Official Standard on safety in coalmines; (iv) the activities of the labour inspectorate; (v) the situation of the labour administration in relation to the Labour Administration Convention, 1978 (No. 150); (vi) the damages paid by the enterprise *Industrial Minera Mexico* and the State benefits for the families concerned; and (vii) the social benefits provided to the families of miners who were without protection. Moreover, to be completely satisfactory, the activities, programmes and plans of action should be developed with the participation of the social partners, who should also be involved in their follow-up. The Worker members hoped that the Committee of Experts would examine closely the Government's next report and that the case would be followed by the Conference Committee.

The representative of the Secretary-General indicated in reply to the comments made by the Employer member of Colombia that the examination by the Committee of Experts of the follow-up to the recommendations of the tripartite committee concerning the issue of compensation to the families of the victims was based on the recommendations made in paragraph 93 of the Governing Body report in which the tripartite committee requested further information to be provided by the Government to the Committee of Experts on the modalities for determining the compensation provided to the 65 families of the deceased miners, expressing the hope that all the 65 families would receive adequate and effective compensation in accordance with national law. Moreover, in the overall conclusions to this representation which were found in paragraph 99 of the report, the tripartite committee entrusted the Committee of Experts with following up all the questions raised in the report.

## Conclusions

The Committee noted the information provided by the Government representative and the discussion that followed. The Committee noted that the observation by the Committee of Experts essentially related to the application of the recommendations adopted by the Governing Body in March 2009 in the framework of the representation submitted under article 24 of the ILO Constitution concerning the accident that had occurred in the Pasta de Conchos mine in 2006. The Committee of Experts had noted with satisfaction the adoption on 23 December 2008 of Mexican Official Standard NOM-032-STPS-2008 concerning safety in underground coalmines (NOM 032) and requested the Government to provide information on its implementation, as well as on inspections carried out and on compensation paid to the survivors and the families of the victims.

The Committee took note of the information provided by the Government regarding the extensive tripartite consultations that had preceded the development of NOM 032 and the comprehensive efforts that had been made to promote the awareness and knowledge of NOM 032 since its adop-

tion, including targeted training of workers and the development of a practical guide on its implementation in practice. It also noted the information on the current inspection methods to ensure compliance with NOM 032, including prescribed inspection protocols, the number of inspections undertaken in 2009, the measures prescribed, as well as the formal notifications of failures to comply. On the question of compensation offered and actually extended to the survivors and the families of the victims, the Government indicated that the package had several components as it included not only compensation paid by the mining company, but also those that would result from ongoing court proceedings. The Government also indicated that the total compensation provided would exceed what was required by law.

While noting this information and welcoming the adoption of the new NOM 032, which placed a strong emphasis on prevention, *inter alia*, by prescribing a systematic use of risk assessments, the Committee emphasized that it was crucially important that the Government pursue its efforts, in a consistent and comprehensive manner, to prevent accidents such as the one which occurred in the Pasta de Conchos mine in 2006. The Committee requested the Government to provide to the Committee of Experts, for its forthcoming session, detailed and updated information on follow-up measures taken by it to implement the recommendations adopted by the Governing Body concerning the article 24 representation, including on the number and nature of accidents in both the formal and informal mining sector; risk assessment methods used in the mining industry; the compensation actually paid and those still due to the survivors and the families of the victims including damages by the enterprise concerned in this case and the relevant State benefits; and any social benefits provided to the families of miners who were without social protection.

The Committee urged the Government to ensure that all relevant actions and measures taken in relation to this matter was done in close consultation with the social partners and requested the Committee of Experts to continue to monitor the developments and the progress made.

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**Indigenous and Tribal Peoples Convention, 1989 (No. 169)**

**PERU (ratification: 1994)**

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A Government representative stated that the Government of Peru had always demonstrated its willingness to engage in dialogue to find a solution to the justified claims of indigenous peoples, through dialogue mechanisms such as the National Coordination Group for the Development of the Amazonian Peoples, which included representatives of the Executive, the regional government authorities and Amazonian indigenous organizations. The National Coordination Group was responsible for, among other things, investigating and analysing the events at Bagua, revising and updating legislation on issues relating to the forest and its fauna, establishing a mechanism for prior consultations for the application of Convention No. 169, and drawing up the National Plan for the Development of the Amazonian Peoples. The Government affirmed its willingness to advance with investigations to establish political and criminal responsibility for the events in Bagua which had caused the deaths of 23 police officials and ten civilians, and the disappearance of a police officer. A number of investigative proceedings had been initiated under the auspices of the National Coordination Group, within the Executive, the Congress of the Republic and the Office of the Attorney-General, with the guarantees of due process normally expected in a State governed by the rule of law. The Congress of the Republic had also set up a Multi-Party Commission to investigate the incidents in Bagua which has already reported to Congress. Within the Office of the Attorney-General and the judiciary, proceed-

ings were under way against senior officials of the national police and against indigenous persons in connection with various alleged offences. The State had provided legal aid for all persons being prosecuted in connection with the events in Bagua in order to safeguard their rights as citizens. The State guaranteed that the investigations and proceedings involving political, police and indigenous authorities would be objective and impartial, in accordance with the principles of due process and in order to ensure that the deplorable events of Bagua did not go unpunished.

The Government had undertaken action to bring its definition of indigenous peoples into line with that of the Convention. To that end, on 19 May 2010, the Congress of the Republic had approved the Bill on “the right to prior consultation of indigenous and original peoples, as recognized in ILO Convention No. 169” (“the Act on Prior Consultation”). The Act, as approved, had been submitted to the President for approval. It reflected the proposals of the People’s Ombudsperson and the agreements reached through consultations with representatives of indigenous peoples. The Act included a definition of indigenous peoples that was consonant with that of Convention No. 169, and included the following elements: the characteristics of the indigenous peoples in terms of their social institutions, cultural patterns and customs which distinguished them from other sectors of the national community; their identity by virtue of their direct descent from the original populations that inhabited the national territory; and their awareness of being a group possessing an indigenous or original identity.

The Act provided that the National Institute for the Development of the Andean, Amazonian and Afro-Peruvian Peoples (INDEPA) was a technical body specializing in indigenous affairs under the auspices of the Executive. It was a multisectoral and cross-cutting body operating at all three levels of the Government, and headed by an indigenous leader in consultation with indigenous peoples.

With regard to the design of a dialogue and consultation mechanism, the Act provided that prior consultations should be held on any national and regional development plans, programmes and projects that affected the rights of indigenous peoples. It also established that the purpose of consultation was to reach agreement between the State and indigenous peoples or obtain the consent of those peoples with regard to the legislation or administrative measures that concerned them, through intercultural dialogue that guaranteed their inclusion in the decision-making process of the State and the adoption of measures that respected their collective rights. The Act had elicited a positive response from the most representative organizations of Peru’s Amazonian peoples. In addition, a number of sectors had specific dialogue and participation mechanisms, as for example in the environmental sector, the mining sector and the hydrocarbon sector. The process for citizens’ participation in those activities was implemented through consultation mechanisms that came into play during the development and evaluation of environmental impact studies and, once they had been approved, in the form of citizens’ monitoring and/or supervisory programmes.

Peru had made significant progress in social development and in combating poverty. Such progress had been possible as a result of the social policies implemented by the Government to promote productive employment and decent work, in accordance with the Global Jobs Pact and the ILO Declaration on Social Justice for a Fair Globalization, 2008. It was therefore particularly difficult to accept the fact that the Committee of Experts had recommended the suspension of activities to explore and exploit natural resources that affected the peoples covered by the Convention, thereby exceeding its mandate. Extraction

activities had played a fundamental role in the social progress achieved, in the context of an international crisis. Their contribution had been particularly important in developing local economies and improving the living conditions of those living in the areas where the industries in question operated. Suspending exploration and exploitation activities would affect over 120,000 jobs, as well as the incomes that regional and local governments received as their share in the benefits of extraction activities.

The National Coordination Group had established a round table which had developed and approved by consensus a National Plan for the Development of the Amazonian Peoples, which envisaged positive measures for the development of these peoples in relation to such essential matters for their development as: property rights, bilingual intercultural education, the extension of coverage by the public health system, the participation of indigenous peoples in the management and benefits of natural protected areas and the sharing in the benefits from natural resources, the environment, and respect for the culture and collective knowledge of indigenous peoples among others. The plan was in the process of being implemented.

The property rights of indigenous peoples were inalienable in accordance with article 89 of the Political Constitution of Peru. Communities could assert their right of ownership or occupation before any administrative or judicial authority in the event of such rights being affected. There were a series of provisions to give effect to this right which were intended to determine the lands that were traditionally occupied by native and rural communities and to promote the formalization and grant title to the properties of indigenous peoples with their participation, so that they could assert their right of ownership or occupation before any administrative or judicial authority in the event of such rights being affected.

With regard to the adoption of educational measures to eliminate prejudices by the State in relation to indigenous peoples, action had been taken to ensure that the educational materials that were to be distributed and delivered for educational purposes contained information based on criteria of equity and inclusion relating to the societies and cultures of those peoples. The Ministry of Education published educational materials for initial and primary education in ten indigenous languages and in Spanish as a second language.

The Government and Peruvian society had made great efforts to achieve the participation of indigenous peoples in their representative institutions, making use of effective and systematic mechanisms for participation, consultation and dialogue and reaffirming their own identity as a multi-ethnic and multicultural nation.

**The Employer members** stated that the present case was one that exemplified how the ILO's supervisory machinery should ideally function, and also demonstrated the importance of having a diversity of cases before the Committee. They noted that in the information it provided, the Government had directly addressed virtually all of the points raised in the Committee of Experts' report, and the Committee's conclusions of last year. With regard to the Act on Prior Consultation, they noted the following: (1) the Act's definition of indigenous and tribal peoples was consistent with that contained in the Convention; (2) the Act laid down the right of prior consultations of indigenous and tribal peoples with respect to any legislative or administrative measure affecting them; (3) the consultations envisaged by the Act were to be held with a view to achieving consent on the measures proposed and, if agreement in this respect could not be reached, the Government was required to make a decision taking into consideration the rights of indigenous peoples; (4) the Act had to be interpreted in accordance with the provisions of

Convention No. 169; (5) representative organizations of indigenous and tribal peoples had been consulted prior to the adoption of the Act on prior consultation; and (6) the drafting of the Act took into consideration several documents, including: the drafts presented by the Office of the Ombudsperson and parliamentary groups (Bloque Popular, Nacionalista and Union por el Peru), the results of the Working Group No. 3 of the National Coordination Group for the Development of the Amazonian Peoples which was integrated by representatives of the Executive and indigenous Amazonian organizations, and the report on prior consultations prepared by the special commission established to study and recommend solutions for indigenous people's issues. Although it was for the Committee of Experts to evaluate the conformity of the provisions of the Act with the Convention, they underscored that it was nevertheless important to recognize the actions taken by the Government and commended it for them. The Government had amply demonstrated its commitment to respond to the conclusions of the ILO supervisory bodies.

They noted that a number of actors and organizations had commented favourably on the Act. Several organizations, including the Inter-Ethnic Association for the Development of the Peruvian Rainforest (AIDESEP), the Peasant Farmers' Confederation of Peru (CCP), National Agrarian Confederation (CCNA), the National Coordinating Committee for Communities Affected by Mining (CONACAMI) and the Confederation of Amazonian Nationalities of Peru (CONAP), all considered the Act on Prior Consultation an important achievement. The UN Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples commended the law's adoption and considered that it could establish an important precedent as a best practice for other countries of the region and the world. With regard to the Committee of Experts' request that the exploration and exploitation of natural resources be suspended until the peoples affected and covered by the Convention were consulted, the Employer members maintained that the Convention did not provide for or envisage such injunctive authority. Stating that injunctions of this nature held potentially serious consequences for a nation's economic activity, in particular its ability to attract foreign direct investment, they stressed that this request of the Committee of Experts needed to be re-examined. The Experts needed to understand that the real issue was that economic activity resulted in taxes and revenues that supported the local communities. The conclusion of the Experts that economic activity should stop was not supported by the legislative history of the Convention and jeopardized foreign direct investment.

They recalled that Article 6 of the Convention was the principal clause concerning the right of consultation, and that the definition of the latter term had been extensively discussed in the deliberations preceding the Convention's adoption. From the records of these discussions, it was clear that consultation did not equate to, or require, the consent of the parties being consulted. The record of the second round of discussions preceding the Convention's adoption showed that the Employers' group believed the term "consultations" to signify "dialogue, at least", and the Office itself had stated that it did not consider the consultations referred to, to require the agreement or consent of those being consulted. In its observation, however, the Committee of Experts appeared to have interpreted the term so as to impose a more exacting requirement upon the Government beyond that envisaged by the Convention; the potential consequences of this interpretation would be discussed and examined by several of the Employer members in the course of the discussion.

**The Worker members** indicated that the discussion of this case formed part of the follow-up to the discussion

held in 2009 and the serious incidents that had occurred in Bagua, leaving 33 dead. These incidents had been related to the adoption by the Government of decrees affecting the rights of indigenous and tribal peoples to lands and to natural resources. The decrees were not in conformity with the provisions of Convention No. 169, which called for consultation with the peoples concerned, through appropriate procedures, and in particular through their representative institutions, whenever consideration was being given to legislative or administrative measures which might affect them directly. Following his visit to the country, the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples had also confirmed the seriousness of the situation. Following the incidents of 2009, a commission had been established to investigate the violence that had occurred in Bagua. Nevertheless, there remained the greatest confusion as to the functioning of the commission, and particularly with regard to its impartiality. Although a report had been published, it had not shed light on those directly responsible, nor had it been signed by the representatives of indigenous peoples.

In this context, the indigenous peoples had called for the adoption of legislation requiring the State to consult them. On 19 May 2010, the Parliament had approved a Bill on prior consultations, which appeared to contain an exhaustive list of the principles to be followed to achieve consultation within the meaning of the Convention and could therefore serve as a first step in the improvement of relations. However, neither the Committee of Experts nor the Conference Committee had yet examined the legislative text in question, despite the commitment given by the Government to provide information on the measures taken to bring the national legislation into conformity with the Convention. The Conference Committee was therefore not able to express an opinion on whether or not the Act on Prior Consultation of May 2010 was in conformity with the Convention, both in terms of its scope of application and in relation to the protection provided, consultation procedures and the concept of “land” covered by Article 13 et seq. of the Convention. The Act needed to be in conformity with the definition of indigenous peoples, but also with the fact that these peoples “owned” the lands with which they had a special relationship. The Government had also undertaken to prepare and adopt a plan of action, in consultation with indigenous organizations, as indicated in the conclusions of the Committee the previous year, which referred to the establishment of mechanisms for permanent dialogue between the Government and Amazonian indigenous peoples and a multisectoral commission which would constitute another dialogue mechanism. Nevertheless, one year later, no plan had been adopted and the ad hoc dialogue body had not had any tangible effects.

The action taken by the INDEPA also raised problems in view of its lack of knowledge of the problems and the lack of representation of indigenous peoples within it. In July 2009, the INDEPA, despite the fact that it had an essential role to play in the application of the law and the promotion of indigenous peoples, had engaged in acts of political interference in the operation of the Amazonian organization AIDESEP with a view to obstructing its action. These allegations of partiality were damaging to the Institute and could only jeopardize the application of the law once it had been adopted. It also appeared that the AIDESEP had not been consulted concerning the project to relocate Amazonian peoples, even though this project endangered the social, political and economic integrity of Amazonian peoples and communities. Moreover, issues of relocation were covered by Article 16 of the Convention. These flawed consultations concealed major economic interests. The Ministry of Energy and Mining was

continuing to grant permits for the exploitation of hydrocarbons without any consultation and contrary to the Act on Prior Consultation. Over recent weeks, 25 new oil and gas exploitation zones had been granted, mainly in Amazonia.

In conclusion, the Worker members indicated that, even if the Act on Prior Consultation constituted progress, it was necessary to remain cautious and the Committee should not reduce the pressure exerted on the Government. In practice, the Act still has to be approved by the President. In addition, the Act did not take into account the recommendations of the Committee of Experts relating to the suspension of concessions in indigenous lands, did not deal with the repeal of the previous legislation, nor of compensation for acts that were contrary to the Convention. It was therefore important for the Act to be examined by the ILO before its signature by the President. Doubts remained concerning the Government’s real political will to comply with prior consultation procedures, particularly since several agreements concluded between the executive authorities and the organizations of Amazonian indigenous peoples had, in practice, not been supported by the executive authorities in Congress. An effective framework for collaboration with the INDEPA was essential to give effect in practice to the obligations deriving from the Convention. For that purpose, the composition of the INDEPA would need to be reviewed to ensure that it effectively represented the interests of the peoples covered by the Convention. In that respect, the Government could benefit from ILO technical assistance.

A Worker member of Peru observed that the tragic events that had occurred at Bagua had been the result of the failure to give effect to the Convention, as reflected in the eight points emphasized by the Committee of Experts. A true and impartial investigation into everything that had occurred in Bagua had not been carried out. The body entrusted with the investigation had not been able to issue an objective report in view of the refusal by the Government’s representatives to accept any responsibility on the part of the legislative and executive authorities. She added that the Government had not prepared any plan of action beforehand in consultation with the representative organizations of indigenous peoples. The discussions referred to by the Government in the context of the dialogue round tables did not amount to an adequate response. They consisted of incomplete dialogue which included the Amazonian people, but not the Andean peoples.

With regard to the INDEPA, she noted that the necessary steps had still not been taken for its reform so as to allow dialogue concerning long-term policies and plans of action with the participation of indigenous peoples. It was not composed of real representatives of indigenous peoples. Its bodies were bureaucratic and did not include consultative mechanisms, and its officials lacked knowledge of indigenous peoples. The INDEPA supported the establishment of a parallel board of directors organized to hinder the functioning of AIDESEP; the lack of impartiality by the body would have serious consequences for the application of the law.

The Act on Prior Consultation adopted by Congress on 19 May 2010 was a positive step obtained as a result of internal and international pressure, but it still had not been officially approved. It was regrettable that so many years had elapsed without the adoption of the consultation machinery envisaged in the Convention. There were serious doubts concerning the real commitment to give effect to the provisions of the Convention respecting consultation. There also remained many serious situations of conflict relating to the significant increase in the exploitation of the natural resources in the lands occupied by Andean and native communities, in relation to which they had not been consulted. Some 72 per cent of the Amazonian terri-

tory had been granted under concession for the exploration and exploitation of hydrocarbons, but the current participation mechanisms did not amount to real consultation. Progress needed to be made in the implementation of the recent Act on Prior Consultation and in the application of all the stages of consultation. Nor had legislative measures been adopted to guarantee the participation of indigenous peoples in the benefits from mining, oil and gas and compensation for the damage caused by such activities. Nor had the question of the lack of formal land title been resolved. The Government had not adopted educational measures to eliminate prejudice against indigenous people and the lack of indigenous teachers was a matter of concern.

**Another Worker member of Peru** stressed the importance of freedom of expression and the guarantees that were afforded by the rule of law. He confirmed that the Government had continued to hold dialogues with *apus* (tribal chiefs), non-governmental organizations and peasant farmers. He highlighted the importance of the judiciary carrying out its work to investigate the deaths of indigenous peoples and police staff, and to investigate the disappearances. It was important that the legislative authority carry out its work regarding the official approval of the Act on Prior Consultation. He said it would be advisable to broaden training for peasant farmers and indigenous peoples on their rights and obligations in order for them to be able to decide on their future democratically and in a sovereign manner.

**The Employer member of Peru** provided detailed information on the national legislation relating to the right to consultation. He explained that, although it was the State that granted the concession for exploiting natural resources, the title to the concession did not confer ownership of the land on the enterprise or holder of the concession, nor did it authorize them to begin operating. Before any exploration or exploitation could start, the holder of the concession should reach an agreement with the owner of the land. In the case of a concession located on community land, the Constitution guaranteed that peasant and indigenous communities had the autonomous right to use the land as they saw fit, within the framework of the law. There were a number of national laws and regulations that protected the rights and customs of indigenous peoples as well as an official standard for the protection of the environment. He described the integrated system for assessing environmental impact, which had standardized and transparent criteria, and procedures to ensure that the proper participatory channels were used. Moreover, with the new Act on Prior Consultation, the country could definitely be said to have the highest standards for consulting indigenous peoples in accordance with the terms of the Convention. In the case of the mining and energy sector, the existing standards required that, before any such activities could be started, it be ascertained whether the interests of the indigenous peoples inhabiting the area directly concerned by a project might be affected, so that any concerns regarding any possible social, economic, environmental or cultural impact could be examined and taken into account. The speaker felt that the Committee of Experts' observations were inappropriate, given that the country's standards complied amply with the objectives of the Convention.

He concluded by stating that indigenous communities enjoyed the economic benefits accruing from the exploitation of natural resources by virtue of a levy, i.e. the share of State income deriving from the economic exploitation of those resources that local and regional governments were entitled to, irrespective of any compensation that enterprises might pay the owners for the use of their land.

**The Government member of the Bolivarian Republic of Venezuela**, spoke on behalf of the Government members

of the Committee, Member States of the Group of Latin America and the Caribbean States (GRULAC). He cited the progress that had been made in ensuring that the Convention was applied, which had led to the drafting of a Development Plan for the Amazonian Peoples in which they participated fully, and the approval by Congress of the Act on Prior Consultation establishing the requirement that the indigenous peoples be consulted in advance so as to obtain their agreement or consent to any national or regional development plans, programmes or projects affecting their rights. He hoped that the conclusions to be adopted would take into account the discussion that had been held, without overlooking the new information, data and arguments put forward by the Government. In conclusion, he reiterated his firm hope that the Committee of Experts would confine itself to the explicit mandate it had received from the Governing Body.

**The Worker member of Paraguay** expressed his solidarity and committed support for the indigenous peoples and peasants of Peru, and expressed serious concern about the problems in applying the Convention. He said that the General Confederation of Workers of Peru (CGTP) and federations of peasants and indigenous peoples had repeatedly denounced the increase in conflicts in indigenous and campesino areas, and that such conflicts were closely related to access to, and control of, natural resources. In addition, the Government persisted in applying systematically a vertical administrative framework to Amazonian and Andean territories, which did not provide any guarantees of environmental protection. He pointed out that 72 per cent of the Amazonian area was dedicated to exploiting hydrocarbons, which meant that it was strategically and politically important to have a mechanism for the active participation of indigenous peoples and peasants relating to such activities. He regretted the fact that current legislation only provided for administrative and information measures, which did not in any way fulfil the obligation of consultation set out in the Convention. Given the risk of a resurgence in social conflicts related to the exploitation of natural resources because of lack of prior consultation, he requested that such obligation of consultation be implemented in practice as soon as possible.

**The Employer member of Mexico** argued that the Committee of Experts had exceeded its mandate. He explained that he had been the Employer spokesperson during the discussions that led to the adoption of Convention No. 169 and that he knew well the spirit of the provisions. It was inaccurate that consultations had to achieve agreement and it was incorrect to interpret that it was possible to require a hold on or suspension of economic activities. Article 6 of the Convention did not have, and never had, a binding nature. The Committee of Experts should not be able to change the meaning of the provisions of Conventions. He concluded by declaring that he felt that the Government was adopting a legislative package appropriate for implementation of the Convention.

**The Worker member of the Bolivarian Republic of Venezuela** highlighted the importance of ancestral rights of indigenous peoples as native peoples. She recalled that 70 per cent of the country's population had its ancestral roots in indigenous communities. She requested that the Government acknowledge the right of Peruvian indigenous peoples to maintain their culture and traditions. She urged the Government to enact the Bill on the right to prior consultations, end indiscriminate over-exploitation of natural resources, put an end to the persecution of Andean and union leaders and guarantee the right of indigenous peoples to mandatory consultation on decisions in which they had a say.

**The Employer member of Colombia** stated that only five of the provisions of the Convention related to labour is-

sues and that the other topics included were outside the ILO's competence. There were many regional and international instruments, as well as specialized organizations, to guarantee the protection of indigenous peoples. The ILO should limit itself to the field of labour. He expressed his concern that the Committee of Experts wished to introduce an injunctive measure to suspend economic activity that did not exist in the Convention. He also pointed out that there was no justification in the Convention for a need to reach agreement through consultations.

**The Worker member of France** responded to certain statements of the Employer members by recalling that Convention No. 169 was not the only Convention in which the ILO had addressed questions of civilization in close synergy with the United Nations. The Convention had been adopted by the Conference, and it was an international treaty that, once ratified by a member State, had to be implemented in its entirety. As regards the calling into question of the Committee of Experts' mandate and impartiality, it should be recalled that the interpretation of the text of a Convention was indispensable in order to clarify how its objective might be effectively attained. It should therefore be stressed that the Committee of Experts had not exceeded its prerogatives. The speaker emphasized that the word "consultation", as reflected in the text of the Convention, implied that consultations had to be undertaken in good faith, that is to say taking into account the views expressed. In the case under discussion, however, the Committee of Experts considered that the Government had not conformed to the objective of the Convention. He expressed the hope that the Act on Prior Consultation, referred to by the Government, would resolve the problem. However, the fact that three-quarters of the country had already been handed over for exploitation was a source of concern. The value of the territories went far beyond their market value. The discussion of this case revealed two conflicting ideologies: on the one hand, a capitalist approach, and on the other, a philosophy of sustainable development.

**The Employer member of Ecuador** expressed his concern at the interpretation of Article 6 of the Convention. The Convention did not authorize indigenous or tribal groups to set up parallel legislative bodies with the power to establish national standards or the right to veto legitimate measures taken by the national authorities when acting within their sphere of competence. He recalled the debate that had taken place when the Convention was being drafted, when the Workers' group presented an amendment to replace the term "consult" by "obtain the consent of" which was not accepted; that meant that the outcome of consultations was not binding. The spirit of the Convention was that the opinion of indigenous peoples should be sought when a government measure, or any matter stemming from the public authorities, might endanger the traditions and culture of their peoples. There was no way that this could be understood as opening up the possibility of their preventing or opposing categorically, irrespective of the will of the rest of society, a particular development model or projects going beyond the specific interests of those communities. The consultations should also serve to determine whether the groups wished to participate in, or stay out of, projects being undertaken in the proximity of their areas of interest and, should they decide to participate, what form that participation should take. That, however, did not imply that they were empowered to take decisions in the place of the duly authorized national bodies. He regretted that the Committee of Experts had gone beyond its mandate by requiring the suspension of projects relating to the exploration and exploitation of natural resources.

**The Employer member of Spain** pointed out the progress made by the Government, including the Act on Prior Con-

sultation. As for the discussion on the concept of consultations, he stressed the importance of respecting the rights of indigenous and tribal peoples to land, respect for the environment, the search for sustainable and harmonious development and the importance of corporate social responsibility, but he indicated that the concept of consultations could not engender the notion of a veto. He felt that it was inappropriate to consider that the consultations provided for in the Convention had a binding nature.

**The Government representative** welcomed the opinions and comments given on the progress that had been made. She said that the role of the INDEPA had changed because, at the request of leaders of indigenous peoples, it had been placed under the purview of the Presidency of the Council of Ministers as of February 2010. It was now a specialized technical body that carried out its functions in a multi-sectoral and cross-cutting manner at all levels of Government. She said that an *apu* (tribal chief) would be appointed to head the INDEPA; consultations were under way with indigenous groups to that end. She also said that the National Coordinating Group had prepared a National Plan for Amazonian Development, comprising ministries, regional governments and two representative organizations of Amazonian peoples: AIDSEP and CONAP. She described the measures being taken to fight discrimination and racism and the new resources being allocated to education in rural areas.

She said that a source of constant concern was the fact that some of the benefits derived from extracting natural resources were granted to the peoples and communities where such activities were undertaken. Six types of concessionary payments had therefore been created for the various types of extraction activity. She said that, during 2009, US\$1.2 billion had been paid in concessionary payments. She concluded by reaffirming her commitment to continue ensuring a different future for members of Peru's indigenous communities.

**The Employer members** thanked the Government for the information it had provided during the discussion, noting that the Committee of Experts would need to assess the actions mentioned by the Government with respect to the Act on Prior Consultation and would indicate in its next report any possible flaws or shortfalls. While it typically took governments years or decades to act in response to observations, the Government of Peru had taken prompt action within a year and should be commended. They noted that no person or institution was infallible and that, based on the testimony and evidence presented, it would be prudent for the Committee of Experts to reconsider its conclusions with respect to the interpretation of certain provisions of the Convention that had been addressed by Employer members.

**The Worker members** considered that the Employer members had unjustly challenged Convention No. 169 and that their discourse on treaty interpretation could not hide the lack of any real arguments on the substance of the case. Yet this was a very serious case from which lessons could be drawn for the entire region. The recently adopted Act on Prior Consultation might be the first step towards the amelioration of relations which were currently characterized by violence. However, certain questions remained unanswered: the exact circumstances of the serious incidents in Bagua; the conformity of the Act with the Convention; the composition and impartial operation of the INDEPA; the repeal of previous laws; and the right to compensation for victims who had suffered from the application of earlier legislation. The Government had taken a first encouraging step and, in order to prove its good will, should accept a technical assistance mission of the Office at the earliest opportunity so that the Committee of Experts had all the necessary information it needed to be able to answer the questions raised.

The representative of the Secretary-General stated that she wished to provide some clarifications. The word “consultation” was probably found in every ILO instrument; it was the very backbone of international labour standards, since all Conventions and Recommendations included a provision on consulting with workers’ and employers’ organizations, or required consulting with “workers and employers” concerned or groups of persons concerned, such as persons with disabilities. However, this common, very important concept had to be construed within the overall context of the instrument in which it was placed. Consultation was an obligation irrespective of the language used, such as the expression “shall consult”. Article 6 of Convention No. 169 highlighted this term more than most provisions, and to interpret it correctly, one needed to look at the Article in its entirety, and not just part of it. Paragraph 2 of Article 6 set out that consultations carried out in application of the Convention had to be taken in good faith, and in a form appropriate to the circumstances, with the objective of achieving agreement or consent. This provision did not require that consultations had to reach agreement, but meant more than merely consulting and moving on. One had to consult in good faith and with the objective of achieving consent. Both the English and the French versions of the text were clear. They did not compel agreement or consensus. The same understanding was reflected in the Committee of Experts’ observation which was being discussed in this case.

She further stated that, as an ILO Convention, Convention No. 169 could not be disowned; it was a revision of the Indigenous and Tribal Populations Convention, 1957 (No. 107). The ILO was the first organization with a Convention on indigenous peoples and it was the only organization with a binding instrument on indigenous peoples. These elements of clarification were provided while recognizing that this remained a sensitive and controversial issue.

The Employer members thanked the Office for the clarifications but indicated that the word “consult” had a different meaning in English than in French, where it had a stronger connotation. Leaving this distinction aside, it was clear that failure to consult should not be taken to mean that one might stop economic development. To this end, when they questioned the Committee of Experts as to the true meaning of the Convention, they were referring to its injunctive aspects.

### Conclusions

The Committee noted the statement by the Government representative and the discussion that followed. It noted that it had examined this case in 2009, and that the Committee of Experts, referring to the conclusions of this Committee, had called on the Government to take a range of measures of a legislative, institutional, awareness-raising and educational nature.

The Committee noted the Government’s indication that the Congress of the Republic of Peru had adopted on 19 May 2010, an Act on the Right to Prior Consultation of Indigenous or Original Peoples as recognized in ILO Convention No. 169, containing, *inter alia*, provisions to identify the peoples concerned. The Government also provided information regarding Presidential Decree No. 022-2010 endowing the INDEPA with the status of a specialized technical body. The Government further provided information on the work of the four dialogue round tables established in June 2009 with the participation of Amazonian peoples, which, *inter alia*, covered investigations into the Bagua incidents, and the formulation of a development plan for the Amazon area. It also referred to access of indigenous peoples to education, measures to eliminate prejudices in respect of indigenous peoples as well as initiatives aimed at improving their conditions.

The Committee welcomed the Government’s acknowledgment of the importance of consultation and the consequent adoption by the Congress of the Republic of the Act on Prior Consultation, and trusted that it would be promulgated rapidly by the President of the Republic. The Committee urged the Government to provide full information to the Committee of Experts on the promulgation and implementation of the Act to enable it to assess compliance with the provisions of the Convention. It urged the Government to ensure that the new Act on Prior Consultation was signed and implemented and to ensure, if needed, that transitional measures were adopted, in accordance with Articles 6, 7 and 15 of the Convention, as discussed in the Committee. The Committee also recalled the need for coordinated and systematic action to protect the rights of indigenous peoples, as provided for in Articles 2 and 33 of the Convention, which required state institutions that enjoyed the trust of indigenous peoples and in which their full participation was ensured. The Committee noted the information provided that the Act on Prior Consultation attributed a central role to the INDEPA as the technical body specialized in indigenous affairs and accordingly considered that the reform of this body, with the full participation of the representative organizations of indigenous peoples, was necessary to ensure its legitimacy and a genuine capacity for action and to secure the application of this important Act.

The Committee noted the formulation of a development plan for the Amazon area which, however, would not cover indigenous peoples of the Andean region. It also noted that progress needed to be made in relation to the formulation and implementation of plans of action to address in a systematic manner the pending problems relating to the protection of the rights of the peoples covered by the Convention, as requested by the Conference Committee and the Committee of Experts. It emphasized the need to ensure that these plans of action were developed and implemented with the participation of the representative organizations of indigenous peoples, in accordance with Articles 2 and 6 of the Convention.

The Committee requested the Government to provide full information in a report to be submitted for examination at the forthcoming session of the Committee of Experts in reply to the matters raised by this Committee and the Committee of Experts, including detailed information on the promulgation and implementation of the new Act on Prior Consultation and related transitional measures, the implementation of the development plan for the Amazon region, as well as information on the effect of Ministerial Resolution No. 0017-2007-ED setting admission criteria on bilingual teacher training. The Committee encouraged the Government to avail itself of the technical assistance of the Office to ensure that adequate progress on the implementation of the Convention was made.

The Worker members stated that in adopting these conclusions they had demonstrated great flexibility. They hoped that the Government would accept the technical assistance offered by the Office.

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### Worst Forms of Child Labour Convention, 1999 (No. 182)

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#### BURUNDI (ratification: 2002)

A Government representative stated that the problem of forced recruitment of children for use in armed conflicts no longer existed because of the transformation of the last remaining rebel movement into a political party, the National Liberation Front (FNL). All child soldiers had been demobilized and returned to their families, but they still suffered the same fate as the other children in terms of satisfaction of their needs. As for the use, procuring or offering of children for prostitution, the juvenile police had taken steps to discourage this phenomenon. He re-



called that prostitution was not permitted by the legislation, not even for adults. As for the use, procuring and offering of children for illegal activities involving street children, beggars or sexual exploitation, in September 2009 the Government had adopted a national action plan for the period 2010–2015, to eliminate the worst forms of child labour. That plan consisted of six activities: strengthening legislation in order to prevent and protect children from the worst forms of child labour; promoting awareness about child labour and its worst forms; building the capacity of institutions and stakeholders; promoting education for all by 2015; supporting underprivileged families through the rehabilitation and social-economic integration of youth; and coordination and management of the said plan. He further recalled that the country had a policy of universal education guaranteeing free access to primary education. However, the challenge remained of overcrowded schools with classes of more than 100 pupils. Despite the Government's strong political will to solve these problems, the country suffered from extreme poverty, from which children were not spared. Only the combined and continuous effort of the Government and the international community to combat poverty would make it possible to achieve the Millennium Development Goals and prevent and protect children against the worst forms of child labour.

**The Employer members** indicated that, in the context of the forthcoming 20th anniversary of the IPEC programme, according to the Report of the Director-General, progress in sub-Saharan Africa on the elimination of child labour had slowed down, which was a disappointment. Convention No. 182 required the commitment of all ratifying countries to adopt effective and time-bound measures to bring an end to the most extreme and abhorrent forms of work involving the most vulnerable and defenceless persons. These abuses must not be tolerated by the international community, even though they occurred in complex situations that were difficult to eradicate: States party to the Convention had undertaken to address them on a priority basis.

Burundi was a country that had suffered armed conflict, which had weakened its economy and institutions and had resulted in the use of children in armed conflict, including for prostitution and spying. Burundi would not be able to resolve the situation on its own, despite the Peace and Reconciliation Agreement. Assistance was therefore required from international organizations, such as the United Nations (UN), the ILO and the United Nations Children's Fund (UNICEF), and through international cooperation.

The reports referred to by the Committee of Experts described the use of thousands of children in armed conflict in recent years, of whom a significant number had been demobilized as a result of the United Nations programme (3,015 children), the IPEC Programme (1,442 children) and the national structure established by the Government of Burundi (1,932 children).

The low rate of school attendance facilitated the exposure of children to exploitation. Despite the progress made, serious problems remained, including the persistence of impunity in cases of serious violations, such as murder, mutilation, sexual violence and the use of children by armed movements, as well as child prostitution and the exposure of children to the risks outlined above as a result of their engagement in begging. They deplored the fact that the Government had failed to provide the last report and encouraged it to send further information to demonstrate the level of its commitment to the eradication of the problem and to continued dialogue with the Committee of Experts.

**The Worker members** stated that, in spite of the Government's ratification of Convention No. 182 in 2002, the

Committee of Experts received the first report only in 2008. Since then no new information had been sent on the issues repeatedly raised by the Committee of Experts. These questions referred to three situations concerning the worst forms of child labour prohibited by the Convention. The first was the forced recruitment of children for use in armed conflict: the data received by the Committee of Experts through the Committee on the Rights of the Child, the International Trade Union Confederation (ITUC) and the Confederation of Burundi Trade Unions (COSYBU) confirmed that a large number of children were used by the armed forces, either as soldiers or as helpers, in camps or as intelligence officers. In addition, there was evidence that many children were used by the opposition armed forces for sexual purposes. According to the Government, the recruitment of children for armed conflict was a phenomenon that had not existed since the Arusha Peace and Reconciliation Agreement of 2000 and the Comprehensive Ceasefire Agreement signed with the *Conseil national pour la défense de la démocratie – Forces pour la défense de démocratie* (CNDD–FDD) of Pierre Nkurunziza. However, in a 2006 report on the situation of children in armed conflict in Burundi, the United Nations Secretary-General indicated that, despite some cases of progress in this area, serious violations of children's rights persisted and were still not subject to criminal investigations or sanctions from the competent authorities. Authorities had not yet adopted national legislation to criminalize the recruitment and use of child soldiers. Furthermore, Burundi's Penal Code did not comply with the Convention as concerned the age for enrolment in armed conflict: the Criminal Code provided that the recruitment of children under 16 years was a war crime, whereas this prohibition should apply to persons under 18 years of age. The reintegration of child soldiers into society constituted another important problem. In 2008, the Ministry of National Solidarity, Human Rights and Gender signed a Memorandum of Understanding with the National Commission for Demobilization, Reinsertion and Reintegration for the establishment of outreach programmes on this issue; it was crucial to have more information on the impact of these programmes for the prevention and reintegration of child soldiers. In this respect they underscored the importance of free basic education and vocational training for the successful reintegration of these children.

The second situation of the worst forms of child labour concerned children working in prostitution. The Government stated in its 2008 report that, although it did not deny the existence of child prostitution in certain areas, this phenomenon had been eradicated and those responsible punished. The UN report, however, attested to the contrary and indicated that more and more children were victims of sexual violence. As the Penal Code of Burundi clearly punished the use, procuring or offering of children for prostitution, however, the problem rested not with the legislation but rather its implementation in practice.

The last situation relating to the worst forms of child labour concerned the use, procuring and offering of children for illicit activities. The COSYBU and the United Nations Secretary-General had reported on the situation of children aged 3–10 years living in the street and engaged in begging; these children were very vulnerable and may be used or engaged in armed conflict or any other illegal activity. They concluded by expressing their concern over this growing phenomenon and asked the Government to adopt legislation banning the use, procuring or offering of children for illicit activities and to provide sanctions to that end, without neglecting the rehabilitation and social integration of these children.

**The Worker member of Burundi** stated that the COSYBU endorsed the comments of the Committee of



Experts and the concern of the international community regarding the issue of the worst forms of child labour. Other worst forms of child labour, such as begging, street trade and child prostitution, continued to increase. They were linked in large part to the phenomenon of poverty, which affected most of the population. The Government needed to seriously combat this phenomenon by providing better management of public resources and guaranteeing stable employment for parents who, lacking any means of subsistence, had stopped sending their children to school, married off their daughters at a young age and left their children to begging. The various forms of violence suffered by children were also linked to both administrative and cultural obstacles. As for administrative obstacles, most criminals escaped punishment due not only to a lack of means but above all because of the phenomenon of corruption that marred the judicial system. Because of their culture, the victims of those crimes often did not dare denounce the perpetrators due to severe social pressure and because they were often trivialized and rejected. The COSYBU recognized that the Penal Code had been revised, but it deplored the serious failure to apply its provisions. She also noted that the National Plan of Action for 2010–15 had been adopted, but feared that, as with previous plans, it would not be effectively implemented. It was, therefore, important to assist the Government in implementing that plan and monitoring its implementation at the national level. She stressed that the COSYBU would continue to submit all the information required to the Committee of Experts in order to keep the Committee informed of the labour situation involving children in Burundi.

**The Worker member of Senegal** observed that, while nothing could justify the perpetuation of violations of the Convention, the worst forms of child labour and their attendant tragedies persisted. The Government's declared intentions were meaningless, even if the recruitment of children in armed conflicts appeared to have declined, and it was for the Government to address the problems of the recruitment and procurement of children for prostitution, as highlighted in a UN report of 2006, to which more and more children were victim. He stated that the phenomenon of street children demonstrated the inadequacy of government action to protect the young, as well as the absence of legislation on begging and accurate statistical data on child labour. According to the information available, about 20 per cent of children aged 5–14 years were engaged in paid employment, while half were involved in non-paid labour outside of the family. Child domestic labour was also a poorly documented phenomenon that was, nevertheless, extensive and mainly concerned children from rural areas. These children were among the most vulnerable, as they were entirely and at all hours subject to the whims of their employers. He concluded by stating that the Government must therefore guarantee its commitment to ending the scourge of the worst forms of child labour and the attendant human tragedies.

**The Government representative** indicated that the phenomenon of child soldiers no longer existed and that, as concerned children who were or had been employed in the worst forms of child labour, the crucial challenge to their reintegration was, in essence, the fight against poverty. In this regard, he stated that in so far as the Government possessed international obligations, it must not be forgotten that the first objective of development was the struggle against poverty, a long-term battle that would eventually resolve the problems associated with the worst forms of child labour. The implementation of the legislation and national action plan recently adopted required resources and a tripartite partnership at the national level. He added that additional efforts would be made by the Government to regulate the various forms of informal

work, including domestic work, and concluded by reiterating his Government's commitment to providing the additional information requested by the Committee of Experts.

**The Employer members** welcomed the information provided by the Government representative and supported the National Plan of Action. They also agreed that there was a link between child labour and poverty and that there was a need for steady progress. The focus should be on three points: (1) the importance of giving priority to the worst forms of child labour; (2) the pursuit of dialogue with the Committee of Experts, involving detailed information along with cooperation and technical assistance; and (3) the stepping up of activities aimed at demobilizing and reintegrating child soldiers, tackling the problem of child prostitution, prosecuting and punishing those guilty of breaking the law, and resolving the problem of child beggars, who were engaged in one of the worst forms of child labour. In conclusion, they stressed the responsibility of the international community in this area.

**The Worker members** pointed out that with regard to legal matters, it was necessary for the Government to take action to modify the Penal Code to expressly prohibit the recruitment of children under 18 for use in armed conflict and to inform the Committee of Experts accordingly. In terms of application in practice, the use of children in the worst forms of labour still occurred. The situation of child soldiers was very worrying, and it was fortunate that there was currently no such recruitment for armed conflict, thanks in particular to collaboration with the United Nations and IPEC, which had enabled the children concerned to be reintegrated. Efforts in that regard should continue, and the Government should renew its contact with IPEC with a view to putting the necessary reception structures in place. In addition, the Government should take the necessary steps to eliminate the phenomena of children being used for prostitution and of street children, who were particularly vulnerable to illicit activities. In that regard, it was vital for such children to receive proper schooling and to be reintegrated into society. They concluded by observing that the recently adopted national action plan to eliminate the worst forms of child labour needed to be implemented, and that the Government should provide information in that regard to the Committee of Experts in its next report on the application of the Convention.

### **Conclusions**

**The Committee** took note of the oral information provided by the Government representative and the discussion that followed. The Committee noted that the report of the Committee of Experts referred to comments from the ITUC and the Confederation of Burundi Trade Unions relating to the forced recruitment of children for use in armed conflict, the commercial sexual exploitation of children and street children.

**The Committee** took note of the information provided by the Government outlining the action programmes established with the assistance of ILO-IPEC to provide for the removal, rehabilitation and social integration of former child soldiers. The Committee also noted the information provided by the Government concerning the Action Plan to Combat the Worst Forms of Child Labour 2010–15, which had been adopted in September 2009 with the assistance of ILO-IPEC. The Committee further noted the information provided by the Government representative highlighting that the worst forms of child labour were the result of poverty, exclusion and underdevelopment. Finally, the Government representative expressed his country's willingness to continue its efforts to eradicate violations of Convention No. 182 with ILO technical assistance and cooperation.

The Committee noted that there was no longer in practice the forced recruitment of children under 18 years by armed groups and the rebel forces and that all child soldiers had been demobilized. It nevertheless urged the Government to ensure that the perpetrators of these egregious crimes were prosecuted and that sufficiently effective and dissuasive penalties were imposed in practice. The Committee called on the Government to continue to take effective and time-bound measures for the reintegration of children formerly involved in armed conflict.

The Committee noted that although the law prohibited the commercial sexual exploitation of children, it remained an issue of serious concern in practice. The Committee accordingly called on the Government to redouble its efforts and take, without delay, immediate and effective measures to eliminate the commercial sexual exploitation of children under 18 years in practice and to ensure that persons who infringed the Convention were prosecuted and that sufficiently effective and dissuasive sanctions were imposed. The Committee also requested the Government to supply detailed information in its report when it was next due on effective and time-bound measures taken to provide for the rehabilitation and social integration of former child victims of commercial sexual exploitation, in conformity with Article 7(2) of the Convention.

The Committee noted with serious concern that the number of children working on the streets remained high and that these children were exposed to various forms of exploitation. The Committee stressed that the engagement of children in hazardous work and begging on the streets constituted the worst forms of child labour and that, by virtue of Article 1 of the Convention, the Government was required to take immediate measures to prohibit and eliminate the worst forms of child labour, as a matter of urgency. It therefore urged the Government to take the necessary measures in national legislation to prohibit the engagement of children in hazardous work and begging on the streets. It also strongly urged the Government to take effective and time-bound measures to remove children undertaking work on the streets, and to provide for their rehabilitation and social integration.

Underlining that education contributed to combating the worst forms of child labour, the Committee strongly encouraged the Government to provide access to free basic education for all children, particularly children removed from armed conflict, former child victims of commercial sexual exploitation and street children.

Moreover, the Committee called on ILO member States to provide assistance to the Government of Burundi in line with Article 8 of the Convention, with special priority on facilitating free basic and quality education and vocational training.

Finally, the Committee requested the Government to provide detailed information, in its report to the Committee of Experts for its forthcoming session, on the implementation of the Action Plan to Combat the Worst Forms of Child Labour 2010–15 and the results achieved. It also requested the Government to provide detailed and accurate information on the nature, extent and trends of the worst forms of child labour in Burundi. Furthermore, the Committee requested the Government to supply detailed information on the measures to ensure the effective implementation and enforcement of the provisions giving effect to Convention No. 182. That information should include data on infringements reported, investigations, prosecutions, convictions and penal sanctions applied. The Committee requested the Office to provide technical assistance to the Government as requested by it to enable it to implement its obligations under the Convention.

**MOROCCO (ratification: 2001)**

A Government representative welcomed the fact that the discussion of the application of the Convention offered the opportunity to present the key aspects of the strategy developed by the Government to combat the worst forms of child labour. In the first place, reference should be made to the adoption in March 2006 of the National Action Plan for Children (PANE) 2006–15, of which a significant part was devoted to combating child labour. Considerable efforts were being made by the Government to implement this national strategy, focusing on five major components: a coherent legislative framework that was in conformity in its major aspects with international labour standards and Morocco's international commitments; the establishment and implementation of an institutional framework; tangible and local action focusing on the areas of origin of child labour; the provision to families of subsidies for the school attendance of children; and the reinforcement of expertise and competence through the technical cooperation undertaken with the ILO–IPEC programme in the context of projects financed by the United States, France and Belgium. In this respect, the Government had included a specific item in its budgets for 2008 and 2009 and intended to maintain it in future with a view to maintaining and generalizing the programmes of action already commenced in this context. In particular, this meant providing support for the activities of non-governmental organizations (NGOs) that were active in combating child labour, documenting the working conditions of children, training those concerned and strengthening competence at the national and local levels. Partnership agreements had been signed in November 2009 with seven NGOs, and it was planned to develop new partnerships in 2010.

He added that all of the efforts made by the Government to combat child labour had been compiled in a document that would be submitted to the Committee of Experts. He nevertheless wished to provide responses now to the specific points raised by the Committee of Experts. It should be noted that domestic work was among the principal objectives of the PANE. At the legislative level, the 2004 Labour Code covered domestic work and a bill was being prepared respecting the conditions of employment and work of domestic workers and establishing penalties for those employing children under 15 years of age. In addition, a specific list of hazardous types of work liable to be performed by domestic workers would be formulated and adopted under the future Act on domestic work. It would be in addition to the new list of hazardous types of work that had been drawn up and had raised from ten to 30 the number of hazardous types of work. Emphasis was also being placed on awareness-raising against child labour. A national campaign to raise the awareness of families, employers and children to the dangers and risks to which child domestic workers were exposed had been undertaken in 2008 in the framework of the national programme to combat the use of young girls as housemaids (INQAD) “Together against Domestic Work by Young Girls” using television, radio and the press, and a second campaign would be launched in 2010 with the support of the ILO–IPEC programme. Finally, reference should be made to a survey, the results of which would be provided to the Committee of Experts, on girl domestic workers under 18 years of age undertaken in 2001 in the Wilaya of Casablanca, and a new survey that would be carried out in 2010 to update the data, measure the impact of the action taken and help the local authorities develop appropriate responses.

With reference to the sexual exploitation of children, this scourge remained invisible and little known in Morocco, but the Government was sparing no effort to prevent and eliminate this worst form of child labour. The

Penal Code established severe penalties for abuses, acts of violence and aggression against children in the context of work or outside any labour relationship. Moreover, with the support of UNICEF, a preliminary study had been carried out on the sexual exploitation of children, and the process of dialogue for the development of a national strategy was currently under way. During the course of 2008, a total of 9,279 persons had been taken to court for violations of the rights of children in 8,748 cases, and 6,384 penalties, including sentences of imprisonment, had been handed down in cases of violence against children. Further information on the violations and the penalties imposed would be attached to the next report on the application of the Convention.

In the context of the implementation of programmes of action, a significant assessment on the prevention and removal of children from the workplace had been carried out by the Government. Over the period 2002–08, with the support of the ILO–IPEC programme, 12,068 children had been removed and offered viable alternatives, and 20,492 children had been withdrawn as a preventive measure. Between 2007 and 2010, with the support of the Adros project, 4,215 children had been removed and 4,068 children had been withdrawn as a preventive measure. Furthermore, an assessment of the activities carried out by the focal points responsible for action to combat child labour, who had recently been appointed by the Ministry of Employment, showed that 874 observations had been made and 451 violations reported in 2009.

In conclusion, he reaffirmed that his country had made enormous progress in combating child labour as a result of the political will shown and the real awareness of the phenomenon. However, much remained to be done to ensure that the progress achieved was sustained. Finally, he reaffirmed the will of the Government to cooperate with the Committee of Experts for the implementation of international labour standards, including the future standard on domestic work.

**The Employer members** considered the case under discussion to be a serious matter, as it corresponded to a double footnote concerning one of the fundamental Conventions. The Committee of Experts had made observations on the application of this Convention by Morocco in 2004, 2005, 2007 and 2009, but this was the first time that the Conference Committee had had an opportunity to discuss the case. The Committee of Experts' observation drew attention to a series of infringements of the Convention. With regard to Article 3 of the Convention, the observation referred to allegations regarding the existence of large numbers of young children, especially girls, being employed as domestic workers under conditions of servitude, after having been sold by their parents. It was estimated that 50,000 boys and girls – the majority of them under the age of 12 – were employed in domestic work. In the context of domestic work, one of the most serious problems affecting young girls was thought to be ill-treatment and sexual abuse. Moreover, although the 2003 Penal Code had declared sex tourism to be a criminal offence, there was evidence that both young Moroccans and young immigrants continued to be victims of child prostitution and sex tourism.

The Employer members also emphasized the need, as indicated in the latest direct request of the Committee of Experts, for the Government to provide information on the use of children for illicit activities, notably drug trafficking. Although a 1974 Royal Decree prohibited facilitating the access of persons under the age of 21 to drugs, there did not appear to be any ban on offering children for the production and trafficking of drugs, as required under Article 3 of the Convention. Regarding the mechanisms for monitoring the application of the Convention in practice called for in Article 5, ILO–IPEC reports published in

2007 indicated that the programmes of direct action against child labour in rural areas were undermined by the fact that so few labour inspectors operated in that area. Furthermore, with regard to Article 7(2)(a) of the Convention, the latest report by the United Nations Special Rapporteur on the right to education stated that, despite the progress that had been made, 8 per cent of Moroccan children were still outside the school system and there were some 60,000 street children in the country.

The Employer members noted the information supplied by the Government regarding the legislative ban on forced labour of minors, the proposed bill on domestic labour, the updating of the Dahir establishing the list of dangerous jobs, the planned survey on domestic work by girls in the Greater Casablanca area and the PANE 2006–15, which provided for a preliminary study to be carried out of the sexual exploitation of children. The preamble to the 2004 Labour Code reaffirmed the country's commitment to the four categories of fundamental principles and rights at work. Although that was an indication of Morocco's readiness to adopt relevant laws, it did not guarantee their effective implementation in practice. For that it was important to have an effective labour inspectorate. Morocco had indeed ratified the Labour Inspection Convention, 1947 (No. 81), in 1958, but the Government itself recognized that there were only 30 labour inspectors for rural areas, which was far too few for enforcement purposes. The country's labour inspectorate therefore needed to be strengthened both quantitatively and qualitatively, which would then make it possible to include the informal economy in its sphere of action. Recalling the large size of the informal economy in Africa, Asia and Latin America, the Employer members emphasized the important role played by the labour inspectorate in this area, inasmuch as the promotion of decent work meant first and foremost eliminating the most negative features of informal employment, and especially the worst forms of child labour.

**The Worker members** observed that Morocco was still affected by the existence of the worst forms of child labour, and primarily domestic work by children under slave-like conditions after they had been sold by their parents. There were around 50,000 such children, most of them girls under 12 years of age from rural areas. The Labour Code nevertheless prohibited forced labour, and the Penal Code specifically sanctioned recourse to the forced labour of children under 15 years of age.

The Worker members then referred to the various indications provided by the Government, such as the existence of a bill on domestic work setting the minimum age for admission to employment at 15 years, the planned updating of the list of hazardous types of work to bring it into conformity with the Convention and the plans of the Ministry to carry out an investigation into domestic work by young girls in Casablanca. The Government had been referring to these various initiatives for some time now without seeming to give effect to them, even though the Convention, which had been ratified by Morocco in 2001, required States to take immediate measures for the elimination of the worst forms of child labour as a matter of urgency.

The Worker members then referred to cases of child prostitution, particularly among immigrant and Moroccan boys, despite the fact that the Penal Code had classified sexual tourism as a crime since 2003. Although the Government had reported that a preliminary study had been carried out in 2007 on the sexual exploitation of children, the Worker members noted that no specific information had been provided on the subject since then.

In general terms, the Worker members observed that the Government was once again proclaiming numerous initiatives, such as a second awareness-raising campaign on domestic work by young girls, but that once again it had

not provided information on the results and on any progress achieved. This situation appeared to reflect the low level of commitment by the Government to take action as a matter of urgency against the various worst forms of child labour that were common in the country.

**The Worker member of Morocco** indicated that national unions were well aware of the serious nature of the scourge of child labour and were providing assistance, for instance through participation in the elaboration of relevant laws. His country had already made major steps forward by ratifying the Minimum Age Convention, 1973 (No. 138), Convention No. 182, the United Nations Convention on the Rights of the Child and its two Protocols. Moreover, a Decree had been issued in 2004 establishing a list of hazardous types of work. A new Penal Code had been adopted in 2003 imposing appropriate sanctions. It was necessary to bear in mind that, in an agricultural country with a long tradition of craftwork, parents made their children work in the fields, or try to pass on traditions and craft skills. However, this was not being used as an excuse. The Government was taking effective action to combat child labour through measures and programmes such as access to loans in rural areas to generate employment and combat poverty, financial aid for families to encourage them to keep their children in school, the PANE 2006–15, special police units to combat child prostitution, technical cooperation programmes with ILO–IPEC, efforts to draw up the bill on domestic work and subsidies for civil society organizations engaged in combating child labour. His country had accomplished giant strides towards the elimination of child labour, and the national unions would continue to support its efforts.

**The Employer member of Morocco** recalled that his country was currently developing in terms of governance, as well as in the economic and social fields and could not therefore allow child labour, as also demonstrated by the political will to involve the judiciary in the prosecution of offenders. The formal economy was currently growing by 4.5 per cent a year and that the informal economy only represented 12–13 per cent of the national economy, as indicated by international reports. Significant success had been achieved in the school enrolment of children aged 12 to 14 years, for whom the school attendance rate was 80 per cent. Some 500,000 young persons were engaged in vocational development schemes. He concurred with the Worker member from his country that the elimination of illiteracy, especially in rural areas, was the main focus of government policies. He added that there were over 30 inspectors in the country responsible for supervising the implementation of the 2004 Labour Code. He was convinced that Moroccan newspapers, which benefited from the freedom of the press, would publish any case of the mistreatment of domestic workers, which would lead to legal action and the imprisonment of offenders. Morocco was continuing to take action to combat the phenomenon of child labour. This would not only require administrative, but also depended on the progress made in the field of governance, as well as economic and social development.

**The Worker member of India** observed that Morocco had one of the highest child labour rates in the Middle East and North Africa. There were about 60,000 child domestic workers, and the practice of adoptive servitude, whereby parents sold their children to families for adoption for the purpose of domestic work, was common and socially accepted. For these children, decent childhood was a distant dream. He recalled that a society was measured by how it treated its vulnerable members. Child domestic workers, especially the live-ins, were virtual slaves working around the clock at the mercy and command of their employers. These hapless children, isolated and uprooted from their family and familiar environment, were

planted in totally alien surroundings having no one with whom they could share their feelings, complain, talk to or socialize. Being without parental affection, many of them suffered from developmental and psychological disorders. Illiteracy made it impossible for them to communicate with distant friends and family, and they experienced a tremendous amount of loneliness and faced an increased risk of verbal, psychological, physical and sexual abuse and economic exploitation. They faced deprivation, a heavy workload, a lack of proper pay or holidays and excessively long working hours of up to 14–18 hours per day. Furthermore, these domestic workers depended on their employers for all their needs. Hazards, such as burns when preparing meals, were common and were also posed by chemical cleaning fluids and the carrying of heavy items. In cases of breakage, accusations of laziness or poor performance, the child worker was punished severely, for example, through dowsing with boiling water or being confined to a room for days. He cited by way of illustration the case of Zineb, which had been published in the media, who had subsequently been admitted to hospital, had suffered bruises resulting from beating and had been burned with boiling oil on her chest and private parts. The fact that 80 per cent of child maids were illiterate and from rural areas made it impossible to escape, as they lacked money and knowledge of how to return home, and their employers threatened them with violence or handed them over to the police.

The nefarious activities of intermediaries, recruiting agencies and organized child traffickers also aggravated the problem and, in addition to the sexual abuse of young housemaids, prostitution and sex tourism were rampant, involving young Moroccans and immigrants, including boys. Forced prostitution was prevalent, particularly in cities with large numbers of tourists and near towns with large military installations. He added that child workers in other industries were, in addition to the abovementioned risks, also exposed to hazardous risks caused by work in elevated places, physical and psychological exhaustion and exposure to insecticides, harmful rays, chemical and toxic substances. While appreciating that the Government had made good efforts at the legislative level, namely with the prohibition of forced labour in the Labour and Penal Codes and the bill on domestic labour that was awaiting adoption, implementation remained disappointing and abuses mostly went unpunished. He therefore urged the Government of Morocco to take the following steps: (1) curb child labour and eradicate its worst forms; (2) establish effective complaints mechanisms to protect, shelter and rehabilitate exploited children; (3) ensure that no girls under the age of 15 could be employed as domestic servants; (4) increase the rate of children's access to quality education, both formal and informal; (5) enforce laws effectively; (6) adopt, as a matter of urgency, the bill on domestic work; (7) update the list of hazardous types of work to include domestic work; (8) improve the effectiveness of the detection, prosecution and punishment of crimes; (9) provide statistics on the number and nature of the infringements reported, investigations conducted, prosecutions, convictions and penal sanctions imposed; (10) provide information on the incidence of the sexual exploitation of children and the remedial measures taken; (11) organize nationwide awareness-raising campaigns, especially for parents; (12) improve the efficiency of the labour inspectorate through training; and (13) combat and eradicate poverty and illiteracy in Morocco.

**The Worker member of Senegal** stated that Morocco's presence before the Committee was owed to the lack of attention accorded by the Government to the observations of the Committee of Experts on the application of this Convention. Child prostitution and sex tourism, involving young Moroccans and immigrants, persisted in the coun-

try. In this respect, the Government indicated that a set of measures, such as the implementation of the PANE, which covered the issue of sexual exploitation, should lead to the adoption of a national strategy on the issue. Although the Government had indicated that a bill on domestic work was being prepared, and that the list of hazardous types of work had been updated, child labour continued to constitute an extremely serious problem in Morocco. Persons found in violation of the law should not remain unpunished. It was time for the Government to take appropriate measures to eradicate the worst forms of child labour and to implement the measures it had announced, so as to give a signal to the present Committee of its will to combat violations of the provisions of the Convention.

The Government representative said that the terms used by certain speakers to describe the situation did not reflect the real situation. It was appropriate to recall briefly the progress that the Government had made, such as broadening the scope of the Labour Code to include domestic work and the informal economy, expanding the list of hazardous types of work, acceding to the Optional Protocols to the United Nations Convention on the Rights of the Child, raising the school attendance rate, particularly through the human development initiative, and labour inspection activities. In that regard, a network of 400 labour inspectors was responsible for enforcing the application of labour legislation. Labour inspection was currently undergoing modernization in terms of recruitment, training and methodology. In addition, within the Ministry, there was a unit in charge of the 43 focal points responsible for coordinating activities to combat child labour at the regional level. Those who committed violations were severely punished, for example in the case of the young girl employed as a domestic worker which had been reported in the press. Justice was being applied. In conclusion, even if reducing the risk to zero was impossible, the Government was firmly committed to cooperating with all United Nations bodies, and the action it had undertaken on the causes and effects were beginning to bear fruit.

The Employer members welcomed the information provided by the Government concerning the measures taken to give effect to this Convention. They nevertheless expressed their concern at the continued presence of the worst forms of child labour, which were a persistent scourge in the country. They recalled that the principal obligation of States that had ratified the Convention was to take urgent action to eliminate the worst forms of child labour immediately. Such action had to be founded on free basic education for all, rehabilitation and social reinsertion of children freed from the activities in question, and attending to the needs of their families.

The Employer members emphasized the importance of adopting an act on domestic work that set a minimum age for such work, established decent working conditions and provided for appropriate controls and sanctions. Prior to its adoption, a draft of the act should be submitted to the Office for its opinion on whether the text was in conformity with the Convention. Tripartite consultations should be organized to create a constructive environment for the effective elimination of the worst forms of child labour. They again emphasized the need to strengthen labour inspection, both through the allocation of more financial resources and through measures to build capacity, which would allow for more effective action in both the formal and informal economies. It was important to have available reliable data on child labour in general and domestic work by children in particular. They emphasized the need to undertake the survey planned for the second half of 2010, as mentioned by the Government in its statement. Lastly, they encouraged the Government to continue requesting technical assistance from the ILO, particularly

ILO-IPEC, in order to widen the coverage and impact of its policy on eliminating the worst forms of child labour.

The Worker members said that the Government should not complain of being misunderstood, as it had failed for years to provide information to the Committee. Three points should be emphasized. First, the draft legislation that had been announced long ago, especially the bill on domestic work and the list of hazardous types of work, needed to be adopted as soon as possible. The Government should also prepare an ambitious programme of school attendance for girls, backed by measures such as subsidies for poor families. Finally, a detailed report containing information about efforts made and the results achieved should be submitted by the Government to the Committee of Experts.

### Conclusions

The Committee took note of the oral information provided by the Government representative and the discussion that followed. The Committee noted the information contained in the report of the Committee of Experts relating to the forced labour of children in domestic work, the use of children in hazardous domestic work and the use of children in prostitution and sex tourism.

The Committee noted the detailed information provided by the Government outlining laws and policies put in place to combat domestic work by little girls as well as the comprehensive action programmes that were being undertaken with the participation of the social partners and in collaboration with ILO-IPEC to remove children from such situations. The Committee also noted that the Government had expressed its willingness to continue its efforts to eradicate such situations with the technical assistance of the ILO. The Committee further noted the information provided by the Government that it was fully committed to ensuring the enactment of the bill on domestic work which set the minimum age for admission to domestic work at 15 years, and to updating a list of hazardous types of work to include hazardous domestic work.

While noting the policies and programmes of the Government to combat domestic work by children, the Committee noted with grave concern the economic and sexual exploitation which continued to be experienced by a large number of young girls engaged in domestic work in conditions approximating slavery or which were hazardous.

The Committee emphasized the seriousness of such violations of Convention No. 182 and urged the Government to take measures, as a matter of urgency, to eliminate the forced labour of child domestic workers. It also requested the Government to take the necessary legislative measures to ensure that work performed in the domestic sector was prohibited for children under 18 years where it was hazardous. In this regard, it strongly expressed the hope that the bill on domestic work would at last be adopted and the list of hazardous types of work would be updated without delay to include hazardous domestic work in the very near future.

While noting the information provided by the Government representative on prosecutions and convictions of perpetrators of child abuse in general, the Committee reminded the Government that forced labour and hazardous work constituted one of the worst forms of child labour, and that member States were obliged to eliminate these worst forms as a matter of urgency. The Committee accordingly urged the Government to intensify its efforts to ensure that persons who engaged children in forced domestic labour or in hazardous domestic work were prosecuted and faced sufficiently effective and dissuasive sanctions.

The Committee further noted with concern the persistence of the commercial sexual exploitation of children and sex tourism involving young children, particularly boys, and accordingly called on the Government to intensify its efforts to tackle the problem of child prostitution, including in the

context of sex tourism. The Committee noted the Government's indication that it had increased both human and financial resources to the labour inspectorate. It accordingly requested the Government to further strengthen the capacity and reach of the labour inspectorate and to ensure that regular visits, including visits to sectors of the informal economy, were carried out so that penalties were imposed on persons found to be in breach of the Convention. The Committee further requested the Government to provide detailed information and statistical data in its report when it was next due to the Committee of Experts on the number and nature of infringements reported, investigations, prosecutions, convictions and penal sanctions applied.

Underlining the importance of free universal and compulsory education to combating child labour, the Committee strongly urged the Government to ensure access to free basic education for all children, with special attention to the situation of girls.

Finally, the Committee requested the Government to supply detailed information in its report when it was next due on the effective and time-bound measures taken to provide for the rehabilitation and social integration of child victims of commercial sexual exploitation and child domestic workers, in conformity with Article 7(2) of the Convention.

#### UZBEKISTAN (ratification: 2008)

A Government representative informed the Committee that his Government had submitted the report on the application of Convention No. 182 for the 2008–10 period. This report had been compiled with the participation and cooperation of government institutions, the Council of the Trade Unions Confederation of Uzbekistan and the Chamber of Commerce and Industry. He indicated that Uzbekistan implemented international standards on the prevention and prohibition of child labour and had reliable and effective mechanisms for the protection of the rights of children in the field of labour. More specifically, he indicated that forced labour was prohibited by the Constitution; the Act on Guarantees of the Rights of the Child defined children as persons under 18 years of age; the labour legislation set the minimum age for admission to employment at 16 years, strictly defined cases in which children of 15 years of age could work, and provided for the working conditions and preferential conditions of persons under 18 years of age; the Act on the Prevention of Trafficking in Persons provided for mechanisms to counter all forms of exploitation of persons, including forced child labour and the involvement of children in criminal activities; criminal legislation established higher penalties for involving children in illegal activities; and a list of occupations with unfavourable working conditions in which it was forbidden to employ persons under 18 years of age had been adopted.

The Government of Uzbekistan had adopted the National Action Plan (NAP) for the application of the ILO Minimum Age Convention, 1973 (No. 138), and Convention No. 182. Four priorities had been identified under this Plan. Firstly, with regard to the improvement of legislation, the Administrative Responsibility Code had been amended in 2009 so as to increase the liability of officials and individuals for violations of labour legislation and for coercing persons under 18 years of age to perform work. In addition to the "list of occupations with unfavourable working conditions in which it is forbidden to employ persons under 18 years of age", the texts approved specific authorized limits for the lifting and carrying of loads by persons under 18 years of age and the Order on the Admission to Employment of Children under 16 years of age, regulating labour relations between an employer and an employee under 15 years of age and providing for compulsory general secondary education and special secondary professional education.

Secondly, a system of monitoring the application of Convention No. 182 had been prepared and the capacity of the responsible bodies strengthened. The following bodies were involved in the monitoring of the application of the Convention: both chambers of the Parliament; the Office of the General Prosecutor; the Ministry of Internal Affairs; the Ministry of Labour and Social Protection; the Ministry of Education; the Ministry of Secondary and Higher Education; the Council of the Trade Unions Confederation of Uzbekistan; the non-governmental youth organization "Kamolot"; the Council of Ministries of the Republic of Karakalpakstan; regional and local authorities; and civil society institutions. A joint resolution on activities to implement Conventions Nos 138 and 182 in educational institutions, providing for the monitoring of school attendance and the personal liability of heads of educational institutions, as well as monitoring compliance with the prohibition of the use of forced labour by students of secondary schools, professional colleges and academic lyceums had been adopted by the Ministry of Education, the Ministry of Secondary and Higher Education and the youth organization "Kamolot". The Council of the Trade Unions Confederation of Uzbekistan, the Ministry of Labour and Social Protection and the Chamber of Commerce and Industry had drawn up and approved the recommendation on the need to take into consideration the specific characteristics of the employment of persons under 18 years of age when concluding collective agreements.

Thirdly, all state bodies, civil society institutions, mass media and educational establishments had been involved in the dissemination of information on the rights of the child and the implementation of Convention No. 182. Recently, in collaboration with ILO-IPEC, a number of ILO documents, including Conventions and Recommendations, had been published in Uzbek. He added that, in May 2010, the delegation of Uzbekistan had taken part in the Global Conference on Child Labour organized by the Ministry of Social Affairs and Employment of the Netherlands and the ILO with the support of the United Nations Children's Fund (UNICEF), and the World Bank. Uzbekistan supported the Global Report "Accelerating action against child labour" prepared by the ILO, the World Bank and UNICEF, as well as the "Road Map", a plan of action on the elimination of the worst forms of child labour by 2016. Together with UNICEF, the Ministry of Labour and Social Protection had been implementing the project to support the implementation of the National Action Plan on child labour, which provided for the creation of a joint working group, research on the social protection of vulnerable children, awareness raising on child labour issues, the preparation of information materials and educational handbooks, the holding of seminars and the provision of training, the development of minimum standards for children with special needs, etc. In the framework of the Annual Work Plan of the Programme "Protection of the Child", a number of regional training activities had been carried out with the participation of *khokims* (governors), prosecutors, representatives of departments of internal affairs, commissions on minors and labour bodies.

The Government of Uzbekistan paid particular attention to families in need of assistance, mothers and children. Despite the financial crisis, in 2010 total spending on social services amounted to 59 per cent of the state budget. In conclusion, he reaffirmed that Uzbekistan was ready to engage in dialogue and cooperation with all the parties concerned and the relevant international organizations in relation to the protection of the rights and interests of children.

The Employer members noted that this was a double-footnote case and that, although Convention No. 182 had entered into force only in June 2009, there was a long

history in Uzbekistan of the issue of children working in the cotton harvest, to which the International Organisation of Employers (IOE) had been drawing attention for a number of years. They noted that, according to the 2010 Global Report on child labour, 115 million children were engaged in the worst forms of child labour, and of this total 67 million were found in the agricultural sector. The problem of child labour in agriculture was thus a prominent one, and it was therefore appropriate that the present case should come before the Committee.

Recalling that hazardous work comprised one of the worst forms of child labour under Article 3(d) of the Convention, and furthermore that Article 5 required the States parties to establish or designate appropriate mechanisms to monitor the implementation of the provisions giving effect to the Convention, they regretted the Government's failure to provide indications on the extent to which child labour existed in the country. The Government had referred to plans, statutes and regulations respecting child labour, but had not provided any data in this respect; moreover, although the Government had referred to a national plan of action to eliminate the worst forms of child labour, in accordance with Article 6 of the Convention, it remained difficult to assess how it actually implemented the specific measures called for under Article 7.

They noted that, according to the Environmental Justice Foundation (EJF), tens of thousands of children were forced to work in the cotton harvest for periods of up to three months, or 25 per cent of the year. Research undertaken by another non-governmental organization (NGO), the International Labour Rights Forum, further substantiated the EJF's claims. Indeed, the widely held estimate of the number of Uzbek children engaged in the cotton harvest ranged from 0.5 to 1.5 million, and the sheer size of the figures involved gave rise to serious concern; if so many children were prevented from attending school for up to a quarter of the calendar year, this would eventually bear grave consequences for Uzbek society as a whole. The Employer members noted that, although programmes to combat this problem existed, they appeared to have no teeth. Furthermore, it was not clear whether any of the various statutes and regulations referred to in the Committee of Experts' observation were in fact being implemented.

Noting that in its direct request the Committee of Experts had identified other deficiencies in the implementation of the Convention, with respect to the other worst forms of child labour, they emphasized that the problem at hand was greater than the issue of children engaged in cotton harvesting. They concluded that, although laws concerning the elimination of child labour appeared to be in place, there was no information respecting their effectiveness or implementation. They emphasized the necessity of programmes that, *inter alia*, measured the number of children being removed from work in the cotton harvest each year; this was a serious problem that needed to be remedied immediately.

**The Worker members** recalled that the present case concerned forced or compulsory work by children in cotton production and in work liable to harm their health, safety or morals. The systematic and persistent use of child labour in the production of cotton had been denounced by an important movement composed of the Trade Unions Confederation of Uzbekistan, as well as NGOs and certain media. In 2008, the Committee of Experts had noted, in the context of the Abolition of Forced Labour Convention, 1957 (No. 105), allegations by the Council of the Trade Unions Confederation of Uzbekistan reporting the mobilization and requisitioning of labour consisting, among others, of schoolchildren and students for the production of cotton, which could sometimes cover a period of three months. The number of schoolchildren compelled

to participate in the cotton harvest had been estimated at between 0.5 and 1.5 million, which had jeopardized their education and health, especially in rural areas, as confirmed by the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child.

According to the Government, employers could not use compulsory labour in agriculture and the public administration could not impose work on private employers. A Decree prohibiting child labour in cotton plantations had recently been adopted at the same time as the launching of a National Action Plan for the application of Conventions Nos 138 and 182. The Government had added that the Constitution and the national legislation explicitly prohibited all forms of forced labour and established guarantees for the protection of the rights and interests of children. It considered that the alleged facts were mistaken and were part of a denigration programme by NGOs intended to undermine the reputation of Uzbek cotton on the global market. Nevertheless, the introduction of legislative changes offered no guarantee at all that they would be given effect, supervised and enforced through penalties, nor that they would be the subject of consultation with the social partners, with the possible participation of duly recognized and identified NGOs.

Finally, the Worker members indicated that they were prepared to place their trust in the Government, on condition that it demonstrated without further ado its firm political will, particularly by designating an authority responsible for the implementation of Convention No. 182, accepting or proposing the provision of technical assistance and entering into partnership with IPEC.

**The Government member of Spain**, speaking on behalf of the Government members of Member States of the European Union of the Committee, expressed deep concern at the child labour situation in Uzbekistan. He noted with regret that, in its latest report, the Committee of Experts had expressed serious concern at the systematic and persistent use of forced labour, including forced child labour in the cotton fields in Uzbekistan. This concern, furthermore, was supported by well-documented evidence furnished by various organizations, including the Council of the Trade Unions Confederation of Uzbekistan, the IOE and the Committee on the Rights of the Child (CRC).

The large-scale use of children had continued in the 2008 and 2009 cotton harvests, and estimates of the number of children engaged ranged from 0.5 to 1.5 million. Uzbekistan had not achieved any significant progress on this serious issue that had been under examination for a long time, and was thus clearly failing to comply with its obligations under Convention No. 182. He urged the adoption of rapid and effective action to resolve this problem as a matter of extreme urgency, and in this regard drew the Government's attention to the "Road map to 2016", the main outcome of the Hague Global Child Labour Conference of 2010. This document had been developed after several consultations, and had been adopted by acclamation on 11 May by over 450 delegates from 80 countries, representing governments, employers' and workers' organizations, international and regional organizations, and members of academia and civil society. He also noted that the "Road map to 2016" was aimed at substantially increasing efforts to eliminate the worst forms of child labour by 2016, and listed guiding principles and priority actions for governments, workers' and employers' organizations, NGOs and civil society, as well as regional and international organizations. The priority action points in the document provided practical guidance for the Government of Uzbekistan and all other relevant stakeholders, and could serve as a stepping stone to the elimination of the worst forms of child labour.



**The Government member of the United States** stated that her Government noted with concern that, notwithstanding the existence of constitutional and legislative prohibitions against forced labour and child labour in Uzbekistan, there had been persistent and credible reports that many thousands of rural school children were mobilized forcibly each autumn to harvest cotton under hazardous conditions. These reports called attention to the negative consequences for the education of rural children in Uzbekistan and for their health. Considering that forced labour and hazardous work were among the worst forms of child labour, it was understandable that the Committee of Experts had expressed serious concern at this situation so soon after the Government's ratification of the Convention. While noting the commitment expressed by the Government of Uzbekistan to open and candid dialogue regarding its implementation of Convention No. 182, as well as the measures undertaken or envisaged by the Government to eliminate forced child labour, she stressed that much more could and must be done. Recalling that ILO technical assistance could be instrumental in helping the governments to find and implement solutions for the effective and sustained application of ratified Conventions, in both law and practice, she urged the Government of Uzbekistan to avail itself of that assistance. In particular, she joined the broad call for the Government to invite an ILO observer mission that would have full freedom of movement and timely access to all situations and relevant parties in order to assess the implementation of Convention No. 182, and all other relevant ratified Conventions, during the upcoming 2010 cotton harvest.

**The Worker member of Norway** indicated that reports of the 2009 cotton harvest from human rights defenders, independent journalists and photographers clearly demonstrated the still widespread use of forced child labour in Uzbekistan. According to those reports, cotton quotas for each region were prescribed directly from the central government in Tashkent to provincial governors, and then relayed down to district governors and education departments. Head teachers were also given quotas for their respective schools, and each child was ascribed a daily cotton quota.

According to the Ferghana.ru news agency, students at high schools and colleges in the Yangiyl district of the Tashkent region were forcibly sent to work in the cotton fields, as were children in the Syrdarya region. Furthermore, although officials claimed to have restricted labour in the fields to students aged 14 and older, reporters had found children between the ages of 12 and 13. She added that, according to the Central Asia News Agency, all students in the Andijan region had been recruited to participate in the cotton harvest from 17 September 2009 onwards, and that the Ezgulik human rights group had reported the mobilization of school children to pick cotton in the Surkhandarya region of southern Uzbekistan. Moreover, in the Ferghana region a 13-year old girl, interviewed by journalists in November 2009, had stated that she and her classmates had been picking cotton since 20 September and that, at the end of the harvest and in the cold weather, she was finding it difficult to meet her daily quota. Finally, a teacher interviewed in the Tashkent region last year had stated that during the harvest his school was obliged to pick 1.5 tonnes of cotton every day, and that the work was continuing throughout November, despite an administrator's promise that it would end by October.

She maintained that forced labour and child labour occurred not only in Uzbekistan, but was present throughout the whole of the cotton industry worldwide. Cotton was processed in sweatshops in export processing zones around the world, and then sold to textile manufacturers, who were also notorious for their mistreatment of work-

ers. It was time, she concluded, for child labour in Uzbekistan to end by implementing the measures set out in the Committee of Experts' recommendations.

**The Government member of the Russian Federation** noted that the report on the application of Convention No. 182 submitted by the Government had been prepared in consultation with the social partners. With regard to the measures taken by the Government to implement the Convention, he indicated that Articles 37 and 45 of the Uzbek Constitution prohibited any compulsory labour and contained state guarantees of protection of the rights and interests of children; that a list of occupations with unfavourable working conditions in which it was forbidden to employ persons under 18 years of age had been adopted; that the Labour Code had been amended with regard to the minimum age for admission to employment and that the Nation Action Plan for the application of ILO Conventions Nos 138 and 182 had been adopted. The latter provided for the improvement of the legislation on supervising compliance with the prohibition of the use of child labour; the monitoring of the application of both Conventions; awareness raising; and the implementation of international projects on the elimination of the worst forms of child labour. The Government of Uzbekistan had been taking and would continue to take all the necessary measures in cooperation with the ILO to comply with its international obligations under the Convention.

**The Government member of Kuwait** stated that by custom and tradition many agricultural countries, especially developing ones, used a form of mutual help and family solidarity that could include the participation of children in some activities, namely in cotton or rice harvests. This form of mutual help could not be considered to be a form of forced labour or child labour in the strict legal sense for the following reasons. First, this form of work took place among family members. It was a mere expression of solidarity and a form of the transmission of knowledge among generations. Secondly, this form of work took place without a contract and without remuneration. It could not be considered a normal working relationship, even less a form of forced labour, because it was not imposed. Thirdly, this form of mutual help within the family did not involve the absence of the children from school, because it took place during school vacations and did not affect the schooling of children. It was important to recognize the efforts of the Government of Uzbekistan to adopt legislation and its request for technical assistance from the ILO.

**The Government member of Belarus** added that his Government supported the efforts of the Government of Uzbekistan to ensure compliance with Convention No. 182 in law and in practice. He considered that Uzbekistan, as a young and internationally active State, deserved encouragement and support and the ILO should not be taking decisions on the basis of media reports.

**The Government member of Cuba** noted that the Uzbek Constitution prohibited forced labour and child labour and that the legislation and National Action Plan, adopted in consultation with national organizations, demonstrated that the Government of Uzbekistan was taking positive steps for the implementation of the Convention. The ILO should encourage these steps.

**The Government member of Switzerland** concurred with the statement made by the Government member of Spain on behalf of the European Union.

**The Government representative** emphasized that his Government had complied with the principles of tripartism when preparing its report on the application of Convention No. 182. He added that young people under 18 years of age represented 40 per cent of the population of Uzbekistan. Children were not only his country's future, but also its present. Ensuring protection against the worst



forms of child labour was the priority for the Government. To that end, the necessary measures had been taken in law and in practice to monitor the application of the legislation prohibiting child labour. Particular attention was paid to the dissemination of information on the rights of the child. In his Government's opinion, ensuring good education was the best way to eradicate child labour. Finally, he considered that the reports by NGOs on the alleged use of forced child labour were nothing more than a politically motivated campaign by developed nations competing on the cotton market. His Government wanted an honest partnership and would be grateful for any support and assistance by the ILO and international partners.

The Employer members regretted that, in its comments, the Government had failed to specify the workers engaged in the picking of cotton. Given that cotton exports totalled US\$1 billion annually, and that half the country's population comprised young persons, this was a serious question to which the Government needed to respond. Noting that there remained a substantial gap between law and practice with respect to forced and child labour, they emphasized once again the importance of statistical data on the number and ages of persons engaged in the cotton industry and suggested the establishment of independent monitoring programmes as a means of obtaining this information. They concluded that the Government needed to invest substantial resources to remove children from the cotton industry and ensure their attendance at school.

The Worker members observed that the Government's argument rested on two main points. First, it considered that it had been the victim of a smear campaign by NGOs seeking to damage the reputation of its cotton products. Second, it had highlighted the adoption of new provisions intended to ensure the development of an effective education system and the creation of a legislative framework guaranteeing protection for children's rights, through an Act amending the Code on Administrative Responsibility to increase the liability of those prosecuted for violating the legislation prohibiting child labour. However significant those steps might be, it was vital for the legislation on administrative liability to be applied and to be subject to consultation with the social partners, without excluding the participation of NGOs. The Government should consequently take steps to nominate a competent authority responsible for the implementation of the provisions of Convention No. 182; accept a technical assistance mission; develop a partnership with ILO-IPEC; and submit a progress report before the next session of the Committee of Experts in November 2010.

The Government representative indicated that 100 per cent of Uzbek cotton was produced by private farms. It was possible for children over 15 years of age to assist some 400,000 private farmers in the harvesting of cotton, as long as it was not detrimental to their health and education, and parental agreement had been obtained. Furthermore, national legislation prohibiting forced child labour was effectively implemented. Between 2008 and 2010, the Supreme Court had examined 128 criminal cases involving allegations of forced labour and forced child labour. Of 180 accused persons, 137 had been sentenced to imprisonment and others had been remanded. Finally, he indicated that compliance with Convention No. 182 would be discussed by the Parliament later this year and that relevant ministries and civil society institutions would be participating in these discussions.

## Conclusions

The Committee took note of the oral information provided by the Government representative and the discussion that followed. The Committee noted that the report of the Committee of Experts referred to comments from the International Organisation of Employers (IOE) relating to the sys-

tematic and persistent use of forced child labour in the cotton fields of Uzbekistan for up to three months every year, as well as the substantial negative impact of this practice on the health and education of school aged children obliged to participate in the cotton harvest.

The Committee noted the detailed information provided by the Government outlining the laws, policies and action programmes put in place prohibiting the forced labour of, and hazardous work by, children in cotton production and harvesting. The Committee also noted the Government's information on the measures taken within the framework of the National Action Plan for the application of Conventions Nos 138 and 182 to ensure the protection of children's rights. The Committee further noted the Government's statement denying the coercion of large numbers of children to participate in agricultural work, and that the use of compulsory labour was punishable with penal and administrative sanctions.

The Committee noted that, although various legal provisions prohibited forced labour and the engagement of children in hazardous work, it remained an issue of grave concern in practice. The Committee also noted the concern expressed by several speakers about the systematic and persistent recourse to forced child labour in cotton production. The Committee emphasized the seriousness of such violations of Convention No. 182. It reminded the Government that the forced labour of, or hazardous work by, children, constituted the worst forms of child labour and that member States were required to take immediate and effective measures to secure the prohibition and elimination of these worst forms of child labour as a matter of urgency. It accordingly urged the Government to take the necessary measures, as a matter of urgency, to ensure the effective implementation of national legislation prohibiting compulsory labour and hazardous work for children. In this regard, the Committee requested the Government to clearly identify the competent authority responsible for monitoring the legal provisions giving effect to Convention No. 182.

It also called on the Government to expand the capacity and reach of the labour inspectorate in enforcing the law to ensure that persons who infringed the Convention were prosecuted and that sufficiently effective and dissuasive sanctions were imposed.

Moreover, noting with serious concern the significant number of children removed from school and made to work in the cotton fields in hazardous conditions and underlining the importance of free, universal and compulsory education in preventing and combating the worst forms of child labour, the Committee called on the Government to take immediate and effective measures to ensure that school age children in rural and disadvantaged areas were not removed from school for the purpose of cotton production and harvesting. The Committee further requested the Government to supply detailed information in its report to the forthcoming meeting of the Committee of Experts on the effective and time-bound measures taken to remove children from forced labour and hazardous work and to provide for their rehabilitation and social integration, in conformity with Article 7(2) of the Convention.

The Committee urged the Government to accept an ILO high-level tripartite observer mission that would have full freedom of movement and timely access to all situations and relevant parties, including in the cotton fields, in order to assess the implementation of Convention No. 182. It expressed the preference that the mission would take place in time to report back to the forthcoming session of the Committee of Experts. It expressed the firm hope that, following this mission and the additional steps promised by the Government, it would be in a position to note tangible progress in the application of the Convention in the very near future.

**Worst Forms of Child Labour Convention, 1999 (No. 182)**  
*Uzbekistan (ratification: 2008)*

Finally, concerning the issue of insufficient data on children working in the cotton sector, the Committee suggested

that the Government carry out a national household survey on child labour or an area or sector specific survey.

## Appendix I. Table of Reports received on ratified Conventions

(articles 22 and 35 of the Constitution)

### Reports received as of 18 June 2010

*The table published in the Report of the Committee of Experts, page 805, should be brought up to date in the following manner:*

*Note: First reports are indicated in parentheses.*

*Paragraph numbers indicate a modification in the lists of countries mentioned in Part One (General Report) of the Report of the Committee of Experts.*

#### **Afghanistan** 3 reports requested (Paragraph 42)

· All reports received: Conventions Nos. 100, 105, 111

#### **Algeria** 21 reports requested

· All reports received: Conventions Nos. 56, 63, 68, 69, 71, 73, 74, 81, 87, 91, 92, 98, 100, 105, 108, 111, 122, 135, 144, 147, 150

#### **Armenia** 22 reports requested

· 12 reports received: Conventions Nos. (14), (26), 29, 81, (87), 105, (132), (138), (150), (160), (173), (182)  
· 10 reports not received: Conventions Nos. (97), 98, 100, 111, 122, 135, (143), 144, 151, 154

#### **Belgium** 24 reports requested

· All reports received: Conventions Nos. 8, 9, 16, 22, 23, 53, 55, 56, 68, 69, 73, 74, 87, 92, 98, 100, 111, 122, 129, 144, 147, 151, 154, 180

#### **Bulgaria** 25 reports requested (Paragraph 42)

· All reports received: Conventions Nos. 8, 16, 22, 23, 53, 55, 56, 68, 69, 71, 73, 87, 98, 100, 108, 111, 144, 146, 147, 163, 164, 166, 178, 179, 180

#### **Burkina Faso** 7 reports requested (Paragraph 42)

· 6 reports received: Conventions Nos. 87, 98, 100, 111, 144, 150  
· 1 report not received: Convention No. 135

#### **Cambodia** 7 reports requested (Paragraph 42)

· All reports received: Conventions Nos. 87, 98, 100, 105, 111, 122, 150

#### **Cape Verde** 11 reports requested (Paragraphs 33 and 42)

· All reports received: Conventions Nos. 17, 19, 29, 81, 87, 98, 100, 105, 111, 118, 182

#### **Croatia** 20 reports requested (Paragraph 42)

· 19 reports received: Conventions Nos. 8, 16, 22, 23, 53, 56, 69, 73, 74, 87, 91, 92, 98, 100, 103, 111, 122, 147, 179  
· 1 report not received: Convention No. 135

#### **Czech Republic** 22 reports requested (Paragraph 33)

· 13 reports received: Conventions Nos. 1, 14, 29, 87, 98, 105, 108, 132, 135, 142, 163, 164, 171  
· 9 reports not received: Conventions Nos. 100, 111, 122, (138), 140, 144, 150, 160, 182

## Democratic Republic of the Congo

19 reports requested

- 5 reports received: Conventions Nos. 29, 87, 117, 144, 158
- 14 reports not received: Conventions Nos. 12, 19, 62, 89, 94, 98, 100, 105, 111, 119, 120, 121, 135, 150

## Denmark

27 reports requested

- 26 reports received: Conventions Nos. 8, 9, 16, 27, 53, 73, 87, 92, 98, 100, 108, 111, 122, 133, 134, 135, 144, 147, 149, 150, 151, 160, (162), 163, 180, 182
- 1 report not received: Convention No. 169

## Eritrea

7 reports requested

*(Paragraphs 33 and 42)*

- All reports received: Conventions Nos. 29, 87, 98, 100, 105, 111, 138

## Ethiopia

9 reports requested

- 4 reports received: Conventions Nos. 29, 138, 156, 182
- 5 reports not received: Conventions Nos. 87, 98, 100, 111, 158

## Hungary

29 reports requested

- All reports received: Conventions Nos. 3, 14, 16, 24, 29, 81, 87, 98, 100, 105, 111, 122, 129, 132, 135, 138, 140, 142, 144, 145, 147, 151, 154, 163, 164, 165, 166, 182, 183

## Iceland

10 reports requested

- All reports received: Conventions Nos. 87, 98, 100, 108, 111, 122, 138, 144, 147, 182

## Islamic Republic of Iran

12 reports requested

*(Paragraph 42)*

- 7 reports received: Conventions Nos. 14, 19, 29, 95, 106, 111, 122
- 5 reports not received: Conventions Nos. 100, 105, 108, (142), 182

## Italy

32 reports requested

- All reports received: Conventions Nos. 8, 9, 16, 22, 23, 53, 55, 68, 69, 71, 73, 74, 87, 92, 98, 100, 108, 111, 117, 122, 133, 134, 135, 143, 144, 145, 146, 147, 150, 151, 160, 164

## Kenya

17 reports requested

- 13 reports received: Conventions Nos. 2, 14, 29, 45, 81, 88, 105, 111, 129, 135, 138, 142, 182
- 4 reports not received: Conventions Nos. 27, 94, 137, 149

## Kiribati

2 reports requested

*(Paragraph 42)*

- All reports received: Conventions Nos. 29, 105

## Lesotho

10 reports requested

*(Paragraph 42)*

- All reports received: Conventions Nos. 26, 29, 45, 81, 105, 135, 138, 155, 167, 182

## Liberia

19 reports requested

*(Paragraphs 38 and 42)*

- 15 reports received: Conventions Nos. 22, 23, 53, 55, 58, (81), 92, 105, 111, 112, (133), (144), 147, (150), (182)
- 4 reports not received: Conventions Nos. 29, 108, 113, 114

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**Malawi** 15 reports requested

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· All reports received: Conventions Nos. 26, 29, 45, 81, 89, 98, 99, 105, 107, 129, 138, 149, 158, 159, 182

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**Malta** 28 reports requested

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· All reports received: Conventions Nos. 1, 2, 13, 14, 29, 32, 62, 81, 87, 88, 96, 98, 100, 105, 106, 111, 117, 119, 127, 129, 132, 135, 136, 138, 148, 149, 159, 182

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**Norway** 33 reports requested

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(Paragraph 42)

· All reports received: Conventions Nos. 13, 14, 29, 30, 47, 81, 88, 94, 100, 105, 111, 115, 119, 120, 129, 132, 135, 138, 139, 142, 144, 148, 149, 151, 154, 155, 159, 162, 167, 169, 170, 176, 182

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**Pakistan** 13 reports requested

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(Paragraph 42)

· 11 reports received: Conventions Nos. 11, 29, 45, 81, 87, 98, 105, 107, 138, 144, 182  
· 2 reports not received: Conventions Nos. 96, 159

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**Panama** 26 reports requested

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· All reports received: Conventions Nos. 3, 13, 17, 29, 30, 45, 52, 81, 87, 88, 89, 98, 100, 105, 107, 110, 111, 117, 119, 120, 122, 127, 138, 159, 181, 182

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**Papua New Guinea** 13 reports requested

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(Paragraph 42)

· All reports received: Conventions Nos. 2, 29, 45, 87, 98, 100, 103, 105, 111, 122, 138, 158, 182

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**San Marino** 15 reports requested

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(Paragraph 42)

· 5 reports received: Conventions Nos. 88, 103, 143, 144, 182  
· 10 reports not received: Conventions Nos. 29, 105, 119, 138, 140, 148, 151, 154, 159, 161

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**Sao Tome and Principe** 18 reports requested

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(Paragraph 33)

· 6 reports received: Conventions Nos. (135), (138), (151), (154), (155), (182)  
· 12 reports not received: Conventions Nos. 29, 81, 87, 88, 98, 100, 105, 106, 111, 144, 159, (184)

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**Senegal** 12 reports requested

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(Paragraph 42)

· All reports received: Conventions Nos. 13, 29, 81, 96, 102, 105, 117, 120, 122, 135, 138, 182

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**Slovakia** 17 reports requested

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(Paragraph 42)

· 10 reports received: Conventions Nos. 13, 29, 88, 105, 115, 136, 138, 155, 182, 184  
· 7 reports not received: Conventions Nos. 120, 139, 148, 159, 161, 167, 176

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**Thailand** 10 reports requested

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(Paragraph 42)

· 5 reports received: Conventions Nos. 14, 88, 105, 127, 138  
· 5 reports not received: Conventions Nos. 29, 100, 122, (159), 182

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**Togo** 17 reports requested

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(Paragraph 42)

· 5 reports received: Conventions Nos. 87, 98, 138, 144, 182  
· 12 reports not received: Conventions Nos. 6, 11, 13, 14, 26, 29, 85, 95, 100, 105, 111, 143

## Tunisia

15 reports requested

- 14 reports received: Conventions Nos. 13, 29, 45, 62, 81, 88, 105, 118, 119, 120, (135), 138, 159, 182
- 1 report not received: Convention No. 127

## Turkey

18 reports requested

(Paragraph 42)

- All reports received: Conventions Nos. 29, 45, 81, 87, 88, 96, 105, 115, 119, 127, 135, 138, 151, 155, 158, 159, 161, 182

## Turkmenistan

6 reports requested

(Paragraphs 33 and 38)

- All reports received: Conventions Nos. (29), (87), (98), (100), (105), (111)

## United Kingdom - Gibraltar

12 reports requested

(Paragraph 42)

- All reports received: Conventions Nos. 2, 29, 45, 59, 81, 82, 98, 100, 105, 135, 142, 151

## Zimbabwe

15 reports requested

(Paragraph 42)

- All reports received: Conventions Nos. 29, 81, 99, 105, 129, 135, 138, 155, 159, 161, 162, 170, 174, 176, 182

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### Grand Total

A total of 2,732 reports (article 22) were requested,  
of which 2,120 reports (77.60 per cent) were received.

A total of 388 reports (article 35) were requested,  
of which 212 reports (54.64 per cent) were received.

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**Appendix II. Statistical table of reports received on ratified Conventions  
as of 18 June 2010  
(article 22 of the Constitution)**

Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee		Reports received in time for the session of the Conference	
1932	447	-		406	90.8%	423	94.6%
1933	522	-		435	83.3%	453	86.7%
1934	601	-		508	84.5%	544	90.5%
1935	630	-		584	92.7%	620	98.4%
1936	662	-		577	87.2%	604	91.2%
1937	702	-		580	82.6%	634	90.3%
1938	748	-		616	82.4%	635	84.9%
1939	766	-		588	76.8%	-	
1944	583	-		251	43.1%	314	53.9%
1945	725	-		351	48.4%	523	72.2%
1946	731	-		370	50.6%	578	79.1%
1947	763	-		581	76.1%	666	87.3%
1948	799	-		521	65.2%	648	81.1%
1949	806	134	16.6%	666	82.6%	695	86.2%
1950	831	253	30.4%	597	71.8%	666	80.1%
1951	907	288	31.7%	507	77.7%	761	83.9%
1952	981	268	27.3%	743	75.7%	826	84.2%
1953	1026	212	20.6%	840	75.7%	917	89.3%
1954	1175	268	22.8%	1077	91.7%	1119	95.2%
1955	1234	283	22.9%	1063	86.1%	1170	94.8%
1956	1333	332	24.9%	1234	92.5%	1283	96.2%
1957	1418	210	14.7%	1295	91.3%	1349	95.1%
1958	1558	340	21.8%	1484	95.2%	1509	96.8%
<p style="text-align: center;"><b>As a result of a decision by the Governing Body, detailed reports were requested as from 1959 until 1976 only on certain Conventions.</b></p>							
1959	995	200	20.4%	864	86.8%	902	90.6%
1960	1100	256	23.2%	838	76.1%	963	87.4%
1961	1362	243	18.1%	1090	80.0%	1142	83.8%
1962	1309	200	15.5%	1059	80.9%	1121	85.6%
1963	1624	280	17.2%	1314	80.9%	1430	88.0%
1964	1495	213	14.2%	1268	84.8%	1356	90.7%
1965	1700	282	16.6%	1444	84.9%	1527	89.8%
1966	1562	245	16.3%	1330	85.1%	1395	89.3%
1967	1883	323	17.4%	1551	84.5%	1643	89.6%
1968	1647	281	17.1%	1409	85.5%	1470	89.1%
1969	1821	249	13.4%	1501	82.4%	1601	87.9%
1970	1894	360	18.9%	1463	77.0%	1549	81.6%
1971	1992	237	11.8%	1504	75.5%	1707	85.6%
1972	2025	297	14.6%	1572	77.6%	1753	86.5%
1973	2048	300	14.6%	1521	74.3%	1691	82.5%
1974	2189	370	16.5%	1854	84.6%	1958	89.4%
1975	2034	301	14.8%	1663	81.7%	1764	86.7%
1976	2200	292	13.2%	1831	83.0%	1914	87.0%

Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee		Reports received in time for the session of the Conference	
As a result of a decision by the Governing Body (November 1976), detailed reports were requested as from 1977 until 1994, according to certain criteria, at yearly, two-yearly or four-yearly intervals.							
1977	1529	215	14.0%	1120	73.2%	1328	87.0%
1978	1701	251	14.7%	1289	75.7%	1391	81.7%
1979	1593	234	14.7%	1270	79.8%	1376	86.4%
1980	1581	168	10.6%	1302	82.2%	1437	90.8%
1981	1543	127	8.1%	1210	78.4%	1340	86.7%
1982	1695	332	19.4%	1382	81.4%	1493	88.0%
1983	1737	236	13.5%	1388	79.9%	1558	89.6%
1984	1669	189	11.3%	1286	77.0%	1412	84.6%
1985	1666	189	11.3%	1312	78.7%	1471	88.2%
1986	1752	207	11.8%	1388	79.2%	1529	87.3%
1987	1793	171	9.5%	1408	78.4%	1542	86.0%
1988	1636	149	9.0%	1230	75.9%	1384	84.4%
1989	1719	196	11.4%	1256	73.0%	1409	81.9%
1990	1958	192	9.8%	1409	71.9%	1639	83.7%
1991	2010	271	13.4%	1411	69.9%	1544	76.8%
1992	1824	313	17.1%	1194	65.4%	1384	75.8%
1993	1906	471	24.7%	1233	64.6%	1473	77.2%
1994	2290	370	16.1%	1573	68.7%	1879	82.0%
As a result of a decision by the Governing Body (November 1993), detailed reports on only five Conventions were exceptionally requested in 1995.							
1995	1252	479	38.2%	824	65.8%	988	78.9%
As a result of a decision by the Governing Body (November 1993), reports are henceforth requested, according to certain criteria, at yearly, two-yearly or five-yearly intervals.							
1996	1806	362	20.5%	1145	63.3%	1413	78.2%
1997	1927	553	28.7%	1211	62.8%	1438	74.6%
1998	2036	463	22.7%	1264	62.1%	1455	71.4%
1999	2288	520	22.7%	1406	61.4%	1641	71.7%
2000	2550	740	29.0%	1798	70.5%	1952	76.6%
2001	2313	598	25.9%	1513	65.4%	1672	72.2%
2002	2368	600	25.3%	1529	64.5%	1701	71.8%
2003	2344	568	24.2%	1544	65.9%	1701	72.6%
2004	2569	659	25.6%	1645	64.0%	1852	72.1%
2005	2638	696	26.4%	1820	69.0%	2065	78.3%
2006	2586	745	28.8%	1719	66.5%	1949	75.4%
2007	2478	845	34.1%	1611	65.0%	1812	73.2%
2008	2515	811	32.2%	1768	70.2%	1962	78.0%
2009	2733	682	24.9%	1853	67.8%	2120	77.6%



**II. SUBMISSION TO THE COMPETENT AUTHORITIES OF THE CONVENTIONS AND RECOMMENDATIONS  
ADOPTED BY THE INTERNATIONAL LABOUR CONFERENCE  
(ARTICLE 19 OF THE CONSTITUTION)**

**Observations and information**

*(a) Failure to submit instruments to the competent authorities*

A **Government member of Uganda** acknowledged the importance of the constitutional obligation to submit international labour standards to the competent authorities. A Committee had been set up at the national level to identify the instruments that had not yet been submitted, and was currently compiling the instruments for onward transmission to the Parliament of Uganda.

A **Government representative of Zambia** acknowledged the comments of the Committee of Experts concerning the failure to submit to the competent authorities 27 instruments adopted between 1996 and 2007. The instruments had been submitted to the Government through the Cabinet. She pledged that her country would endeavour to adhere to this constitutional obligation and inform the National Assembly on the instruments adopted by the Conference in due course.

A **Government representative of Mozambique** reaffirmed his Government's commitment to the principles enshrined in the ILO Constitution and its willingness to fulfil all its constitutional obligations. He requested technical assistance from the ILO in order to fully achieve those aims. He reported that, as of 2009, the country had restarted the process of submitting the standards adopted by the ILO to the competent authorities, a process that would be completed shortly.

A **Government representative of Kenya** expressed regret about his Government's inability to submit the relevant instruments to the competent authorities due to lack of capacity, restructuring changes in the Ministry and logistical and administrative issues. All efforts were being made to initiate the submission procedure at the earliest. The instruments would be submitted to the competent authorities as soon as the deliberations of the National Labour Board on the subject had been concluded. He finally requested ILO technical assistance as regards reporting obligations.

A **Government representative of Chile** reported that his country's new Government had undertaken to examine the situation highlighted by the Committee of Experts with regard to submission obligations and that it would provide the ILO with information on steps taken in that regard.

A **Government representative of the Central African Republic** stated that there had been a problem of interpretation for some time concerning the concept of "competent authorities". However, thanks to explanations provided by the Office, that term was understood, and measures would be taken to ensure that instruments would be submitted to Parliament within two years following their adoption. In addition, the National Assembly had been discussing since October 2008 instruments adopted during the past 20 sessions of the International Labour Conference, but the Office had not been informed. The speaker stressed the importance of the technical assistance provided by the Office in training government officials responsible for international labour standards concerning requirements for submission.

A **Government representative of Cambodia** informed the Conference Committee that progress had been achieved in complying with the submission obligation. All instruments to be submitted to the competent authorities had been translated into Khmer with ILO technical assistance.

Technical assistance remained crucial to ensure rapid transmission to the legislative body.

A **Government representative of Sudan** indicated his country's previous commitment to submit the instruments adopted by the Conference to the National Assembly. The work of the National Assembly had been delayed for some time, and the Assembly had even been dissolved, due to which the respective instruments had not been submitted, as the situation had changed and a new Assembly had been elected in the previous April. Subsequently, the instruments adopted by the Conference would likely be submitted to the National Assembly in July 2010. The ILO would be informed thereof. The speaker indicated hope that the Conference Committee would understand this exceptional situation.

A **Government representative of the Libyan Arab Jamahiriya** said that all instruments adopted between 1990 and 2001 had been submitted to the competent authorities for consideration, to verify that they were in conformity with national legislation. The instruments would be examined by popular conferences and the ILO would be informed when the process had been completed.

A **Government representative of Bahrain** stated that the Ministry of Labour had been informed of the comments of the Committee of Experts concerning the obligation to submit and that the Ministry had confirmed to submit the instruments adopted between 2000 and 2007 to Parliament.

A **Government representative of Ghana** apologized for his country's failure to comply with the submission obligation, which was owed to a high turnover at the Ministry of Labour in recent years. The submission procedure would be completed within the next few weeks. Technical assistance would be required for capacity building of officials responsible for ILO-related issues.

The **Worker members** underlined that the translation of newly adopted instruments into national language constituted a good practice, as it facilitated their submission to the competent authorities. They also drew the Committee's attention to relevant paragraphs of the report of the Committee of Experts.

The **Committee took note of the information provided and of the explanations given by the Government representatives who had taken the floor.**

The **Committee took note of the specific difficulties mentioned by different speakers in complying with this constitutional obligation, as well as the promises to submit shortly to parliaments the instruments adopted by the Conference.**

As had been done by the Committee of Experts, the **Committee expressed great concern at the failure to respect the obligation to submit Conventions, Recommendations and Protocols to national competent authorities. Compliance with the obligation to submit means the submission of the instruments adopted by the Conference to national parliaments is a requirement of the highest importance in ensuring the effectiveness of the Organization's standards-related activities. The Committee recalled in this regard that the Office could provide technical assistance to contribute to compliance with this obligation.**

The **Committee expressed the firm hope that the 42 countries mentioned, namely Antigua and Barbuda, Bahrain, Bangladesh, Belize, Cambodia, Cape Verde, Central African Republic, Chile, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Georgia, Ghana, Guinea, Haiti, Ireland, Kenya, Kiribati, Lao People's Democratic Republic, Libyan Arab**

**Jamahiriya, Mozambique, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Sierra Leone, Solomon Islands, Somalia, Sudan, Tajikistan, The former Yugoslav Republic of Macedonia, Turkmenistan, Uganda, Uzbekistan, Bolivarian Republic of Venezuela and Zambia** would transmit in the near future information on the submission of Conventions, Recommendations and Protocols to the competent authorities. The Committee decided to mention all these cases in the corresponding paragraph of the General Report.

*(b) Information received*

**Bosnia and Herzegovina.** Since the meeting of the Committee of Experts, the ratification of Conventions Nos 174, 175, 177, 181, 184, 185 and of the Maritime Labour Convention, 2006, was registered on 18 January 2010. The ratification of Conventions Nos 176 and 188 was registered on 4 February 2010. The ratification of Convention No. 187 was registered on 9 March 2010. Recommendations Nos 189, 193, 194, 195 and 198 were also submitted to the competent authorities in December 2009.

**Croatia.** Since the meeting of the Committee of Experts, the Government has ratified the Maritime Labour Convention, 2006, on 12 February 2010.

**Gambia.** Since the meeting of the Committee of Experts, the Government has submitted to the National Assembly on 22 March 2010 the instruments adopted by the International Labour Conference between the 82nd Session (June 1995) and the 96th Session (June 2007).

**Kazakhstan.** Since the meeting of the Committee of Experts, the Government has ratified the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185) on 17 May 2010.

**Nepal.** Since the meeting of the Committee of Experts, the Government has informed that the instruments adopted by the International Labour Conference between the 82nd Session (June 1995) and the 95th Session (June 2006) had been submitted to the Parliament on 16 November 2008.

**Paraguay.** Since the meeting of the Committee of Experts, the Government has submitted to the National Congress on 9 March 2010 the instruments adopted by the International Labour Conference between the 85th Session (June 1997) and the 96th Session (June 2007).

**Russian Federation.** Since the meeting of the Committee of Experts, the Government has ratified the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185) on 26 February 2010.

### III. REPORTS ON UNRATIFIED CONVENTIONS AND RECOMMENDATIONS (ARTICLE 19 OF THE CONSTITUTION)

#### *(a) Failure to supply reports for the past five years on unratified Conventions and Recommendations*

The Committee took note of the information provided.

The Committee stressed the importance it attached to the constitutional obligation to transmit reports on non-ratified Conventions and Recommendations. In effect, these reports permitted a better evaluation of the situation in the context of General Surveys of the Committee of Experts. In this respect, the Committee recalled that the ILO could provide technical assistance to help in complying with this obligation.

The Committee insisted that all member States should fulfil their obligations in this respect and expressed the firm hope that the Governments of Cape Verde, Democratic Republic of the Congo, Guinea, Guinea-Bissau, Kyrgyzstan, Russian Federation, Saint Kitts and Nevis, Sao Tome and Principe, Sierra Leone, Somalia, Tajikistan, The former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Turkmenistan, Uzbekistan and Vanuatu would comply with their future obligations under article 19 of the ILO Constitution. The Committee decided to mention these cases in the corresponding paragraph of the General Report.

The Worker members remarked that governments were aware of their obligations arising from articles 19 and 22 of the ILO Constitution and the Office should increase its technical assistance to enable them to quickly deliver delayed reports.

The Employer members expressed appreciation for the pertinent information supplied by Government members, as it led to a better understanding of the difficulties that certain countries encountered in fulfilling their constitutional obligations. They underlined the need for the ILO to carry out further integrated technical cooperation activities. They also welcomed the efforts made by the Office to simplify and reorganize the reports requested from governments and suggested that such an approach be continued. Concluding, they expressed the necessity to reinforce the capacities of the Conference Committee to achieve those countries' adherence to these fundamental constitutional obligations, which had shown little interest in their implementation.

#### *(b) Information received*

Since the meeting of the Committee of Experts, reports on unratified Conventions and Recommendations have subsequently been received from **Gambia**, the **Lao People's Democratic Republic**, **Liberia**, **Swaziland** and **Uganda**.

#### *(c) Reports received on employment instruments*

In addition to the reports listed in Annex B on page 195 of the Report of the Committee of Experts (Report III, Part 1B), reports have subsequently been received from the following countries: **Denmark**, **Ethiopia**, **Liberia** and **Slovakia**.

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REPORT OF THE COMMITTEE ON THE  
APPLICATION OF STANDARDS

OBSERVATIONS AND INFORMATION CONCERNING  
PARTICULAR COUNTRIES

OBSERVANCE BY THE GOVERNMENT OF MYANMAR OF  
THE FORCED LABOUR CONVENTION, 1930 (No. 29)







## Third item on the agenda: Information and reports on the application of Conventions and Recommendations

### Report of the Committee on the Application of Standards

#### PART 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 reaffirmed that eliminating the practice of forced labour in his country was an important goal set by the Government of Myanmar for the people, and equally shared by the ILO and the international community. Sincere efforts had been made to this end in close cooperation with the ILO, particularly with the ILO Liaison Officer. While relative progress had been achieved, current socio-economic conditions were not conducive to this goal. Time was needed to produce the desired result and the situation had to be looked at objectively and constructively.

Turning to some of the developments since this Committee's session in June 2009, he wished to highlight the extension of the Supplementary Understanding (SU) between the Government of Myanmar and the ILO for another year following the visit of the ILO delegation from 17 to 24 January 2010. This extension reflected the appreciation and support for the work of the ILO by the Government of Myanmar and its commitment to eradicate forced labour in the country. With regard to the complaints mechanism under the SU, he stated that the Liaison Officer's report recognized his Government's full cooperation with the complaints mechanism through the Government Working Group for the Elimination of Forced Labour (the Working Group). Timely responses to the complaints submitted under the SU and the facilitation of training and awareness-raising activities, including the training for military personnel, would not have been possible without his Government's commitment. Movement of the Liaison Officer had also been facilitated.

Concerning the actual extent of the forced labour situation in the country, the speaker pointed out that only 196 alleged cases of forced labour had been submitted to the Working Group from February 2007 to 17 May 2010; 125 of those had been investigated and met with solutions proportionate to their gravity. The results of the investigations on 35 cases had been transmitted to the Liaison Officer. Highlighting that Myanmar had a population of 58 million today, he considered that 196 cases over a three-year period for such a population could not be regarded as widespread. Without intending to suggest that the practice of forced labour was acceptable or tolerable, the statistics and analysis of the issues showed that forced labour was not widespread in the country. While problems remained at the local level, the Government was taking necessary measures to solve them.

Turning to the need for raising awareness about forced labour and its prohibitions, he indicated that a total of 13 awareness-raising activities had been successfully conducted since June 2009, for state/division and village authorities and representatives of military units, as well as UN and INGO field staff. The last workshop had been held in Pegu with the participation of administrative authorities from 14 townships in the area, the township police force and representatives from the Ministry of Defence, the Ministry of Immigration and Population and the Ministry of Labour. More activities would be carried out in the future so that more constituents would be aware of their rights, obligations and consequences concerning forced labour. The simply worded brochure explaining the law on forced labour, the SU and the complaint mechanism was presently being printed and distributed.

With regard to the question of under-age recruitment, the speaker recalled his Government's statement at the 307th Session of the Governing Body (document GB.307/6) that parents, guardians or relatives

could file complaints on under-age recruitment directly to any recruitment centre or military establishment. The military authorities were fully prepared to receive and follow-up on complaints. At the same time, the authors of a complaint may also resort to the SU complaints mechanism and in this regard there was no restriction on the part of the authorities. While being aware of some incidents of under-age recruitment at the local level, these were neither prevalent nor systematic, and should not be generalized. The Committee for the Prevention of Military Recruitment of Under-age Children was actively engaging in poster campaigns, training of military personnel, monitoring of the recruitment process, taking action on perpetrators and, more importantly, the speedy and steadfast releasing of proven under-age recruits. It was regularly providing information on the progress of its work to the relevant UN agencies and would continue to pursue its objectives, which included finalizing a Plan of Action in close cooperation with, among others, UNICEF and UNHCR.

While expressing appreciation to the Liaison Officer for his transparent and cooperative manner in sharing with the Government the draft report to this Committee, the speaker declared that some of the views and approaches expressed in the report were neither objective nor acceptable. Some of the information in the report was outside the mandate of the Liaison Officer and outside the purview of the SU. In future, the Working Group and the Liaison Officer might need to interact more in order to obtain a better understanding of the *modus operandi* of the Liaison Officer.

The speaker concluded by expressing the conviction that the Government of Myanmar would spare no efforts in attaining the goal of eliminating forced labour.

The Employer members expressed the view that, while some small positive steps could be seen, the situation in Myanmar remained fundamentally unchanged and that the Government was quite far from the abolishment of forced labour. Responding to the Government's statement that change would take time due to the socio-economic conditions of the country, they indicated that, given the duration of these issues, it was time to overcome these obstacles. The Employer members welcomed the Liaison Officer's report, and stated that it did not exceed his mandate. The work of the Liaison Officer was growing and his office was understaffed. The Employer members noted with regret that the visa application for an additional staff member had not yet been approved, and urged the Government to do so.

With regard to the elimination of forced labour in both law and practice, the Employer members stated that substantial problems remained. Forced labour involving the military continued at all levels, with an increase of complaints concerning the recruitment of minors into the military, in addition to the intimidation, harassment and imprisonment of those filing complaints in this regard. Examinations of complaints concerning the recruitment of minors should be included in the Liaison Officer's mandate. In addition, it appeared that there was conclusive evidence of the systematic imposition of forced labour by military and civil authorities, particularly the submission by the International Trade Union Confederation (ITUC) to the Committee of Experts in 2009 indicating that more than 100 Order "letters" for the requisition of forced labour had been issued between December 2008 and June 2009. Turning to the Village Act and Towns Act, the Employer members asked when these statutes would be repealed.

While substantial problems remained, small signs of progress could be seen in the Liaison Officer's report including: the third extension of the Supplementary Understanding (SU); the positive response of the Working Group to training and awareness-raising activities; the relatively timely response to complaints filed through the SU through the Working Group; the involvement of the Ministry of Defence in the delivery of training to military personnel on the law regulating under-age recruitment; the planned publication of a brochure on the SU and the procedures to file a complaint; the prosecution of two military officers in connection with forced labour (representing only a small proportion of necessary prosecutions); and the release of 14 out of 20 persons imprisoned relating to procedures under the SU, though the remaining six had yet to be released. Despite these positive signs, there was still a fundamental lack of civil liberties in Myanmar, in particular, 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. Furthermore, there was still a substantial climate of fear and intimidation of citizens, including the continued house arrest of Aung San Suu Kyi. Those were the root causes of forced labour, child labour, recruitment of child soldiers, discrimination and the absence of freedom of association.

With regard to the Government's statement that the number of complaints was low given the large population of Myanmar, the Employer members expressed the view that this low number might be due to a lack of access to the complaints mechanism and because of pressure felt by the population not to file a complaint. A number of complaints of trafficking in persons for the purpose of forced labour had been deemed not receivable by the Working Group and referred to the Ministry of Home Affairs. Forced labour in Myanmar needed to be addressed holistically, and the Government was strongly urged to receive cases of trafficking for the purpose of forced labour without delay.

Turning to the recently adopted Constitution, the Employer members noted that the qualifications contained in the article banning forced labour raised questions regarding its conformity with Convention No. 29. The Convention must be fully and completely implemented in law and in practice. The Government remained far from applying the measures recommended by the Commission of Inquiry that, for example, legislative texts, particularly the Village Act and Towns Act, should be brought into conformity with the Convention, the authorities should cease to impose forced labour and the sanctions provided for imposing forced or compulsory labour be strictly applied. The implementation of those recommendations would be guaranteed if the Government took action in the four areas identified by the Committee of Experts in its 2009 observation; yet, the matters that needed to be addressed remained unresolved.

The Employer members urged the Government to provide full and detailed information as an unequivocal sign of its genuine willingness to cooperate with the Committee and the supervisory bodies. Transparency and collaboration with the Liaison Officer was essential. The Government was reminded that the agreement on the SU and the creation of a complaints mechanism did not relieve it of its obligations under Convention No. 29. The Government needed to make tangible improvements in national legislation and provide sufficient funds so that voluntary paid labour could replace forced labour in the civil and military

administration to demonstrate its unambiguous willingness to combat forced labour and bring an end to the climate of impunity. The situation in Myanmar had persisted far too long, particularly as it had ratified Convention No. 29 over 50 years ago and the Government of Myanmar needed to end forced labour.

**The Worker members** recalled that the discussion was part of the follow-up to the conclusions and recommendations of the Commission of Inquiry established by the Governing Body in 1997, which had concluded that the Government of Myanmar was constantly and systematically violating Convention No. 29 and which had urged it to take three sets of measures. Firstly, it had requested that the country's legislation be brought into line with Convention No. 29. On that point the Government was still not prepared to repeal either the Village Act or Towns Act, even though it claimed that they were not applied in practice. There was every reason to believe that repealing the laws would, in any case, no longer be enough, as article 359 of the new Constitution, which banned forced labour, provided for an exception in the case of work imposed by the State in the interest of the people, thereby opening the door to every kind of forced labour. Secondly, the Commission of Inquiry had called for the adoption of specific measures guaranteeing that the military authorities would no longer impose forced labour. Both the Committee of Experts and the Commission of Inquiry had repeatedly made it clear that the civilian and military authorities, and the population at large, needed to be given precise instruction to that effect. A number of activities had been carried out which marked a degree of progress, but the Government must undertake to provide more information, conduct a more coherent and systematic public awareness campaign, distribute leaflets on the subject in all the local languages and declare unambiguously that it was prohibiting all forms of forced labour. The Worker members also emphasized that the budget for recruiting paid workers in the place of unpaid forced labour was still inadequate or was not adequately utilized. The machinery for handling complaints was useful but its effectiveness was limited by the poor facilities available to the Liaison Officer and his limited sphere of action, by the reprisals suffered by victims who lodged complaints and by the refusal of the local authorities to use the machinery. As a result, civil and military authorities continued to impose forced labour systematically throughout the country. The third issue raised by the Commission of Inquiry concerned the application of sanctions. Although the Penal Code provided for sanctions against people who imposed forced labour, not one of the complaints lodged in 2009 under the Supplementary Understanding had led to charges being brought and only administrative sanctions had been imposed in the cases of minors being recruited by military personnel. This was a source of considerable concern, especially where military personnel were implicated. Although the Liaison Officer played a vital role in helping to do away with forced labour, it was necessary that the Government cooperate fully. Much remained to be done towards applying the Convention.

**Another spokesperson for the Worker members** also felt that the present case should not be reviewed in a historical vacuum and wished to assess the progress that the Government had made with respect to the Conference Committee's conclusions of 2009. These seven conclusions had not been effectively or significantly implemented by the Government, namely bringing the relevant legislative texts, in particular the

Village Act and the Towns Act, into conformity with the Convention; amending paragraph 15 of Chapter VIII of the new Constitution; ensuring the total elimination of widespread forced labour practices; ensuring that perpetrators of forced labour be prosecuted and punished under the Penal Code; issuing an authoritative statement at the highest level clearly confirming the Government's policy for the elimination of forced labour and its intention to prosecute perpetrators; approving a simply worded brochure in accessible languages on the functioning of the SU; and eliminating problems in the physical ability of victims of forced labour or their families to complain and immediately ceasing the harassment, retaliation and imprisonment of individuals who used, or facilitated the use of, the complaints mechanism. Special sittings for this case had been held for a decade, and there continued to be substantial non-compliance with the Committee's conclusions, as well as the recommendations of the Commission of Inquiry. This persistent non-compliance challenged and affronted the supervisory function of the ILO and the ILO Constitution.

Referring to the conclusions of the Commission of Inquiry, the Worker members emphasized that necessary budgetary allotments needed to be made to assure the contracting of voluntary labour. The Committee of Experts, in its 2009 observation, stated that any budgetary allocations for this purpose were not adequate or not adequately utilized. Therefore a lack of progress was due to a lack of political will, and not because of resource constraints. Turning to the need for criminal prosecution of the intellectual and material perpetrators of forced labour practices expressed in the Commission of Inquiry's conclusions, the Worker members noted that the Committee of Experts, in its 2009 observation, had indicated that none of the complaints assessed and forwarded by the Liaison Officer to the Working Group had resulted, in 2009, in a decision to prosecute fully and convict criminally perpetrators of forced labour. This included a case where the explicit recommendation by the Liaison Officer for criminal prosecution was rejected. While the Government's agreement to continue the SU was favourable, the Government continued to undermine its effective implementation. The Committee of Experts had concluded that the Government persisted in imprisoning facilitators of complaints, and that complainants were subject to detention, harassment and judicial retaliation. In a number of cases, complainants chose not to pursue their claims out of fear of such reprisals.

The Worker members recalled the 2007 decision of the Governing Body to defer seeking an advisory opinion from the International Court of Justice (ICJ) on this case until the necessary time, and that the question for the ICJ could be whether the Government's cooperation with the Commission of Inquiry's recommendations "met the relevant threshold". Three years later, the Government was nowhere near the threshold, and this Committee should assume responsibility for the undermining, by the Burmese Government, of the supervisory system.

**The Government member of Spain**, speaking on behalf of the Government members of the Committee member States of the European Union and of the Government members of San Marino, Switzerland and Norway, expressed concern about the critical human rights situation in Burma/Myanmar, as reported by the Liaison Officer, the United Nations Special Rapporteur on the situation of human rights in Myanmar, as well as the UN Human Rights Council and the UN General Assembly. The authorities of

Burma/Myanmar should take steps to bring about peaceful transition to a democratic and civilian system of government and to make the planned elections credible, transparent and inclusive. The political and socio-economic challenges facing the country could only be addressed through genuine dialogue between all stakeholders, including ethnic groups and the opposition. The speaker called upon the Government to release all political prisoners and detainees, including Aung San Suu Kyi, and expressed grave concerns about the non-compliance by Burma/Myanmar with Convention No. 29.

The speaker welcomed certain positive steps taken by the Government of Burma/Myanmar, such as the renewal of the trial period of the SU complaints mechanism; the publication and distribution of the simple-worded brochure, in local languages, setting out the law against forced labour and the complaints mechanism under the SU; and the proposals that the Penal Code and Military Regulations on forced labour incur imprisonment of military personnel for the recruitment of minors. The speaker urged the Government of Burma/Myanmar to build on these steps by ensuring that proposed amendments to the laws and regulations were put in practice.

Full compliance with Convention No. 29 was far from being achieved. It was deeply regrettable that persons who had used the complaints mechanisms in order to denounce forced labour were imprisoned. This was contradictory to the Government's own commitment under the SU and, as had been indicated by the ILO Governing Body, would undermine the progress made to date. Therefore, imprisoned complainants should be released. The authorities were urged to put an end to the recruitment and use of child soldiers, and to pursue their collaboration with the Special Representative of the Secretary-General for Children and Armed Conflict. He expressed deep concern that complaints against serving military personnel were difficult to pursue, especially in light of reports of their use of forced labour for portage and sentry guards. Finally, the speaker called upon the authorities to respect their commitment and reaffirmed the importance of the cooperation between the authorities of Burma/Myanmar and the ILO.

**The Worker member of Malaysia** indicated how the continued situation of forced labour in Burma/Myanmar was having a negative impact on the member countries of the Association of Southeast Asian Nations (ASEAN), and in particular on workers and trade unions. Emigration to avoid forced labour was a major contributing factor to the presence of more than two million migrants from Burma in Thailand, nearly 200,000 in Malaysia and undocumented numbers in Bangladesh. The social and legal issues involved, and the complex situation with respect to the Burmese migrant workers, were a huge financial and political drain on governments, and the workers' organizations in Thailand and Malaysia had to deal with the impact of unscrupulous employers' practices taking advantage of these migrants. Highlighting the continuing exaction of forced labour in North Arakan from hundreds of Rohingya villagers of Maungdaw Township, to build a fence and check posts along the Bangladesh border, he indicated that forced labour depriving the poor from their wages had been the primary root cause for emigration to Bangladesh. While the ILO and the broader international community had been trying to end human trafficking, the Government of Burma/Myanmar seemed to be doing the reverse. He concluded that the continuing forced labour and

denial of fundamental rights were driving workers from Burma to ASEAN and South Asian countries, weakening the social, economic and security conditions in these countries. If Burma wanted to be given due respect as a partner in ASEAN, its Government had to make the necessary changes to end forced labour.

**The Government member of Thailand** welcomed the continued cooperation and dialogue between the Government of Myanmar and the ILO. The developments within the last year were encouraging, namely the functioning of the complaint mechanism, training and awareness-raising activities, operational field missions, consultations between the Liaison Officer and the Working Group and the extension of the SU. The Myanmar Government had responded in a reasonably timely manner to complaints that had been lodged under the SU and progress was made regarding under-age recruitment in the military. The Government should be encouraged to continue this positive trend in partnership with the ILO to ensure the protection of complainants, facilitators and others associated with the filing of complaints. Awareness raising was a key element in addressing forced labour and it was crucial that state authorities and the general public be fully aware of the national laws prohibiting forced labour and the complaints mechanism. The Government's agreement on the final layout of the brochure on this mechanism, which would soon be available to the public was to be welcomed. Wide-ranging distribution of the brochure was necessary, especially in rural areas and in areas with a high number of reported complaints. It was apparent that Myanmar was willing to work with the international community, although more still needed to be done. The Government of Thailand stood ready to support and cooperate with Myanmar on this matter.

**The Government member of Norway** aligned herself with the statement made by the Government member of Spain indicating that, while some positive steps had been made, concern about the human rights situation and the lack of compliance with Convention No. 29 remained. Improvements of the legal framework needed to be accompanied by real efforts on the ground, and the ILO should be given unrestricted access to verify these efforts in practice. The speaker then drew attention to the situation in the states dominated by ethnic minorities, where armed conflicts and tensions made the population particularly vulnerable to forced labour and the recruitment of child soldiers. She urged the Government to allow access by international experts to these areas in order to verify compliance with national legislation and international commitments by Myanmar.

**The Worker member of Japan** referred to the information from a fact-finding mission conducted in February 2010 by a Japanese non-governmental organization to refugee camps along the Thai-Burmese border, which indicated that all new refugees were victims of forced labour exacted by the Burmese army. She also referred to the death of a 15-year-old child soldier in Pyontaza in May 2010, who was killed for refusing to join the army and she expressed the view that this death was a by-product of the army's policy whereby soldiers must fulfil recruitment quotas. The resolution adopted by the International Labour Conference in 2000, which recommended that all member countries review their relations with the Government of Burma, had not been properly implemented. She noted that according to the report of the Burmese National Planning and Economic Development Ministry, by March

2010, the pledged amount of foreign direct investment in the country exceeded US\$16 billion. This was a significant increase from last year, largely due to investment in the oil and gas sector. The Government was heavily dependent on the exports from this sector, accounting for more than 40 per cent of the country's income. Thailand, Singapore and China are the top three countries making direct investment to Burma. This investment served to support the Government and contributed to maintaining the situation of forced labour. She urged governments and employers making investments in Burma to review their relations with the country. Referring to the conclusions of the Selection Committee of the International Labour Conference in 2006, she called for the establishment of a reporting mechanism on steps taken by international institutions, governments and organizations of employers and workers to implement the International Labour Conference Resolution of 2000. She also urged the Government to release Aung San Suu Kyi and other political prisoners.

**The Government member of the United States** commended the ILO, in particular the Liaison Officer and his deputy, for their excellent work, despite the difficult circumstances they often faced. It was now ten years ago that the International Labour Conference had adopted the unprecedented measures available under article 33 of the ILO Constitution in an attempt to secure Burma's compliance with the recommendations of the Commission of Inquiry relating to long-standing, methodical and gross violations of Convention No. 29. Recalling the three specific and clear recommendations made by the Commission of Inquiry, she noted, like some previous speakers that, since the last session of the Conference, there had been a number of steps forward. She encouraged the Government to continue and increase its efforts and urged it to ensure that the simply worded brochure on the complaints mechanism be translated into other local languages and broadly disseminated particularly in rural areas. Notwithstanding these positive steps, continuing and serious deficiencies remained, such as evidence of continuing forced labour throughout the country, the limited reach of the Supplementary Understanding and the discouragement of Burmese citizens from filing complaints, as well as retaliation, including imprisonment, against persons connected with the complaint mechanism. The legislative texts had still not been amended and penalties against forced labour remained inadequate particularly in cases involving military personnel. It was profoundly regrettable that the recommendations of the Commission of Inquiry had still not been implemented and much remained to be done on an urgent basis. Sustained action at all levels was therefore necessary to eliminate forced labour in Burma. The Committee of Experts had identified the types of concrete actions to be taken by the Government to this end and the ILO was willing and able to help it achieve the necessary results. It was incumbent upon the Government to continue to avail itself of the expertise and the assistance of the ILO, and it should take steps to permit additional staff resources so that the ILO Liaison Office in Burma could sufficiently meet the growing demands placed on it. This included issuing without further delay the visa for an international staff member. The Liaison Office should also be allowed to address all situations that fell within the scope of forced labour as defined by Convention No. 29. Only a truly democratic government could effectively guarantee its citizens their human and workers' rights. She urged the Government to release all politi-

cal prisoners and detainees, including Aung San Suu Kyi, and to engage in a genuine, open and inclusive dialogue to find a lasting solution to the problem of forced labour in Burma.

**The Government member of Japan** commended the ILO, including the Liaison Officer, on its efforts to improve the situation regarding forced labour in Myanmar, and noted some positive results. He particularly commended the willingness of the Government of Myanmar to cooperate with the ILO and the efforts by the Government and the military to address the issue of child soldiers. However, it was regrettable that forced labour by the military could still be found and that reports of cases of detention and punishment of complainants and facilitators continued. Greater efforts were needed on the part of the Government, including at its highest level, to cooperate closely with the military, to ensure that the central government's policy on the elimination of forced labour was effectively thoroughly implemented on the ground. As awareness-raising activities were essential, he expressed the hope that the Government of Myanmar would continue to implement such activities and urged it to start the actual distribution of the simply worded brochure as soon as possible. Given the increased workload on the ground, he requested the Government to respond positively to visa applications for new international staff members.

Lastly, Japan reiterated its call on the Government of Myanmar to release all prisoners of conscience in advance of the national elections expected this year, and that the elections would take place in a free and fair manner with the participation of all parties concerned. In order to realize such elections, it was also essential that freedom of association be guaranteed. In this connection, Japan requested that the Myanmar Government do its utmost in cooperation with the ILO.

**The Worker member of the Philippines** noted that, in his report, the Liaison Officer had mentioned a number of positive steps that the Government had taken with respect to the implementation of the Supplementary Understanding and the extension of its validity, but also that no progress had been made regarding the main recommendations of the Commission of Inquiry. The Conference Committee had been discussing this case for over a decade and it was regrettable that the Government of Myanmar was still not delivering on its promises. Myanmar was a member of ASEAN, one of the main objectives of which, was to "strengthen democracy, enhance good governance and the rule of law and to promote and protect human rights and fundamental freedoms". He supported the statement made by the Government member of Thailand calling for free, fair and all-inclusive elections, while even though these elections would not, in any case, eradicate forced labour in the country. In conclusion, he stated that it was high time for the Government of Myanmar to repeal the Village Act and the Towns Act and to amend the Constitution with a view to prohibiting all forms of forced labour, as a first step towards its eradication.

**The Government member of Singapore** welcomed the continued efforts made by the Government of Myanmar with regard to the observance of Convention No. 29, making more specific reference to the renewal for one year of the Supplementary Understanding and to the functioning of the complaints mechanism. He also welcomed the role of the Liaison Officer in training and awareness-raising activities, with the support of the Government. These activities seemed to have an

impact on the enforcement of the legal provisions prohibiting forced labour. Furthermore, the speaker acknowledged the continued efforts made by the Committee on the Prevention of Military Recruitment of Under-age Children for the training of military personnel and communities, the discharge of soldiers found to be under age and the investigation of complaints on forced military recruitment. This demonstrated the seriousness of the Government in stopping under-age military recruitment. What was needed now was a change of mindset in the military. The improved relationship between the ILO and the Government of Myanmar had made it possible for the Government to discuss setting up a proper framework for the recognition of the principles of freedom of association and the right to collective bargaining. Draft legislation on trade unions would be submitted to the new Parliament after the upcoming elections. Finally, the speaker expressed the hope that the Government would facilitate the recruitment by the Office of an additional international staff member to help with the tremendous workload of the Liaison Officer.

**The Worker member of the Republic of Korea** stressed that trade and foreign investments were worsening the situation of forced labour and human rights in general in Burma. Indeed, many countries continued to trade with Burma, which was directly contributing to finance the military regime and contrary to the resolution adopted in 2000 by the International Labour Conference. In addition, many projects by foreign companies were conducted with the use of forced labour, forced relocation and various types of human rights violations. The speaker's organization had repeatedly called on the Government of the Republic of Korea to stop investing in the oil and gas sector in Burma and engaging in trade with the Burmese military regime, without success however. She also recalled that the United Nations Special Rapporteur on the Situation of Human Rights in Myanmar had considered that extraction activities had directly resulted in an increase in human rights abuses committed by the military against the people living along a gas pipeline project, including forced labour overseen by the Burmese army. This project was also one of the major sources of income for the military junta, allowing it to ignore international pressure and democratic demands of the people of Burma. As investments in new projects escalated, the speaker once again requested ILO member States and constituents to fulfil their obligations under the International Labour Conference resolution of 2000 for the eradication of forced labour and human rights abuses in the country.

**The Government member of New Zealand**, speaking also on behalf of the Government of Australia, thanked the Liaison Officer for his report, which highlighted some positive developments. There were indications that the growing familiarity of local authorities with Convention No. 29 had resulted in a reduction of the use of forced labour by civilian authorities in some areas. The approval of the brochure on the complaints mechanism under the Supplementary Understanding was to be welcomed, but she expressed concern about the willingness of the Myanmar Government to address persistent forced labour problems. The Liaison Officer had encountered difficulties in reaching successful outcomes in cases involving forced labour by the military. She called upon the Myanmar authorities to act to prevent this practice. It was important that the mandate of the Liaison Officer encompassed all aspects of forced labour, and she called upon the Government to grant a visa to the new international staff

member which would signal its commitment to the ILO's work. As previous speakers, she urged the Myanmar authorities to use the opportunity of the planned elections to move the country towards a democratic future, and called upon the Government to release all political prisoners, including Aung San Suu Kyi, and those imprisoned due to association with the Supplementary Understanding complaints mechanism.

**An observer representing the Federation of Trade Unions of Burma (FTUB)**, speaking on behalf of the ITUC, observed that although the information provided in the report by the Liaison Officer tended to indicate that the ILO mechanism worked, the violations still taking place in Burma were indicators that forced labour and forceful recruitment of child soldiers persisted contrary to Convention No. 29.

On 20 May 2010, the *Democratic Voice of Burma* reported that less than ten days ago a child had been killed for refusing to join the army. Tin Min Naing, aged 15 years, son of U Htay Win of San Phae village, War-Yone-kone unit, Nyaunglaybin township, Pegu division, was killed by soldiers when he and a friend, while looking for rats to eat, reached a sentry post at a bridge, and were asked to join the army. When the two friends refused, Private Moe Win (TA 41842) shot Tin Min Naing and hid the body under bushes in the stream. It was reported that the outpost had been manned that day by Corporal Kyaw Moe Khaing and Privates Moe Win (TA 41842) and San Ko Ko of the 2nd column, light Infantry Division 586. The family filed the murder case at Pyuntaza police station and the police commander of Nyaunglaybin township went to inspect the sentry post immediately. In March 2010, the Federation of Trade Unions Kawthoolei (FTUK) reported to the Liaison Office in Rangoon that forced labour was occurring in Karen state. It was understood that the Liaison Office had started planning an assessment and awareness-raising mission to take place in that area.

These two cases, one concerning child soldier recruitment and the other concerning forced labour involving from one to 200 persons, both took place in the Taungoo area of Bago division, despite the fact that this division was one of the locations in which an awareness-raising seminar had been led jointly by the ILO and the Ministry of Labour for local authority personnel and representatives of military units, according to the Liaison Office report. The events after this seminar were an indicator that the trainees at the Bago local authority level, who should be personally in charge of the troops in that area, either failed to implement what had been discussed at the seminars or did not have the authority to implement it. This might be an indicator that the Supplementary Mechanism did not work effectively in the Bago division and that there was no political instruction to implement what had been discussed at the seminar. It also meant that there were no enforcement mechanisms in place to hold the perpetrators accountable.

On 11 March 2010, the United Nations Special Rapporteur on the situation of human rights in Burma recommended that the UN should consider establishing a Commission of Inquiry into war crimes and crimes against humanity committed by the Burmese Government. Taken together, the reports of the UN Human Rights Council and the ILO demonstrated, first, a systematic abuse of human beings in Burma for the benefit of the ruling junta and, second, a lack of political commitment to change the system.

The Government reported that an election was forthcoming and that things would change after the

election. However, this junta was the one that had refused to honour an election they had hosted in 1990. Having lost faith in the junta and their electoral process, the people of Burma, unless coerced, would not be voting in that election. The National League for Democracy that had won the 1990 election was not participating in the 2010 election, which was a farce. The next government would be composed of the junta without their military uniforms. This election and the new Constitution which allowed forced labour under section 359 would become yet another barrier facing the ILO in its mission to eradicate forced labour in Burma. Convention No. 29 would still be violated under the excuse that time was needed for the new government to settle down. It was clear that for a number of reasons, the junta itself and the delegations to the International Labour Conference which promised the ILO to eradicate forced labour were unable to deliver on their promise. Since the junta was unable to protect its own people, after over a decade of asking for the impossible and losing scarce resources, it was time, in the name of the people who suffered, to ensure that the ILO redressed its constructive approach and focused on responsibilities and protection.

**The Government member of the Russian Federation** stated that, being convinced of the need to eradicate forced labour in the world, his Government welcomed the extension, for a further 12 months, of the Supplementary Understanding trial period following an ILO high-level mission to Myanmar in January 2010. He expressed his Government's sincere appreciation to the ILO Liaison Officer for his constant and self-sacrificing efforts to implement the above Understanding. As a result of these efforts, more than 100 complaints on alleged cases of forced labour had been examined by the competent bodies including the Ministry of Defence, and in a number of cases efficient measures had been adopted.

The speaker noted with satisfaction the carrying out of joint seminars and visits to remote regions of the country, the dissemination of the text of the Supplementary Understanding translated into the local language, the publication in central newspapers of articles describing the complaints mechanism and the agreement reached with the authorities about the publication of a special brochure on this subject. However, there was an evident need for the Government to take additional measures to eradicate forced labour, particularly at the local level. The extension and deepening of the constructive cooperation between the ILO and the Government constituted the most efficient mechanism in order to move towards the fastest possible resolution of the forced labour problem in Myanmar and the implementation of Convention No. 29.

**The Worker member of Italy** indicated that the move to recruit a new staff member of the Liaison Office with financing from the Government of Germany was a positive development, although additional measures were necessary like the opening of offices in other parts of the country. However, despite the availability of funding as well as the Government's agreement and its undertaking to eradicate forced labour, the Government continued to stall any progress regarding the appointment of the new officer on the pretext of having to issue a visa. While investors never faced problems with their visas, the delegates to the Conference had to face insulting and evasive excuses year after year for the lack of implementation of the Government's commitments. This was just one example of the delaying tactics of the regime, contrary to the spirit



of cooperation that the authorities had repeatedly promised.

The brochure on the eradication of forced labour, despite being a positive step forward, had only been published in the Burmese language and not in ethnic languages as called for by the Committee of Experts, since forced labour was mainly prevalent in areas where the majority of the population read and wrote in their respective ethnic languages. In order to inform and support those who suffered the most from the practice of forced labour, information brochures should be translated into the main ethnic languages and illustrations should be included for those who could not read, as they were the most vulnerable to exploitation. It would be interesting to know how these brochures would be distributed as widely as possible. The stalling tactics of the authorities, including the delays in issuing visas, should no longer be regarded as legitimate excuses for the slow pace of progress. There had been more than enough time. The ILO and its constituents should evaluate the intentions of the authorities, and the ILO's capacity to investigate and monitor forced labour should be strengthened.

**The Government member of India** expressed his Government's satisfaction at the progress being made in the observance of Convention No. 29 by the Government of Myanmar as well as the ongoing cooperation between the Government and the ILO in this matter. Encouraging recent developments included most importantly the extension of the Supplementary Understanding for a further period of 12 months and the constructive dialogue that the ILO delegation to Myanmar had with the Government in January 2010. This could serve as an important basis in further strengthening the ongoing cooperation and help in the implementation of the provisions of the Convention. The awareness workshops jointly conducted by the Liaison Office and the Labour Department, and the publication of the Supplementary Understanding and a brochure on the law pertaining to forced labour by the Government had the potential to play an important role in eliminating the practice of forced labour. Finally, the mutually agreed mechanisms, including the complaints mechanism, were functioning properly.

The debate in the Committee should take place in a fair and transparent manner and focus on the matter in hand relating to the observance of Convention No. 29. Introduction of issues extraneous to the subject or unnecessary politicization of the debate would deviate the focus of the Committee from the merits of the case. India had consistently encouraged dialogue and cooperation between the ILO and the member States to resolve all outstanding issues. India had been and continued to remain strongly opposed to the practice of forced labour which was expressly prohibited under its Constitution. The speaker concluded by commending the ILO Director-General and his team for their efforts in assisting Myanmar to tackle the problem of forced labour.

**The Worker member of France** referred to another provision of the national legislation that required amendment, namely section 359 of the Constitution. That section provided for a number of exceptions to the prohibition on forced labour, and its wording rendered that prohibition ineffective. By allowing "work imposed by the Government in the general public interest" that constitutional provision reinstated the Towns Act and the Village Act. The speaker stressed that although the Constitution had been approved by more than 92 per cent of the voters participating in the

referendum, the conditions under which that referendum had been held were very controversial. General recourse to forced labour could not be isolated from the general situation of human rights in Myanmar, which was characterized by systematic violations of rights and freedoms. Forced labour could, therefore, be eradicated only by instauration of democracy and the legislative elections that were to be held soon would serve as a test in this regard. A series of restrictive electoral laws had already been adopted, which would prevent the opposition from freely participating in that process. Myanmar had reached a crucial turning point, which should not be used by the authorities as an excuse for maintaining an intolerable situation but, on the contrary, allow it to prove its political willingness to eradicate forced labour. The international community should remain particularly attentive to future developments.

**The Government member of China** noted that the Government of Myanmar and the ILO had cooperated effectively since the last session of the Conference and there had been a certain progress in the elimination of forced labour. This included the extension of the trial period for the Supplementary Understanding, the efficient handling of complaints, the publication of a brochure on the elimination of forced labour and the corresponding legislation and the appearance of articles on the subject in the national press. The Government of China continued to consider forced labour as a fundamental violation of human rights, and it was to be hoped that the ILO would be able to maintain its technical assistance to Myanmar, notably in the form of cooperation projects on employment creation that could improve people's quality of life. He trusted that the future would bring new projects aimed at eliminating forced labour in Myanmar.

**The Worker member of Zimbabwe** compared the anguish of the workers of Burma to that suffered in his own country, as attested by Commissions of Inquiry appointed for the two countries. He explained that although forced labour in his part of the world existed as a result of ingrained habits or wars and rebellions, and was mostly practised by private individuals and not at a large scale, forced labour in Burma was widespread, systematic and promoted and practised at all levels of the State by the military and civilian authorities. Forced labour in Burma took many forms, such as forcing villagers, including children, to grow food, build bridges and roads, construct and maintain army camps, build security fences, carry equipment for troops; forcibly displacing villagers from their land in areas where oil and gas infrastructure and pipelines were being construed and operated; putting prisoners to work in leg irons without wages, without access to medical treatment or other basics of life; forcibly recruiting child soldiers, in a context of the barbaric practice of human minesweeping; and forcing citizens to build and maintain tourism sites and facilities in larger cities like Mandalay and Rangoon, to enrich top military leaders whilst the soldiers suffered economic hardship. The military forced civilians into labour through intimidation, kidnapping and threat of arrest or bodily harm. This inhumane, degrading and back-breaking treatment also led civilians to lose wages and land, and many became sick from disease, malnutrition or exhaustion without medical assistance. All of these claims were backed by the extensive evidence submitted by the ITUC to the ILO, including copies of 100 Government Orders issued to village heads to gather workers from local communities for forced labour. As the Committee of Experts had concluded,

this was conclusive evidence of the systematic imposition of forced labour, and it was conclusive evidence to which the Burmese Government had not even bothered to respond. It was about time that the Government undertook a real engagement to end the unsavoury use of systematic forced labour and start implementing the recommendations of the ILO supervisory bodies. A first and immediate step should be to ensure that the law prohibited forced labour.

**The Government member of Cuba** observed that the report of the Liaison Officer on the latest activities carried out by the ILO and the Government of Myanmar described the progress made towards the elimination of forced labour and the difficulties that remained to be resolved. He noted the statement of the Government of Myanmar outlining the steps that were being taken in that direction. It was clear that the results that had been achieved so far were the fruit of the ILO's technical cooperation and of the bilateral dialogue with the Government. It was to be hoped that the technical cooperation and the open and unconditional dialogue between the Government of Myanmar and the ILO would be pursued, so that a proper analysis could be made of the conditions and circumstances prevailing in the country, as that was the only way to further the goals of Convention No. 29.

**The Worker member of Pakistan** observed that it was very sad and discouraging that in the twenty-first century, known as the age of reason, technological development and social justice, the military still used forced labour in Burma, which was a crime against humanity, after ten years of discussions on this issue. Nowhere was it shown that penalties had been imposed on those who had committed the crime of forced labour or that they had been brought to justice. Paragraph 8 of the report of the Liaison Officer referred to the difficulties encountered in obtaining proof of under-age recruitment and the hardship of the families who had to fetch their children from their regiments at considerable expense, leading them to sell their harvest in advance, borrow money or sell assets. In order to cope with the increasing workload, the capacity of the Liaison Office needed to be strengthened but despite the availability of funds from Germany, the Government had not granted a visa to an additional official. Those who helped the victims were themselves victimized. Paragraph 16 of the report of the Liaison Officer indicated that two lawyers who were active supporters of the Supplementary Understanding procedures had lost their licences to practise after their release from prison. In such circumstances, the speaker associated himself with the members who called for more action by the international community and the reinforcement of the Liaison Office, so that wider investigations could be carried out and appropriate penalties enforced against those who committed the crime of forced labour.

**The Government member of Canada** commended the Liaison Officer and his deputy for their continuing diligence and admirable work. Every year the Committee was confronted with the modest accomplishment that the Government of Myanmar offered to conform to its commitments to address issues of forced labour, including under-age military recruitment in Burma. In spite of the fact that the Understanding had been signed eight years ago and the Supplementary Understanding over three years ago, the pace of progress was frustratingly slow. While some positive steps which had been noted in the report of the Liaison Officer should be welcomed and encouraged, they were incremental and did not reflect a strong com-

mitment by the regime to eliminate forced labour. There was an urgent need for more significant progress.

Areas remained where the Government's failure to meet its commitments was fundamentally unacceptable and should be noted with greatest concern, notably the continued allegations of harassment of complainants, facilitators and their legal counsel as well as the refusal to receive complaints of human trafficking for forced labour. The speaker condemned any reprisals against complainants, particularly imprisonment, and called upon the Government to comply with its commitment to address forced labour in all its forms and provide support for the implementation of the full mandate of the ILO Liaison Officer. She also associated herself with other members who considered that the report of the Liaison Officer fell completely within its intended mandate. Finally, the speaker urged the Government of Myanmar to expedite the request for further assistance to manage the considerable caseload and meet demands, such as training and awareness raising, on an urgent basis. It was unfortunate and discouraging that the Government had to be urged once again to issue immediately the visa for an additional staff member and an update on the status of this question would be welcomed.

In conclusion, the speaker strongly urged the Government of Myanmar to take proactive and substantial steps to ensure compliance with Convention No. 29 throughout the country, including through the imposition of more meaningful penalties for all perpetrators of forced labour. The speaker also called on the authorities to release all political prisoners and detainees, notably Daw Aung San Suu Kyi.

**The Government representative** thanked those speakers who had made their interventions objectively and took note of their comments. Some of the interventions had been based on groundless information and were politically motivated. There were also some remarks that were not relevant to the work of the ILO. Some speakers had been referring to the country by its incorrect name. The official communications from the United Nations and its agencies addressed the country correctly as Myanmar, as this name had been recognized throughout the UN system. The importance and seriousness of the work carried out in the ILO should be reciprocated by the speakers. The use of inappropriate language did not serve any purpose, was not well intentioned and showed a lack of respect. A code of conduct should be enforced during the deliberations in this regard.

Some remarks had not been relevant to the work of the ILO. The Government of Myanmar rejected all undue comments and criticism concerning the home-grown political process. The destiny of Myanmar was to be decided by its own people. The democratization process was moving forward steadily and democratic elections would be held this year, as the fifth step in the road map to democracy. Laws necessary for multi-party general elections had already been promulgated. Over 20 political parties had been registered so far for the upcoming elections. The Constitution, approved by 92.48 per cent of eligible voters in Myanmar, would be the basis for the democratic society of the future. This clearly reflected the political will of the people.

The amendment of the Village Act and Towns Act had been explained repeatedly in previous sessions of the Conference. Under the Myanmar legal system, orders of the legislative authority had the force of law. This was the case for Order 1/99 and its Supplemen-

tary Order. Thus, in the Myanmar legal system the offending provisions of the two Acts had been put into dormant state or had even been annulled, as acknowledged by the Committee of Experts in the past. At the plenary session of the 98th International Labour Conference, the Government representative of Myanmar had mentioned that these conclusions were due to a misunderstanding as to the facts. He had taken the matter up with the Office and had provided explanations to the officials concerned.

The speaker concluded by adding that the representative of the FTUB and his friends were responsible for endangering and violating the security of the Myanmar people. The Government had concrete evidence that they were plotting, financing and carrying out several activities including bomb attacks in the country leading to loss of lives and numerous injuries. Such terrorists had no place in the work of the ILO.

**The Employer members** observed that the Government of Myanmar did not seem to appreciate the fact that it was not even close to abolishing forced labour. The Government should not be under the false impression that the Supplementary Understanding process was sufficient in itself. It was at best an internal process that should not absolve the Government from the obligation of full and complete implementation of policies and practices for the abolition of forced labour.

**The Worker members** concluded by asking for the immediate release of all trade union activists and political prisoners who had exercised their freedom of expression and fought against forced labour; the immediate discontinuation of harassment and detention of persons who filed complaints on forced labour; and the end of the impunity enjoyed by the perpetrators of forced labour. They recalled that it was essential to implement the recommendations of the Commission of Inquiry and to revise the provisions of the Constitution relative to forced labour. Moreover, the decisions taken in the past should be implemented, notably: the re-examination of the implementation of the 2000 Conference resolution; the request made to international institutions, governments and organizations of employers and workers to report on the steps taken in the framework of that resolution; the organization of a conference on best practices aimed at implementing the resolution; and the implementation of other international penal measures with a view to sanctioning those who exacted forced labour. To this end, the Worker members requested the Liaison Officer to focus on the implementation of the recommendations of the Commission of Inquiry and on the reinforcement of the means at the disposal of the ILO: increase in the number of offices and establishment of a network of facilitators in the country. Finally, the Worker members condemned and repudiated the statement of the Government representative with regard to the representative of the FTUB.

### **Conclusions**

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 19 January 2010, for a further 12 months to 25 February 2011.

The Committee also noted the discussions and decisions of the Governing Body of November 2009 and March 2010. It further took due note of the statement of

the Government representative and the discussion that followed.

The Committee acknowledged some limited steps on the part of the Government of Myanmar. It noted the further extension of the Supplementary Understanding for another year; the agreement for publication and distribution of an informative brochure on forced labour; certain activities concerning awareness raising of the complaints mechanism established by the Supplementary Understanding, including newspaper articles in the national language; and certain improvements in dealing with under-age recruitment by the military. The Committee was however of the view that these steps remained totally inadequate.

The Committee noted that despite these special sittings, none of the three specific and clear recommendations of the Commission of Inquiry had been implemented. These recommendations require the Government to: (1) bring the legislative texts in line with Convention No. 29; (2) ensure that in actual practice forced labour is no longer imposed by the authorities; and (3) strictly enforce criminal penalties for the exaction of forced labour.

The Committee also noted that the complaints mechanism reached only limited parts of the country and its functioning could be an indication that there had been any significant diminution in the use of forced labour.

The Committee emphasized the importance of the conclusions reached in its special sittings at the 97th and 98th Sessions of the Conference (June 2008 and June 2009), and again placed emphasis on the need for the Government of Myanmar to work proactively towards the full implementation of the recommendations of the Commission of Inquiry appointed by the Governing Body in March 1997 under article 26 of the Constitution. It also recalled the continued relevance of the decisions concerning compliance by Myanmar with Convention No. 29 adopted by the Conference in 2000 and 2006 and all the elements contained therein.

The Committee fully supported all of the observations of the Committee of Experts and the decisions of the Governing Body referred to above, and expressed the firm expectation that the Government of Myanmar moves with urgency to ensure that the actions requested are carried out at all levels and by all civil and military authorities.

The Committee strongly urged the Government to fully implement without delay the recommendations of the Commission of Inquiry and the comments and observations of the Committee of Experts. The Government in particular should:

- (1) take necessary steps to bring the relevant legislative texts, in particular the Village Act and Towns Act, into line with Convention No. 29;
- (2) ensure that legislation foreseen by paragraph 15 of Chapter VIII of the new Constitution is developed, adopted and applied in full conformity with Convention No. 29;
- (3) ensure the total elimination of the full range of forced labour practices, including the recruitment of children into the armed forces and human trafficking for forced labour, that are still persistent and widespread;
- (4) strictly ensure that perpetrators of forced labour, whether civil or military, are prosecuted and punished under the Penal Code;
- (5) ensure that the Government makes the necessary budget allocations so that workers are freely contracted and adequately remunerated;

- (6) eliminate the continuing problems with the ability of victims of forced labour or their families to complain and immediately cease all harassment, retaliation and imprisonment of individuals who use, are associated with or facilitate the use of the complaints mechanism;
- (7) release immediately complainants and other persons associated with the use of the complaints mechanism who are currently detained;
- (8) facilitate the production and wide distribution of the brochure in the ethnic languages;
- (9) intensify awareness-raising activities throughout the country, including training to military personnel to end under-age recruitment; and
- (10) actively pursue agreement of a joint action plan with the Country Task Force on Monitoring and Reporting in respect of children in circumstances of armed conflict, of which the ILO is a member, to address amongst other things under-age recruitment.

The Committee called for the strengthening of the capacity available to the ILO Liaison Officer to assist the Government in addressing all of the recommendations of the Commission of Inquiry, and to ensure the effectiveness of the operation of the complaints mechanism, particularly in respect of the urgent issuance of an entry visa

for an additional international professional as a priority and without delay.

The Committee specifically called on the Government of Myanmar to take every opportunity, including through the continued use of all of the available forums, to increase the awareness of the people (the civil and military authorities as well as the general public) as to the law against the use of forced labour, to their rights and responsibilities under that law and of the availability of the complaints mechanism as a means of exercising those rights. An authoritative statement at the highest level would be a significant step in this regard.

The Committee regretted with serious concern the continued human rights violations in Myanmar, including the detention of Daw Aung San Suu Kyi. The Committee urged her immediate release as well as that of other political prisoners and labour activists.

The Committee called on the Government to investigate, without further delay, the allegations of forced labour orders and similar documents which had been submitted to the Committee of Experts and encouraged the Government to communicate to the Committee of Experts, for its next session, its findings and any consequential concrete actions taken. The Committee expected to be in a position to take note of significant developments at the next session of the Conference.

## Document D.5

### **B. 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 its previous comments the Committee has discussed in detail the history of this extremely serious case, which has involved gross, methodical and pervasive breaches of the Convention enduring for many years, and which is also manifested by the long-standing failure of the Government to implement the recommendations of the Commission of Inquiry, appointed by the Governing Body in March 1997 under article 26 of the Constitution.

2. The Committee recalls that the Commission of Inquiry concluded that the obligation under the Convention to suppress the use of forced or compulsory labour was being violated in Myanmar in national law as well as in actual practice in a widespread and systematic manner. In its recommendations (paragraph 539(a) of the Commission's report of 2 July 1998), the Commission urged the Government to take the necessary steps to ensure:

- that the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Convention;
- that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military, an outcome which required concrete action to be taken immediately for each and every of the many fields of forced labour and to be accomplished through public acts of the Executive, promulgated and made known to all levels of the military and to the whole population; and
- 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, which required thorough investigation, prosecution and adequate punishment of those found guilty.

#### *Developments since the Committee's previous observation*

3. There have been numerous discussions and conclusions reached by ILO bodies, as well as further documentation received by the ILO, which have been considered by the Committee. These include the following:

- the report of the ILO Liaison Officer (ILC, 98th Session, *Provisional Record* No. 16, Part Three, Doc. D.5.C) submitted to the Conference Committee on the Application of Standards during the 98th Session of the International Labour Conference in June 2009, as well as the discussions and conclusions of that Committee (ILC, 98th Session, *Provisional Record* No. 16, Part Three, A and Doc. D.5.B);

- the documents submitted to the Governing Body at its 304th and 306th Sessions (March and November 2009), as well as the discussions and conclusions of the Governing Body during those sessions;
- the communication by the International Trade Union Confederation (ITUC) received in September 2009 which includes an appendix of 74 documents amounting to more than 1,000 pages, a copy of which was transmitted to the Government for comments on the matters raised therein;
- the Agreement of 26 February 2009 to extend the trial period of the Supplementary Understanding of 26 February 2007; and
- the reports of the Government of Myanmar received on 10 and 24 March, 1 and 4 June, 27 August, 6 and 21 October 2009.

4. *The Supplementary Understanding of 26 February 2007 – extension of the complaints mechanism.* The Committee notes that the trial period of the complaints mechanism under the Supplementary Understanding (SU) of 26 February 2007 between the Government and the ILO was extended on 26 February 2009 for one year, until 25 February 2010 (ILC, 98th Session, *Provisional Record* No. 16, Part Three, Doc. D.5.F., Appendix II). The SU supplements the Understanding of 19 March 2002 concerning the appointment of an ILO Liaison Officer in Myanmar and has as its object to “formally offer the possibility to victims of forced labour to channel their complaints of forced labour 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 Convention”. Information about the functioning of this important mechanism is discussed below in the sections on monitoring and enforcement.

5. *Discussion and conclusions of the Conference Committee on the Application of Standards.* The Committee on the Application of Standards once again discussed this case in a special sitting during the 98th Session of the Conference in June 2009. The Conference Committee, inter alia, acknowledged some limited steps on the part of the Government of Myanmar: the further extension of the SU for another year; certain activities concerning awareness raising of the complaints mechanism established by the SU; certain improvements in dealing with under-age recruitment by the military; and the distribution of publications relating to the SU. The Committee was however of the view that those steps were totally inadequate, and it strongly urged the Government to fully implement without delay the recommendations of the Commission of Inquiry.

6. *Discussions in the Governing Body.* The Governing Body also continued its discussions of this case during its 303rd and 306th Sessions in March and November of 2009 (GB.304/5(Rev.), GB.306/6). Following the discussion in November 2009 the Governing Body, inter alia, reconfirmed the continuing validity of its previous conclusions and those of the International Labour Conference. It noted the Government’s cooperation regarding complaints of forced labour submitted under the SU, as well as the joint Government–ILO awareness-raising activities. However, it called on the Government to strengthen the capacity of the ILO in the framework of the SU to deal with complaints throughout the country and, in particular, to facilitate adjustments to the staff capacity of the Office of the Liaison Officer, as provided for in article 8 of the SU, so that an increased workload could be met. It also called for the immediate release of all persons currently detained being complainants, facilitators and others associated with the SU complaints mechanism. It further called for particularly accessible material in local languages for awareness raising, and it reiterated the need for an authoritative statement by the senior leadership against the continued use of forced labour and the need to respect freedom of association.

7. *Communication received from the International Trade Union Confederation.* The information contained in the communication from the ITUC received in September 2009, referred to in paragraph 3, is discussed below in the section on current practice.

8. *The Government's reports.* The reports received from the Government, referred to in paragraph 3, include replies to the Committee's previous observation. They include information, inter alia, about joint ILO–Ministry of Labour (MOL) publicity, awareness-raising and training activities on forced labour; the Government's continued cooperation with the various functions of the ILO Liaison Officer including monitoring and investigating the forced labour situation, the operation of the SU complaints mechanism, and the implementation of technical projects; and ongoing efforts the Government is making to enforce the prohibitions of forced labour. The reports also include a reply to the ITUC communication of September 2008 by way of a categorical dismissal of the allegations of forced labour contained therein. The Government also indicates that no action was being contemplated to amend or repeal the Village Act and Towns Act or to amend section 359 of the New State Constitution. Further references to the Government's reports are made in the discussion below.

### **Assessment of the situation**

9. Assessment of the information available on the situation of forced labour in Myanmar in 2009 and in relation to the implementation of the recommendations of the Commission of Inquiry and compliance with the Convention by the Government will be discussed in three parts, dealing with: (i) amendment of legislation; (ii) measures to stop the exaction of forced or compulsory labour in practice; and (iii) enforcement of penalties prescribed under the Penal Code and other relevant provisions of law.

#### **I. Amendment of legislation**

10. With regard to the Village Act and the Towns Act, referred to in paragraph 2, the Committee notes the statement of the Government in its report received on 27 August 2009 that these laws “have been put into dormant [sic] effectively and legally” by Order No. 1/99 (Order Directing Not to Exercise Powers Under Certain Provisions of the Town Act, 1907, and the Village Act, 1907) as supplemented by the Order of 27 October 2000. In its previous comments, the Committee has observed that the latter orders have yet to be given bona fide effect and do not dispense with the separate need to eliminate the legislative basis for the exaction of forced labour. ***Noting the indication of the Government representative, during the discussion in the Governing Body at its 306th Session in November 2009, that these Acts were under review by the Ministry of Home Affairs, the Committee urges the Government to take the long overdue steps to amend or repeal them and thereby to bring its law into conformity with the Convention. The Committee hopes that in its next report the Government will provide information confirming that such steps have been taken.***

11. In its previous observation the Committee noted that the Government has included in section 359 of the New State Constitution (Chapter VIII – Citizenship, Fundamental Rights and Duties of Citizens) a prohibition of forced labour containing an exception for “duties assigned by the Union in accordance with the law in the interest of the public”. The Committee observed that the exception encompasses permissible forms of forced labour that exceed the scope of the specifically defined exceptions in Article 2(2) of the Convention and could be interpreted in such a way as to allow a generalized exaction of forced labour from the population. The Committee notes with regret the statement of the Government in its report received on 27 August 2009, that section 359 of the New State Constitution “adequately captures the spirit” of the Convention. ***The Committee once again urges the Government to take steps to amend section 359 of Chapter VIII of the new Constitution, in order to bring its law into conformity with the Convention.***

## II. Measures to stop the exaction of forced or compulsory labour in practice

12. *Information available on current practice.* The Committee notes from the ITUC's communication referred to above, the well-documented allegations that forced and compulsory labour continued to be exacted from local villagers in 2009 by military and civil authorities and to have occurred in all but one of the country's states and divisions. The information in the appendices refers to specific dates, locations and circumstances of the occurrences, and to specific civil bodies, military units and individual officials responsible for them. According to these reports, forced labour has been requisitioned both by military personnel and civil authorities such as village heads, and has taken a wide variety of forms and involved a variety of tasks, including: construction of bridges and roads; forced portering for military personnel; prison labour, construction and maintenance of army camps; confiscation of food supplies and extortion of money; forced recruitment of child soldiers; forced sentry duty; and human minesweeping. The appendices also include translated copies of more than 100 Order documents and Order "letters" for the requisition of forced (and uncompensated) labour issued between December 2008 and June 2009 to villagers and village heads in Chin, Karen, Mon, and Rakhaing States and in Irrawaddy, Pegu, and Tenasserim Divisions. The tasks and services demanded by these call-up orders involved, inter alia, portering for the military; road repair and other infrastructure projects, and on paddy plantations; production and delivery of thatch shingles and bamboo poles; recruitment of children as soldiers; attendance at meetings; provision of money and alcohol; provision of information on individuals and households; registration of villagers in State-controlled NGOs; and restrictions on travel and use of muskets. ***Noting the conspicuous absence of any comment from the Government on such Order letters forwarded by the ITUC in previous years, the Committee requests that in its next report the Government respond in detail to the entirety of the September 2009 communication of the ITUC, and in particular to the Order letters referred to above which constitute conclusive evidence of the continued systematic imposition of forced labour by military and civil authorities throughout the country in 2009.***

13. The Committee notes the observations of the ILO Liaison Officer that the SU mechanism continues to function, yet "the overall forced labour situation remains serious in the country". (GB.304/5/1(Rev.), paragraph 2). Victims of under-age military recruitment with substantiated complaints are regularly discharged from the military, yet the "continued and repeated illegal recruitment of children by military personnel" is also confirmed (GB.306/6, paragraphs 5 and 7). In terms of the experience with the SU complaints mechanism, the Liaison Officer refers to action taken by the authorities "to ensure that the practice of forced labour does not continue and further complaints are not received from that area" from which they originate (GB.306/6, paragraph 10). However, he also refers to the behaviour of local authorities, both civil and military, as well as judicial, who refuse to accept the validity of settlement agreements reached under the SU process, continue traditional forced labour practices, and harass those who attempt to exercise their rights under the law (GB.306/6, paragraph 15).

14. In its previous observations the Committee, recalling the Commission's recommendation that concrete action needed to be taken immediately for each and every of the many fields of forced labour, identified four types of "concrete action" the Government needed to take, without which an end to imposition of forced labour in practice could not be achieved: issuing specific and concrete instructions on forced labour and on its prohibitions to civilian and military authorities; giving wide publicity to the prohibitions on forced labour; making adequate budgetary provisions for replacing forced labour with free wage labour; and monitoring the practice of forced labour and efforts to enforce its prohibitions.



15. *Issuing specific and concrete instructions.* In its previous observations the Committee has emphasized that specific, effectively conveyed instructions to civil and military authorities, and to the population at large, are required which identify each and every field of forced labour, and which explain concretely for each field the means and manner by which the tasks or services involved are to be carried out without recourse to forced labour. The Committee has noted that, with one exception (namely, the “Additional Instruction” issued by the Department of General Administration of the Ministry of Home Affairs, No. 200/108/Oo, dated 2 June 2005 and noted by the Committee in its 2005 observation), the series of instructions and letters issued by Government authorities in 2000, 2004 and 2005, which were intended to secure compliance with the prohibition of forced labour under Order No. 1/99 and its supplementing Order of 27 October 2000, were not shown to have met these criteria.

16. The Committee notes that in its report received on 1 June 2009 the Government states only that “the various levels of administrative authority are well aware of the orders and instructions related to forced labour prohibition issued by the higher levels”. The document submitted to the Governing Body in March 2009 (GB.304/5/1(Rev.)) includes an indication, without a date specified, that the General Administration Department had issued instructions through the state and divisional administrative structures reconfirming the prohibition of forced labour; and that this instruction had been transmitted to township and village tract levels (paragraph 6). The Government indicates in its report received on 27 August 2009 that all instructions and directives “contain the details [sic] necessary measures for the implementation of the Orders”. The Committee also notes the observation of the ILO Liaison Officer that a number of forced labour complaints, particularly involving confiscation of farmers’ croplands, result from the improper application of economic and agricultural policies not directly concerned with the practice of forced labour, yet the Government has not agreed to consider policy-application training designed to stop the application of such policies in a way that leads to the imposition of forced labour (Report to the Conference Committee, paragraph 14; GB.304/5/1(Rev.), paragraph 9). The Committee notes that once again the information provided by the Government is grossly deficient. It reiterates the need for concrete instructions to be issued to all levels of the military and to the whole population, which identify all fields and practices of forced labour and provide concrete guidance as to the means and manner by which tasks or services in each field are to be carried out, and by which any other relevant government policies are to be implemented, without recourse to forced labour or forced contributions from the population, and for steps taken to ensure that such instructions are fully publicized and effectively supervised. ***The Committee requests the Government to provide in its next report information about the measures of this nature it is taking, including a translated and dated copy of the text of the instructions it states have been issued reconfirming the prohibition of forced labour and of the “necessary details” it states are contained in its directives and instructions.***

17. *Making adequate budgetary provisions for the replacement of forced and unpaid labour.* The Committee recalls that in its recommendations the Commission of Inquiry drew attention to the need to make adequate budgetary provisions to hire free wage labour for the public activities which are today based on forced and unpaid labour. In its report received on 27 August 2009, the Government has reiterated previous indications in stating that it “provides the budget allotment including labour costs for all Ministries to implement their respective projects”. In previous observations the Committee, noting the information available on actual practice which shows that forced labour continues to be imposed in many parts of the country, particularly in those areas with a heavy military presence, has considered it obvious that any budgetary allocations that are specifically designated for the recruitment of free wage labour have not been adequate or adequately utilized. ***The Committee once again urges the Government to use state budget allotments to provide civil and military authorities at all levels the financial means for utilizing voluntary paid labour for needed tasks and services, and which are adequate enough to eliminate the***

***material incentives for recourse to forced and unpaid labour, and that it report in detail on the steps taken to that end and on the effect of such measures in actual practice.***

18. *Giving publicity to and raising awareness about forced labour and its prohibitions.* The Committee notes from the Government's reports and the documents submitted to the Governing Body and to the Conference Committee, the indications that a number of activities to give publicity to and raise awareness about the forced labour situation, the legal prohibitions of forced labour and existing avenues of recourse for victims were carried out in 2009. These included, inter alia, a joint ILO–MOL awareness-raising seminar for civil and military personnel held in Karen State and Northern Shan State in April and May of 2009; a joint seminar held in Rhakine State with participants representing both the civil and military authorities; and a joint presentation to a refresher training programme for senior township judges. A booklet comprised of the texts of the SU and related documents and translated into the Myanmar language, was prepared (GB.304/5/1(Rev.), paragraph 4) and distributed to civilian and military authorities nationwide, to civil society groups, and the general public for awareness-raising purposes (Report to the Conference Committee, paragraph 18). Some 16,000 copies had been circulated as of November 2009; however, the Government had yet to agree to the production of a simply-worded brochure, translated into local languages, which outlined the law against forced labour and the procedures available to victims to exercise rights under the law (GB.306/6, paragraph 10). The Government, in its reports received on 6 and 21 October 2009, refers to a number of activities carried out in May and August of 2009 by the Committee for the Prevention of Military Recruitment of Under-Age Children, including law lectures for officer trainees at military camps; supervision of training on recruitment procedures at military training schools and basic training units; and informational visits to numerous regiments and recruitment centres. A rural infrastructure project in the cyclone-affected area of the Irrawaddy Delta implemented by the Office of the ILO Liaison Officer with cooperation from the MOL, a second phase of which was carried out through September of 2009 but with a further extension declined by the Government, included awareness-raising seminars (GB.306/6, paragraph 22) and was reported to have played a valuable role in raising awareness in the cyclone-affected area as to the rights and responsibilities in employment, in particular those relating to the prohibition of forced labour (GB.304/5/1(Rev.), paragraph 23). The Committee notes the indication of the Liaison Officer in November 2009 of an increase in new complaints filed under the SU complaints mechanism during the five-and-a-half-month period from mid-May through 28 October 2009, which he considered to be due to heightened awareness generally of citizens' rights, the maturing and expansion of the facilitators' network, and an increased readiness to present complaints. The Liaison Officer further observed, however, that awareness levels, particularly in rural areas, remained low (GB.306/6, paragraph 4). The Government had also yet to issue an authoritative public statement at the highest level, as called for by ILO supervisory organs, to clearly reconfirm its policy prohibiting all forms of forced labour throughout the country and its intention to prosecute perpetrators, both civilian and military (Report to the Conference Committee, paragraph 24, GB.306/6, Conclusions).

19. The Committee considers the publicity and awareness-raising activities noted above to represent a step forward, and the recent increase in new complaints received under the SU and partly attributed to such activities to be a positive sign; however, these measures continue to be largely ad hoc, partial and piecemeal in nature. The Committee reiterates the need for the Government to commit itself more fully to publicity and awareness-raising activities, to conceive and undertake them in a more coherent and systematic way, and with a view to the tangible effect they have on the observance in practice by civil and military authorities and personnel at all levels, and in all areas of the country, of their legal obligation not to exact forced labour, and on the efforts of victims of forced labour throughout the country to seek legal recourse. ***The Committee hopes that in its next report the Government will supply information on measures of this nature being***

***taken or contemplated, including information about their practical effect, observed or anticipated.***

20. *Monitoring the situation of forced labour including efforts to enforce its prohibitions.* The Committee notes the important role in assisting the Government with monitoring and investigating the situation of forced labour in Myanmar, including enforcement of rights and obligations arising out of the prohibitions of forced labour, which has been accorded to the ILO Liaison Officer, both under the broad mandate of the Understanding of 2002 and in the framework of the SU complaints mechanism. The Committee notes that several ad hoc investigation missions and inspection tours were carried out by the Liaison Officer and the Ministry of Labour in late 2008 and early 2009, and that presentations were made to NGOs and civil society groupings, in part, to seek their support in forced labour observation and reporting (GB.304/5/1(Rev.), paragraphs 5 and 6). A small sub-unit of the Office of the Liaison Officer has been established for dealing with under-age recruitment complaints and for monitoring and reporting on the child soldier situation nationwide (GB.306/6, paragraph 21). The Committee considers these to be positive steps. At the same time, however, the reach of the SU mechanism in a country the size of Myanmar is still very limited (GB.304/5/1(Rev.), paragraph 10); the ILO Liaison Officer is based in Yangon and is provided meagre facilities and a small staff (paragraph 12); he does not have the authority to initiate complaints on the basis of his own observation or information (GB.306/6, paragraph 6) or his own investigations of under-age military recruitment (GB.304/5/1(Rev.), paragraph 7); and there are continuing practical impediments to the physical ability of victims of forced labour or their families to complain, such that a network of complaints facilitators remains a necessity (Report to the Conference Committee, paragraph 12). The complaints mechanism of the SU is being undermined (GB.306/6, paragraph 4) by the continued imprisonment of labour activists with a record of support in the facilitation of complaints under the SU (GB.306/6, paragraphs 14 and 16), by serious cases of apparent harassment and judicial retaliation against complaining victims, facilitators and other persons associated with complaints filed with the ILO (GB.306/6, paragraphs 11–14; Report to Conference Committee, paragraph 10), and by the refusal of local civil and military authorities, as well as local courts, to respect the terms of formal complaint settlements, notably the agreements in several land-confiscation cases that resulted from joint ILO–MOL investigative missions carried out in Magwe Division in December 2008 and March 2009 (GB.306/6, paragraphs 13 and 15). In this regard notations in the Register of cases under the SU mechanism indicate a number of cases, including Cases Nos 149, 150, 151, 204, 205 and 206, in which complainants chose not to pursue their claims out of fear of reprisals (GB.306/6, Appendix IV). A formal proposal of the ILO Liaison Officer to the Working Group for joint action to address these issues with a view to achieving lasting solutions has not been accepted by the Government (GB.306/6, paragraph 15). ***Noting the obligation of the Government under the 2002 Understanding and the 2007 SU to take appropriate steps to enable the ILO Liaison Officer to effectively discharge the work and responsibilities arising therein, including extending to his Office the requisite facilities and support, the Committee strongly urges the Government to take immediate steps to address the serious problems noted above, and it requests information from the Government in its next report on the progress of those steps. More generally, the Committee urges the Government to take necessary measures to ensure that a climate exists for a monitoring and investigation process that is effective, national in its reach and scope, and fully respected by all elements and all levels of society. It requests that in its next report the Government supply information on the progress of measures so taken or contemplated.***

### **III. Enforcement of penalties**

21. The Committee recalls that section 374 of the Penal Code provides for the punishment, by a term of imprisonment of up to one year, of anyone who unlawfully

compels any person to labour against his or her will, and that Order No. 1/99 and its supplementing Order of 27 October 2000, as well as the series of instructions and letters, issued by Government authorities in 2000, 2004 and 2005 with a view to securing the enforcement of those orders, provide for persons “responsible” for forced labour, including members of the armed forces, to be referred for prosecution under section 374 of the Penal Code or other applicable provisions of law. The Committee notes that none of the complaints under the SU mechanism assessed and forwarded by the ILO Liaison Officer to the Working Group for investigation and appropriate action resulted, in 2009, in a decision to prosecute perpetrators of forced labour. The notations in the Register of cases under the SU mechanism (as of 23 October 2009) indicate that in at least 14 of the closed cases, the Liaison Officer considered the penalties or punishment imposed or disciplinary actions taken to be inadequate, and that the Working Group has routinely rejected recommendations made for more serious sanctions to be applied (GB.306/6, Appendix IV). Recent cases involving complaints of under-age military recruitment have resulted in the discharge of the child victims but with only administrative sanctions, if any, imposed on the perpetrators; there have been no prosecutions under criminal law (GB.304/5/1, paragraph 7). In Case No. 127 an explicit recommendation by the Liaison Officer for criminal prosecution was rejected. The Committee notes the observation of the Liaison Officer that the need for the imposition of meaningful penalties on perpetrators “continues to be a concern, particularly in respect of cases involving military personnel” (GB.306/6, paragraph 7), and that in the most serious cases of under-age military recruitment the penalties remained inadequate (Report to the Conference Committee, paragraph 15). ***The Committee urges the Government once again to take measures to ensure that the penalties imposed by law for the illegal exaction of forced or compulsory labour are adequate and strictly enforced, as required by Article 25 of the Convention, and it requests the Government to supply information in its next report on the progress of measures taken to that end. The Committee hopes that fulfilment of the Government’s commitments as a party to the SU will be better reflected in the processing of cases forwarded to the Working Group by the ILO Liaison Officer, in terms of greater weight being accorded to the preliminary assessments of the Liaison Officer and a greater number of investigations leading to prosecutions, convictions and the imposition of criminal penalties rather than to case closures, and it requests information on progress being made in that vein.***

## **Concluding comments**

22. In summary, the Committee observes that the Government has yet to implement the recommendations of the Commission of Inquiry; to wit: it has failed to amend or repeal the Towns Act and the Village Act; it has taken no concrete actions shown to have brought about in any significant and lasting way an end to the exaction of forced labour in practice; and it has failed to ensure that penalties for the exaction of forced labour under the Penal Code or other relevant provisions of law have been strictly enforced against civil and military authorities and personnel who are responsible for it. While the Office of the ILO Liaison Officer, by virtue of the broad mandate set forth under the Understanding of 19 March 2002, and the procedures and mechanisms provided for under the SU, has been accorded a critical role in assisting the Government in its efforts to bring about the elimination of forced labour, the robust and fully fledged cooperation of the Government that is vital to the fulfilment of that role, including the cooperation needed in extending the requisite facilities and support and in engendering full respect for, and trust in, these special organs by the society at large, leaves much room for improvement. ***The Committee once again urges the Government to give credence to its expressed commitment to eliminate the use of forced labour in Myanmar and take the long overdue steps that are required to implement the recommendations of the Commission of Inquiry and achieve compliance with the Convention in law and in practice.***

## **C. Report of the Liaison Officer to the special sitting on Myanmar (Convention No. 29) of the Committee on the Application of Standards, and register of cases as of 17 May 2010**

### **I. Introduction**

1. The ILO Liaison Officer in Myanmar operates under the authority of a 2002 Understanding between the Government of the Union of Myanmar and the ILO. The Liaison Officer undertakes various activities aimed at supporting the Government in its implementation of the recommendations of the Commission of Inquiry on Forced Labour in Myanmar concerning the Forced Labour Convention, 1930 (No. 29).
2. A Supplementary Understanding signed on 26 February 2007 sets out a complaints mechanism under which residents of Myanmar can forward to the Liaison Officer complaints on alleged cases of forced labour. The definition of forced labour under Convention No. 29 also includes the recruitment of minors into the military. The trial period of the Supplementary Understanding was extended for a third time in January 2010 for a further 12 months.<sup>1</sup>
3. The Governing Body has reviewed developments, including any progress made, at each of its March and November meetings under a specific agenda item on the subject. The reports of the Liaison Officer to the Governing Body in November 2009 and March 2010, together with the conclusions reached following each of those discussions, are attached. The register of cases as at 17 May 2010 is attached as appendix.
4. This report provides a summary of activities over the past year without, however, repeating the information that is contained in the abovementioned reports to the Governing Body. The report takes into account the conclusions of the special sitting on Myanmar of the Committee on the Application of Standards held at the 98th Session of the International Labour Conference in 2009 (see Part C), and highlights developments that can be considered steps forward as well as areas where further progress is required in order to achieve the objective of the elimination of forced labour in Myanmar.

### **II. The operational environment**

5. Through its Government Working Group for the Elimination of Forced Labour, chaired by the Deputy Minister of Labour and consisting of senior representatives from a range of relevant ministries, the Supreme Court and the Office of the Attorney-General, the Government of Myanmar continues to respond in a reasonably timely manner to complaints that have been lodged under the Supplementary Understanding and, after assessment by the Liaison Officer, transmitted to the Government. The Working Group has responded positively to proposals for training and awareness-raising activities under the 2002 Understanding. The Ministry of Defence has been involved in the delivery of training to military personnel in respect of the law concerning under-age recruitment.
6. While these activities continue to take place and expand, complaints continue to be received alleging the use of forced labour by both military and civilian authorities. There is

<sup>1</sup> See GB.307/6, paras 15–19.

little evidence of the use of forced labour in the private sector, although working conditions may often leave much to be desired.

7. Non-verifiable available evidence does suggest that the use of forced labour by the civilian authorities has been reduced at least in some locations and parts of the country. This is most likely due to the extensive awareness-raising activities undertaken and the heightened awareness of local authority personnel to the issue itself, including the risk attached to being the subject of a complaint and its follow-up action. A fair conclusion would also be that a significant part of the use of forced labour reflects the weakness of macroeconomic governance and policy application, particularly in respect of budgeting and the corresponding financial allocations.
8. It is difficult to reach satisfactory conclusions to complaints that allege the use of forced labour by the military, either in respect of their operational activities (use of porters, sentry guards, and so on) or their commercial activity in various industries. Where a complaint of under-age recruitment is submitted, and the Liaison Officer can prove the age and the fact of recruitment, the child concerned is in most instances discharged to his family. There are recent indications that, in addition to undertaking an assessment of the case, the Government expects the Liaison Officer to undertake a more extensive inquiry and to obtain at least two official forms of proof of age before the case is accepted for government investigation. Notwithstanding numerous requests to the authorities to release identified under-age recruits close to their homes, parents are still required to fetch their sons from their regiments, which often entails lengthy travel at considerable expense. Some families, for example, have to sell their harvest in advance, borrow money, or sell assets, in order to undertake the journey.
9. The publication of a simply worded brochure to explain the law, the Supplementary Understanding and the procedure for filing a complaint was agreed in principle by the Working Group in January 2010. On 30 April 2010, the wording and its translation were agreed. The Liaison Officer received government approval of the document layout on 24 May 2010 and arrangements are currently being made for its publication and subsequent distribution.
10. The full-time professional staff in Yangon consists of the Liaison Officer, his deputy and one national programme officer. The workload has grown considerably as awareness of the law and the right to submit complaints has spread. The increased caseload must be managed in parallel with other demands, such as undertaking assessment missions, awareness-raising seminars, facilitators' network training, and working with other United Nations (UN) agencies, international non-governmental organizations (INGOs) and non-governmental organizations (NGOs) on various aspects of the forced labour agenda. The Government of Germany generously provided one year's funding for, among other things, an additional international professional to further support Supplementary Understanding activities, particularly in respect of child soldiers. Some valuable additional activities have been undertaken using these funds. However, as the Government of Myanmar has not approved the visa application for an additional international staff member, a considerable sum had to be returned to the donor in December 2009. The donor has generously agreed to extend the project execution date to 31 December 2010 on condition that the visa is accorded or an appropriate in-country candidate is located before 31 July 2010. The number of complaints requiring preliminary assessment is growing, and there is a backlog of follow-up work on earlier cases.
11. A number of complaints of human trafficking for forced labour have been received. The Government Working Group has expressed its view regarding a more effective way of taking action, advising that such cases are not receivable by the Working Group and that the complainants should be referred to the proper authorities within the Ministry of Home

Affairs without further action being taken by the ILO Liaison Officer. Three such cases have been referred to the ILO anti-human trafficking projects based outside the country this year and they have resulted in the release of 56 persons from a forced labour situation in neighbouring countries. The Liaison Officer has renewed his recommendation that such cases be referred through the Government Working Group to the Myanmar police anti-human trafficking unit for appropriate action.

12. The work related to under-age recruitment under the Supplementary Understanding supports the activity of the UN Country Task Force on Monitoring and Reporting on Children and Armed Conflict under Security Council Resolution 1612 on the protection of children affected by armed conflict. As a member of the Task Force, the Liaison Officer and his deputy have been involved in the negotiation of a joint action plan with the Government with a view to stopping the recruitment of children into the military and the release of those already in service.

### **III. Action under the Understanding and the Supplementary Understanding**

13. Since the 2009 meeting of the Committee on the Application of Standards, the following activities have been undertaken.

#### **(a) Training and awareness raising**

- Three joint ILO/Ministry of Labour awareness-raising seminars at State/Division level for state/division/district/township/village local authority personnel and representatives of military units in Rhakine State, Magway Division and Bago Division.
- Five training workshops/presentations held for UN and INGO field staff on the law pertaining to forced labour, including under-age recruitment and the practical operation of the Supplementary Understanding complaints mechanism.
- Two joint ILO/Ministry of Labour presentations on the law and practice on forced labour to township judge and deputy judge refresher training courses.
- Three training seminars/presentations for members of the armed forces (operational, training and recruitment personnel), the police and the prison service on the law and practice concerning under-age recruitment into the military.

#### **(b) Operational field missions**

- Four in-country field missions for case assessment or follow-up.
- Two orientation/information gathering missions.
- One mission accompanying the UN Special Rapporteur on the situation of human rights in Myanmar on his inspection visit to Rhakine State.

#### **(c) Government consultations**

- Four meetings with the full Government Working Group for the Elimination of Forced Labour on the operation of the Supplementary Understanding and one meeting to discuss the principles and application of the Freedom of Association Convention,

1948 (No. 87), with the participation of the International Labour Standards Department, and the Government's concept for proposed trade union legislation.

- Two meetings with the Government Human Rights Body regarding the Universal Periodic Review process and the promotion of UN/Government of Myanmar cooperation on human rights matters.
- Three meetings with the Committee for the Prevention of the Recruitment of Minors as part of the UN Country Task Force on Monitoring and Reporting on Children and Armed Conflict under Security Council Resolution 1612 on the protection of children affected by armed conflict.

#### **IV. Statistics on complaints**

14. Since the entry into force of the Supplementary Understanding in February 2007, a total of 331 complaints have been received by the Liaison Officer. Of those, 45 were outside the ILO mandate in Myanmar, including five relating to freedom of association issues that could not be pursued under the Supplementary Understanding.
15. Of the 286 cases accepted as being within the ILO mandate, 144 have been assessed, submitted to the Government Working Group for the Elimination of Forced Labour, investigated by the Government and subsequently concluded to varying degrees of satisfaction. Another 68 cases remain open, either awaiting information on the results of government investigations or still the subject of follow-up negotiations. Some 52 cases are currently either under assessment or require further information prior to submission. Twenty-two cases that fall within the mandate set out in the Supplementary Understanding have not been submitted, either because there is insufficient information to substantiate the allegations or because of reluctance on the part of the complainant to proceed owing to their own fear of possible reprisals.
16. Since the last report to the Committee on the Application of Standards, seven cases of alleged harassment of complainants, facilitators or legal counsel have been received. Fourteen persons deemed to have been the subject of judicial harassment for their association with the complaints mechanism have been released from prison after their sentences were reduced. Six people who had either been imprisoned owing to their association with the complaints mechanism, or sentenced for unrelated alleged breaches of the law in a situation where they had clearly had an association with the Supplementary Understanding mechanism, remain in prison. Two lawyers who are active supporters of the Supplementary Understanding procedures have lost their licences to practise after their release from prison. The Government continues to maintain that these persons have all been arrested and appropriately sentenced for breaches of the law unrelated to their association with the Supplementary Understanding complaints procedure and that the cancellation of the lawyers' practising licences reflects their breach of the legal practitioners' code of conduct. A total of 99 persons who had been recruited as children have been discharged from the military and returned to their families.



## Appendix

### 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, land use remains in dispute [case 129].
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	Closed	Government denied portering and alleged victim to be an insurgent who was captured but subsequently escaped. Any connection between the facilitator's subsequent imprisonment and this case was denied.
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 undertaken.
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 inquiry considered 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 June 07	Yes	14 Aug. 07	Closed	Four officials dismissed, administrative instructions re-issued.
026	26 June 07	Yes	13 Aug. 07	Closed	Local authorities instructional activity undertaken.

Case	Date received	Accepted	Intervention date	Status	Comments
027	28 June 07	No		Closed	Not related to mandate – pension/gratuity matter.
028	7 June 07	No		Closed	Not related to mandate – pensions matter.
029	14 June 07	Yes	2 Aug. 07	Closed	Village chairman dismissed.
030	31 July 07	Yes	31 July 07	Closed	Child released – summary military trial – recruiting officer disciplined.
031	25 June 07	No		Closed	Not related to mandate – mass termination.
032	29 June 07	No		Closed	Not related to mandate – land confiscation.
033	6 July 07	Yes	9 Aug. 07	Closed	Child released, training seminar undertaken.
034	12 July 07	No		Closed	Not related to mandate – hours of work/overtime issue.
035	23 July 07	Yes	17 Aug. 07	Closed	Government instructions issued, retrospective remuneration paid, joint field trip for awareness education undertaken.
036	24 July 07	No		Closed	Insufficient basis to proceed.
037	29 June 07	No		Closed	Not related to mandate – migrant worker/payment of wages.
038	25 July 07	No		Closed	Not related to mandate – termination of employment issue.
039	12 June 07	No		Closed	Insufficient basis on which to proceed.
040	31 July 07	No		Closed	Insufficient information to proceed.
041	6 Aug. 07	No		Closed	Not related to mandate – termination grievance.
042	7 Aug. 07	Yes	8 Aug. 07	Closed	Not within Supplementary Understanding mandate – issue of freedom of association remains. Six labour activists remain imprisoned. Request for ILO visiting rights rejected. The mission of the UN Special Rapporteur on the situation of human rights in Myanmar to Northern Rhakine State visited U Kyaw Min in February 2010.
043	15 Aug. 07	Yes	16 Aug. 07	Closed	Child released, disciplinary action as the result of military inquiry considered 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	Closed	Joint mission undertaken, village chairman dismissed, military officer reprimanded, practice stopped.
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 prison labour policy review made.

Case	Date received	Accepted	Intervention date	Status	Comments
050	14 Sep. 07	Yes	20 Sep. 07	Closed	Victim released – military inquiry resulted in disciplinary reprimand.
051	20 Sep. 07	Yes	25 Feb. 08	Closed	Practice of forced labour ceased, awareness raising undertaken.
052	20 Sep. 07	Yes	22 Feb. 08	Closed	Forced labour stopped, travel restriction removed.
053	10 Oct. 07	Yes	9 Nov. 07	Closed	Responsible officer disciplined, practice stopped, joint awareness-raising mission undertaken.
054	17 Oct. 07	Yes	18 Oct. 07	Open	Clause 9 breach – negotiations continue, Su Su Nway, Min Aung remain in prison. Request for ILO visiting rights rejected.
055	19 Oct. 07	Yes	31 Oct. 07	Closed	Child released – military inquiry resulted in disciplinary reprimand.
056	25 Oct. 07	Yes	9 Nov. 07	Closed	Child released – military inquiry resulted in disciplinary reprimand.
057	7 Nov. 07	No		Closed	Not related to mandate – cross-border trafficking and 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	Closed	Government agreed to issue discharge in absentia, however victim cannot be located.
062	20 Dec. 07	Yes	28 Dec. 07	Closed	Victim discharged to custody of parents. Responsible recruiting officer officially reprimanded.
063	7 Jan. 08	Yes	14 Jan. 08	Closed	Victim discharged, recruiting officer reprimanded, instruction on humane treatment of trainees issued. Ongoing procedure recommendation made.
064	7 Jan. 08	Yes	11 Feb. 08	Closed	Sentence remitted, victim discharged from military to care of family.
065	8 Jan. 08	No		Closed	Not related to mandate – corruption allegation.
066	14 Jan. 08	Yes	22 Feb. 08	Open	Forced labour ceased, 12 complainants and associated persons released from prison. One complainant remains in prison. Related land issues remain unresolved. Negotiation continues.
067	16 Jan. 08	No		Closed	Not within mandate of forced labour, land confiscation.
068	16 Jan. 08	Yes	25 Feb. 08	Closed	Official dismissed, education activity undertaken, ongoing situation to be monitored.
069	31 Jan. 08	Yes	25 Feb. 08	Closed	Closed in association with case 051 following assessment mission.
070	6 Feb. 08	Yes	12 Feb. 08	Closed	Victim discharged, recommendation on proof of age documentation procedure made.

Case	Date received	Accepted	Intervention date	Status	Comments
071	29 Jan. 08	No		Closed	Not related to mandate – compensation for damaged crop issue.
072	30 Jan. 08	Yes	11 Mar. 08	Closed	Awareness-raising activity undertaken.
073	20 Feb. 08	Yes	3 Mar. 08	Closed	Portering allegation denied, disciplinary action re: serious assault on complainant considered inadequate.
074	21 Feb. 08	No		Closed	Insufficient basis to proceed.
075	3 Mar. 08	Yes	11 Mar. 08	Closed	Victim discharged, responsible officer reprimanded, Government investigation to locate broker continues.
076	3 Mar. 08	Yes	10 Mar. 08	Closed	Child discharged – recruitment officer reprimanded.
077	5 Mar. 08	No		Closed	Not within Supplementary Understanding mandate – freedom of association issue subject to separate consideration.
078	5 Mar. 08	No		Closed	Not within Supplementary Understanding mandate – freedom of association issue subject to separate consideration.
079	14 Mar. 08	No		Closed	Not within Supplementary Understanding mandate – freedom of association issue subject to separate consideration.
080	14 Mar. 08	Yes	8 Apr. 08	Closed	Associate with case 068, ongoing situation to be monitored.
081	17 Mar. 08	No		Closed	Not related to mandate – labour market dispute.
082	17 Mar. 08	No		Closed	Complainants unwilling to be identified.
083	20 Mar. 08	Yes	8 Apr. 08	Closed	Victim discharged. Recruiting officer seriously reprimanded, disciplinary response considered inadequate.
084	26 Mar. 08	No		Closed	Being dealt with in context of case 015.
085	28 Mar. 08	No	2 Aug. 08	Closed	Being dealt with in context of case 066.
086	28 Mar. 08	Yes	7 Apr. 08	Closed	Victim discharged to care of parents. Responsible senior officer reprimanded. Disciplinary action considered inadequate.
087	11 Apr. 08	Yes	11 Apr. 08	Closed	Child discharged – recruitment officer reprimanded.
088	22 Apr. 08	Yes	16 June 08	Closed	Child discharged.
089	19 May 08	Yes	20 June 08	Closed	Victim discharged, desertion charge dropped, responsible officer reprimanded.
090	20 May 08	Yes	17 July 08	Closed	Victim discharged, responsible officer seriously reprimanded. No response in respect of other reported minors in same unit.
091	23 May 08	No		Closed	Complaint withdrawn.
092	27 May 08	No		Closed	Not related to mandate – labour dispute.
093	28 May 08	Yes	16 June 08	Closed	Victim discharged, responsible officer reprimanded.

Case	Date received	Accepted	Intervention date	Status	Comments
094	28 May 08	Yes	2 Sep. 08	Closed	Division-wide joint training seminar for civilian, judicial, police and army authorities undertaken.
095	11 June 08	No		Closed	Not related to mandate – land confiscation.
096	11 June 08	Yes	14 July 08	Closed	Victim discharged, two officers responsible disciplined. One with 28 days' salary deduction and one with 14 days' salary deduction and a serious reprimand.
097	14 June 08	Yes	20 June 08	Closed	Child discharged – recruitment officer reprimanded.
098	15 June 08	Yes	17 June 08	Open	Negotiation for reinstatement of facilitator's law practicing license continues.
099	18 June 08	Yes	24 June 08	Closed	Victim released from prison, discharged from military, desertion sentence remitted – first perpetrator dead, second perpetrator resigned with no disciplinary action applied. Victim seriously ill on release, subsequently deceased.
100	23 June 08	Yes	9 Oct. 08	Open	Government response received, full denial of forced labour, claiming sentry duty to be community work. Communication continues.
101	2 July 08	Yes	9 Oct. 08	Closed	Allegation denied, Ministry of Defence instruction on recruiting process issued.
102	11 July 08	No		Closed	Insufficient evidence to proceed.
103	16 July 08	Yes	18 July 08	Closed	Victim discharged to care of parents.
104	17 July 08	Yes	21 July 08	Closed	Victim located, allegedly now of age and wishing to remain in army. ILO independent verification request denied.
105	21 July 08	Yes	24 July 08	Closed	Child discharged – recruitment officer disciplined by the loss of 28 days' salary.
106	31 July 08	Yes	31 July 08	Closed	Community work related. Government guidance distributed through General Administration Department as to appropriate approach to be adopted.
107	28 July 08	Yes	4 Aug. 08	Closed	Victim discharged, perpetrator fined 28 days' salary.
108	29 July 08	Yes	28 Aug. 08	Closed	Autistic boy of disputed age recruited. Government advises that victim deserted in 2005. Person responsible for his delivery to recruitment centre has himself deserted. No action taken against any perpetrator. Current whereabouts and status of victim unknown.
109	11 Aug. 08	Yes	23 Oct. 08	Open	Joint mission undertaken, negotiated settlement re: forced labour and land confiscation reached, agreements not yet fully applied by local authorities, negotiations continue. Facilitator and lawyer imprisoned, alleged harassment of facilitator's family denied. Lawyer released on judicial review of sentence, March 2010 with legal licence revoked. Negotiations continue.

Case	Date received	Accepted	Intervention date	Status	Comments
110	13 Aug. 08	Yes	10 Oct. 08	Closed	Victim not located, prison labour policy review proposed.
111	14 Aug. 08	Yes	21 Aug. 08	Closed	Victim initially not located. Government advised that victim rejected at recruitment centre. No action taken against identified broker or military personnel. Subsequently established that he was discharged on health grounds after 11 months of service.
112	19 Sep. 08	Yes	29 Sep. 08	Closed	Victim discharged, three military personnel seriously reprimanded.
113	24 Sep. 08	Yes	–	Closed	Parents decided not to pursue the case.
114	25 Sep. 08	Yes	29 Oct. 08	Closed	Victim located, is now of age, decided to remain in the army, ILO not granted private meeting for verification.
115	26 Sep. 08	Yes	29 Oct. 08	Closed	Victim discharged, two military personnel seriously reprimanded.
116	1 Oct. 08	No		Closed	Insufficient information to proceed.
117	1 Oct. 08	Yes	10 Nov. 08	Closed	Victim released, compensation paid, ongoing medical treatment provided, prison labour policy review proposed and agreed in principle, awaiting outcome.
118	1 Oct. 08	No		Closed	Not within Supplementary Understanding mandate – industrial dispute issue.
119	22 Oct. 08	Yes	22 Oct. 08	Closed	Awareness-raising activity undertaken, practice ceased.
120	30 Oct. 08	Yes	6 Nov. 08	Closed	Victim discharged, non-commission officer seriously reprimanded with loss of 28 days' salary and allowances. Disciplinary action considered inadequate.
121	4 Nov. 08	Yes	10 Nov. 08	Closed	Victim discharged, senior officer responsible reprimanded.
122	10 Nov. 08	Yes	20 Feb. 09	Closed	ILO offer of support for the production of guidelines for agricultural policy application to avoid forced labour complaints stands.
123	14 Nov. 08	Yes	14 Nov. 08	Closed	Victim discharged, perpetrator seriously reprimanded with loss 14 days' salary, disciplinary action considered inadequate.
124	14 Nov. 08	No		Closed	Not within Supplementary Understanding mandate – land confiscation.
125	5 Dec. 08	Yes	15 Dec. 08	Closed	Victim discharged. Captain dismissed and sentenced to one year civilian imprisonment with hard labour. Two privates sentenced to three months and one month military imprisonment with hard labour. Warrant Officer and Sergeant both reduced one year pensionable service rights.
126	11 Dec. 08	Yes	11 Dec. 08	Closed	State-wide awareness raising held in Karen State and Northern Shan State, ongoing situation being monitored.

Case	Date received	Accepted	Intervention date	Status	Comments
127	15 Dec. 08	Yes	22 Dec. 08	Closed	Victim discharged, perpetrator had retired, recommendation for criminal prosecution not accepted.
128	14 Jan. 09	Yes	30 Jan. 09	Closed	Victim discharged, junior officer disciplined. Recommendation on policy procedure concerning allocation of responsibility made.
129	30 Jan. 09	Yes	26 Oct. 09	Open	Related to case 01, ILO assessment mission undertaken. Two complainants imprisoned on damage to government property charges, negotiations continue.
130	4 Feb. 09	Yes		Closed	Settlement incorporated within case 66 solutions.
131	13 Feb. 09	Yes	9 Mar. 09	Open	Victim dismissed/ discharged. Communication re: perpetrator continues (related to cases 132 and 133).
132	13 Feb. 09	Yes	22 May 09	Open	Discussion on process for potential discharge continues.
133	13 Feb. 09	Yes	22 May 09	Open	Age on and circumstances of recruitment disputed. Communications continue.
134	16 Feb. 09	No		Closed	Insufficient information to proceed.
135	16 Feb. 09	Yes	9 Mar. 09	Open	Government agreed to victim being discharged – victim ran away from army between date of filing complaint and date that parents arrived at his unit to collect him. As yet not located – communication continues.
136	17 Feb. 09	No		Closed	Not related to mandate – alleged political harassment issue.
137	5 Mar. 09	Yes	13 July 09	Open	Two persons died whilst undertaking alleged forced labour. Government investigation determined it to be community work. Joint awareness-raising seminar involving township local authorities undertaken.
138	6 Mar. 09	Yes	10 Mar. 09	Closed	Victim released from prison, desertion sentence remitted, discharged from the military, perpetrator seriously reprimanded. Punishment considered insufficient.
139	9 Mar. 09	Yes	8 Apr. 09	Closed	Victim released from army, recommendation made re: issuance of instruction and discipline.
140	30 Mar. 09	Yes	8 Apr. 09	Closed	Victim discharged. Responsible Private disciplined with unspecified salary deduction. No action taken against identified broker who denies involvement.
141	30 Mar. 09	Yes	27 Apr. 09	Closed	Victim discharged, recruiting officer seriously reprimanded, penalty deemed inadequate.
142	31 Mar. 09	Yes	18 May 09	Closed	Use of forced labour denied. Summary of north-west command instruction against use of forced labour received. Full text awaited.
143	1 Apr. 09	No		Closed	Forced labour criteria met, victim does not wish to pursue the matter.

Case	Date received	Accepted	Intervention date	Status	Comments
144	22 Apr. 09	Yes	27 Apr. 09	Closed	Victim discharged, recruiting officers (two) seriously reprimanded.
145	22 Apr. 09	Yes	22 Apr. 09	Closed	Rhakine State/Northern Rhakine State awareness-raising session held in Sittway on 7 September 2009, ongoing situation being monitored (see case 225).
146	30 Apr. 09	Yes	30 Apr. 09	Closed	Victim discharged, recruiting officer seriously reprimanded.
147	8 Apr. 09	Yes	8 Apr. 09	Closed	Not within Supplementary Understanding mandate, four labour activists released. Issue of freedom of association remains.
148	15 May 09	Yes	25 May 09	Closed	Victim discharged, recruiting officer seriously reprimanded, disciplinary action considered inadequate.
149	15 May 09	Pending		Pending	Multiple complainants, reluctant to formalize complaint in fear of reprisal. ILO assessment mission in consideration (Kayin State).
150	15 May 09	Pending		Pending	Multiple complainants, reluctant to formalize complaint in fear of reprisal. ILO assessment mission in consideration (East Bago).
151	15 May 09	Pending		Pending	Multiple complainants, reluctant to formalize complaint in fear of reprisal. ILO assessment mission in consideration (Tanintharyi Division).
152	15 May 09	No		Closed	Insufficient information to proceed on alleged forced labour – complaint centred on alleged corruption and land confiscation.
153	21 May 09	Yes	25 May 09	Closed	Victim discharged. No reported action has been taken against two identified military personnel allegedly responsible for the recruitment of 13-year-old boy and one named military officer accused of harassing the victim's family.
154	21 May 09	No		Closed	Not related to mandate – labour dispute issue.
155	22 May 09	Yes	25 May 09	Closed	Victim discharged. Facts on recruitment remain in dispute. No disciplinary action taken against military personnel involved. Recommendation on discharge location policy made.
156	29 May 09	Yes	26 June 09	Closed	Victim released from prison, desertion sentence remitted, discharged from the military.
157	3 June 09	Yes	31 Aug. 09	Closed	Victim discharged. Responsible officer seriously reprimanded.
158	10 June 09	Yes	9 July 09	Closed	Victim discharged. Responsible officer seriously reprimanded with loss of seven days' pay. Recommendation for action re: second perpetrator made. Two further possible victims alleged to be volunteer adults, verification not possible.
159	11 June 09	Yes		Closed	Victim discharged whilst ILO assessment under way.



Case	Date received	Accepted	Intervention date	Status	Comments
160	17 June 09	Yes	6 Oct. 09	Closed	Magway Division awareness-raising seminar undertaken.
161	17 June 09	Yes	10 July 09	Closed	Victim discharged, ILO recommendation re: disciplinary action against perpetrators not accepted.
162	24 June 09	Yes	20 Oct. 09	Open	Awaiting Government response.
163	25 June 09	No		Closed	Forced labour criteria met, victim does not wish to pursue the matter.
164	29 June 09	Yes	16 July 09	Closed	Victim released from prison, discharged from army. Facts on recruitment circumstances disputed. No disciplinary action taken.
165	30 June 09	Yes	9 July 09	Open	Victim located, not under-age recruitment. Alleged abduction for forced labour – 100 more other children allegedly involved. Government questioned veracity of victim's story and indicated that its investigation could not locate the alleged forced labour site. Information on detailed investigation process and findings awaited.
166	13 July 09	Yes	5 Aug. 09	Closed	Victim (14 years old) released from army. Facts of recruitment disputed. Not reported if action taken against medical doctor and military officer as alleged perpetrators.
167	15 July 09	Yes	30 July 09	Closed	Victim discharged, one perpetrator seriously reprimanded with loss of 14 days' salary, second perpetrator identified by victim. National registration card returned to father of victim.
168	15 July 09	Yes	5 Aug. 09	Open	Victim discharged, perpetrator seriously reprimanded. Communication concerning other follow-up recommendations continues.
169	17 July 09	Yes	3 Aug. 09	Open	Qualified agreement for discharge received. Communication on process continues.
170	17 July 09	Yes		Closed	Evidence indicates forced labour. However, complainants not prepared to proceed owing to fear of reprisal.
171	6 Aug. 09	Yes	31 Aug. 09	Closed	Victim discharged from the army, recruiting officer was seriously reprimanded. ILO considered disciplinary response inadequate.
172	6 Aug. 09	Yes	8 Sep. 09	Closed	Victim discharged. Warrant Officer seriously reprimanded. Awareness-raising activity undertaken in victim's operational unit.
173	10 Aug. 09	Yes	8 Sep. 09	Closed	Victim discharged suffering from malaria, second Lieutenant reprimanded.
174	10 Aug. 09	Yes	8 Sep. 09	Closed	Victim released from prison, desertion charge remitted, discharged from the army.
175	11 Aug. 09	No	11 Aug. 09	Closed	Note related to mandate – land issue.
176	13 Aug. 09	Yes	8 Sep. 09	Closed	Victim discharged. Responsible officer seriously reprimanded with loss of 28 days' salary.

Case	Date received	Accepted	Intervention date	Status	Comments
177	13 Aug. 09	Yes	11 Sep. 09	Open	Government rejected complaint arguing there was no factual reference to victim's age. Victim currently in prison for desertion. Documentation shows him to be a minor. Negotiations continue.
178	17 Aug. 09	Yes	20 Oct. 09	Closed	Victim discharged. Recruiting Sergeant seriously reprovved. ILO considers punishment inadequate under the circumstances of case.
179	21 Aug. 09	Yes	15 Sep. 09	Closed	Victim discharged. Responsible Sergeant seriously reprimanded.
180	24 Aug. 09	Yes		Closed	Victim discharged during assessment process.
181	24 Aug. 09	Yes		Closed	Victim discharged during assessment process.
182	24 Aug. 09	Yes	18 Oct. 09	Closed	Victim discharge notified. Responsible Sergeant seriously reprovved, recommendation made that discharges take place close to the victim's home.
183	25 Aug. 09	Yes	15 Sep. 09	Closed	Victim discharged. Responsible Sergeant seriously reprimanded.
184	25 Aug. 09	Yes	20 Oct. 09	Closed	Victim discharged. Recruiting Sergeant clerk seriously reprimanded.
185	25 Aug. 09	Yes	7 Oct. 09	Closed	Victim discharged. Recruiting Sergeant received seven days' salary deduction penalty.
186	25 Aug. 09	Yes	20 Oct. 09	Open	Age at recruitment disputed, victim dismissed from military and sentenced to two years' hard labour for desertion. Communications on proof of age and circumstances of forced recruitment continue.
187	2 Sep. 09	Yes	22 Sep. 09	Open	Government advised victim cannot be located owing to insufficient information. Further inquiries being made.
188	2 Sep. 09	Yes	27 Oct. 09	Closed	Victim discharged, perpetrator seriously reprimanded. Recommendation on awareness raising for known brokers made.
189	2 Sep. 09	Yes	27 Oct. 09	Open	Victim discharged. Corporal reprovved on summary trial, communication on disciplinary response continues.
190	3 Sep. 09	Yes	10 Sep. 09	Closed	Victim discharged from the army. No charges for alleged desertion. One perpetrator deserted and one retired. Recommendations made as regards training of recruiting staff and police.
191	3 Sep. 09	Yes	14 Sep. 09	Closed	Victim discharged, recruitment took place in 1997. No punishment against perpetrator. Recommendations made concerning arrest warrant and desertion charge procedures in case of under-age recruits.
192	4 Sep. 09	No		Closed	Not related to mandate – civil dispute.
193	4 Sep. 09	Yes	15 Sep. 09	Closed	Victim released. Absence of any disciplinary response considered inappropriate, recommendation made.

Case	Date received	Accepted	Intervention date	Status	Comments
194	8 Sep. 09	Yes	27 Oct. 09	Closed	Victim discharged, Sergeant punished with loss of 14 days' salary, further information sought on investigations' findings.
195	8 Sep. 09	Yes	27 Oct. 09	Closed	Victim discharged, recruiting Corporal seriously reprimanded. Recommendation on release location made.
196	8 Sep. 09	Yes		Closed	Victim discharged and released from convict labour camp during assessment process.
197	10 Sep. 09	Yes	28 Oct. 09	Closed	Victim released from prison and discharged from army during assessment. On associated forced labour complaint, recommendation made for counselling local authorities on community work procedures.
198	16 Sep. 09	Yes	28 Oct. 09	Open	Government disputes age, negotiation continues.
199	16 Sep. 09	Pending		Pending	Awaiting further information.
200	22 Sep. 09	Yes	26 Oct. 09	Closed	Victim discharged, perpetrator seriously reprimanded. Recommendation on police training made.
201	24 Sep. 09	Yes	26 Oct. 09	Open	Victim court-martialled and sentenced to seven years' imprisonment for desertion whilst case still with Government for investigation. Request made for his release and for full investigation on under-age recruitment allegation to be completed.
202	24 Sep. 09	Yes		Closed	Insufficient evidence to proceed.
203	24 Sep. 09	Yes		Closed	Insufficient evidence to proceed.
204	28 Sep. 09	Yes		Closed	Evidence indicates forced labour, however, complainants not prepared to proceed owing to fear of reprisal.
205	28 Sep. 09	Yes		Closed	Evidence indicates forced labour, however, complainants not prepared to proceed owing to fear of reprisal.
206	28 Sep. 09	Yes		Closed	Complainants unwilling to pursue.
207	1 Oct. 09	Yes	28 Oct. 09	Closed	Victim discharged, desertion charge dropped, responsible officer seriously reprovved.
208	2 Oct. 09	Yes	28 Oct. 09	Open	Government disputes age and recruitment facts. Negotiation continues.
209	2 Oct. 09	Yes	28 Oct. 09	Open	Victim discharged, further communications taking place covering three other alleged under-age recruits and policy for entry to the military academy.
210	2 Oct. 09	Pending		Pending	Assessment in process.
211	5 Oct. 09	Yes	6 Oct. 09	Closed	Victim discharged, perpetrator deceased.
212	6 Oct. 09	Yes	9 Nov. 09	Open	Government disputes both age on recruitment and the facts of the case. Negotiation continues.

Case	Date received	Accepted	Intervention date	Status	Comments
213	6 Oct. 09	Yes	2 Nov. 09	Closed	Victim discharged. Corporal reprovved after summary trial.
214	12 Oct. 09	Yes	13 Oct. 09	Closed	Victim discharged. Responsible Sergeant reprovved. Recommendation on process made.
215	13 Oct. 09	Yes	9 Nov. 09	Open	Discharge agreed, arrangement for physical discharge being made.
216	15 Oct. 09	Pending		Pending	Assessment in process.
217	16 Oct. 09	Yes	26 Oct. 09	Closed	Victim discharged, perpetrator seriously reprimanded.
218	16 Oct. 09	Yes	4 Nov. 09	Open	Government alleged victim rejected on health grounds at recruitment centre. Victim cannot, as yet, be located. Inquiries continue.
219	19 Oct. 09	Yes	27 Oct. 09	Closed	Victim discharged, Corporal seriously reprimanded. No action taken on Officer and Sergeant who ignored mother's advice that victim is under age.
220	20 Oct. 09	Yes	9 Nov. 09	Open	Awaiting government response.
221	20 Oct. 09	Pending		Pending	Assessment in process.
222	23 Oct. 09	Yes	6 Jan. 10	Closed	Victim discharged, perpetrator seriously reprimanded.
223	23 Oct. 09	Yes	23 Oct. 09	Open	Awaiting government response.
224	29 Oct. 09	Yes	3 Nov. 09	Open	Under-age recruit convicted with death penalty in military court. Recommendation made that as a minor he should have been discharged from the military and prosecuted under the appropriate jurisdiction. Awaiting government response.
225	2 Nov. 09	Yes	2 Nov. 09	Open	Awaiting government response on proposed specific Northern Rhakine State awareness raising following continuing reports of use of forced labour.
226	2 Nov. 09	Yes	2 Nov. 09	Closed	Government investigation found that it was community work but acknowledged that inappropriate procedure adopted. Use of village labour discontinued.
227	3 Nov. 09	Yes	22 Dec. 09	Open	Victim currently serving seven years' prison sentence for desertion. Negotiation continues.
228	11 Nov. 09	Yes	24 Dec. 09	Closed	Victim discharged. Perpetrator seriously reprimanded.
229	12 Nov. 09	Yes	24 Dec. 09	Closed	Victim discharged, training centre corporal seriously reprimanded. Recommendation on review of process and punishment made.
230	16 Nov. 09	Yes	23 Dec. 09	Closed	Victim discharged, regiment Captain reprovved.
231	16 Nov. 09	Yes	23 Dec. 09	Open	Government disputes age on recruitment, negotiation continues.
232	17 Nov. 09	Yes	23 Dec. 09	Closed	Victim rejected on ground of age. Released from informal attachment to military regiment to care of parents.

Case	Date received	Accepted	Intervention date	Status	Comments
233	17 Nov. 09	Yes	23 Dec. 09	Open	Victim discharged, awaiting official advice.
234	24 Nov. 09	Yes	23 Dec. 09	Open	Government disputes age on recruitment, negotiation continues.
235	30 Nov. 09	No		Closed	Not related to mandate – employment dismissal.
236	1 Dec. 09	Yes	23 Dec. 09	Open	Government disputes age on recruitment, negotiation continues.
237	30 Nov. 09	Yes	22 Dec. 09	Closed	Victim discharged, responsible officer reprimanded.
238	1 Dec. 09	Yes	22 Dec. 09	Closed	Victim discharged. Recruitment Centre corporal seriously reprimanded.
239	10 Dec. 09	Yes	23 Dec. 09	Open	Government disputes age on recruitment, negotiation continues.
240	15 Dec. 09	Yes	22 Dec. 09	Open	Government disputes age on recruitment, negotiation continues.
241	16 Dec. 09	Yes	23 Dec. 09	Open	Government advised unable to locate the victim. Further identification and location information provided. Awaiting government response.
242	21 Dec. 09	Yes	22 Dec. 09	Open	Government disputes age on recruitment, negotiation continues.
243	23 Dec. 09	Yes	24 Dec. 09	Open	Victim imprisoned for desertion. Government disputes age on recruitment. Negotiation continues.
244	5 Jan. 10	Yes	7 Jan. 10	Open	Awaiting government response.
245	5 Jan. 10	Yes	8 Jan. 10	Closed	Victim discharged, perpetrator seriously reprimanded.
246	6 Jan. 10	Yes	8 Jan. 10	Closed	Victim discharged, perpetrator given monetary fine on summary trial.
247	8 Jan. 10	Yes	12 Jan. 10	Open	Government rejected complaint, does not accept proof of age documentation submitted, communication continues.
248	8 Jan. 10	Pending		Pending	Further information being obtained.
249	12 Jan. 10	Pending		Pending	Further information being obtained.
250	12 Jan. 10	Yes	26 Feb. 10	Open	Victim discharged, awaiting Government official confirmation.
251	14 Jan. 10	Yes	12 Feb. 10	Closed	Victim discharged.
252	21 Jan. 10	Pending		Pending	Further information being obtained for assessment purposes.
253	21 Jan. 10	Yes	22 Apr. 10	Open	Awaiting government response.
254	25 Jan. 10	Yes		Closed	Victim discharged whilst ILO assessment under way.
255	26 Jan. 10	Yes		Closed	Victim discharged whilst ILO assessment under way.
256	27 Jan. 10	Yes	25 Feb. 10	Open	Awaiting government response.
257	27 Jan. 10	Yes	12 Feb. 10	Open	Awaiting government response.

Case	Date received	Accepted	Intervention date	Status	Comments
258	27 Jan. 10	Yes	25 Feb. 10	Open	Victim discharged, communication on punishment continues.
259	1 Feb. 10	Yes	2 Mar. 10	Open	Awaiting government response.
260	2 Feb. 10	Yes	1 Mar. 10	Open	Awaiting government response.
261	2 Feb. 10	Yes	23 Apr. 10	Open	Awaiting government response.
262	2 Feb. 10	No		Closed	Not related to mandate – commercial dispute and alleged corruption.
263	5 Feb. 10	No		Closed	Not related to mandate – migrant worker, occupational safety and health compensation.
264	5 Feb. 10	No		Closed	No causal link between alleged harassment and ILO activity.
265	8 Feb. 10	Yes	4 Mar. 10	Open	Human trafficking for forced labour case. Rejected by Government's Forced Labour Working Group. Referred to ILO anti-human trafficking project in neighbouring country and Myanmar Government anti-trafficking unit. One victim returned. Investigation continued.
266	8 Feb. 10	No		Closed	Not related to mandate – employment dismissal.
267	9 Feb. 10	Yes	26 Feb. 10	Open	Awaiting government response.
268	9 Feb. 10	Yes	9 Mar. 10	Open	Awaiting government response.
269	9 Feb. 10	Yes	25 Mar. 10	Open	Awaiting government response.
270	9 Feb. 10	Pending		Pending	Further information being sought for assessment process.
271	10 Feb. 10	Yes	5 Mar. 10	Open	Awaiting government response.
272	10 Feb. 10	Yes	5 Mar. 10	Open	Awaiting government response.
273	15 Feb. 10	Yes	22 Apr. 10	Open	Awaiting government response.
274	15 Feb. 10	Pending		Pending	Assessment in process.
275	16 Feb. 10	Yes	5 Mar. 10	Open	Awaiting government response.
276	17 Feb. 10	Pending		Pending	Further information being sought for assessment process.
277	18 Feb. 10	Pending		Pending	Assessment in process.
278	19 Feb. 10	Yes	15 Mar. 10	Open	Awaiting government response.
279	19 Feb. 10	Yes	23 Apr. 10	Open	Awaiting government response.
280	19 Feb. 10	No		Closed	Not related to mandate – land eviction.
281	22 Mar. 10	Yes	22 Apr. 10	Open	Awaiting government response.
282	25 Feb. 10	Pending		Pending	Assessment in process.
283	25 Feb. 10	Pending		Pending	Assessment in process.
284	26 Feb. 10	Yes	19 Apr. 10	Open	Awaiting government response.
285	26 Feb. 10	No		Closed	No causal link between alleged harassment and ILO activity.
286	3 Mar. 10	Pending		Pending	Assessment in process.

Case	Date received	Accepted	Intervention date	Status	Comments
287	3 Mar. 10	Pending		Pending	Assessment in process.
288	3 Mar. 10	Pending		Pending	Assessment in process.
289	5 Mar. 10	Yes	25 Mar. 10	Open	Awaiting government response.
290	5 Mar. 10	Yes	23 Apr. 10	Open	Awaiting government response.
291	5 Mar. 10	Pending		Pending	Assessment in process.
292	15 Mar. 10	Pending		Pending	Assessment in process.
293	15 Mar. 10	Pending		Pending	Assessment in process.
294	16 Mar. 10	Pending		Pending	Assessment in process.
295	16 Mar. 10	Pending		Pending	Assessment in process.
296	16 Mar. 10	Pending		Pending	Assessment in process.
297	17 Mar. 10	Pending		Pending	Assessment in process.
298	17 Mar. 10	Pending		Pending	Assessment in process.
299	17 Mar. 10	Pending		Pending	Assessment in process.
300	22 Mar. 10	Yes	23 Apr. 10	Open	Awaiting government response.
301	23 Mar. 10	Yes	26 Apr. 10	Open	Awaiting government response.
302	30 Mar. 10	Pending		Pending	Assessment in process.
303	31 Mar. 10	Yes	22 Apr. 10	Open	Awaiting government response.
304	1 Apr. 10	Yes	09 Apr. 10	Open	Referred to anti-trafficking unit, awaiting further contact.
305	1 Apr. 10	Yes	09 Apr. 10	Open	Awaiting government response.
306	5 Apr. 10	Yes	23 Apr. 10	Open	Awaiting government response.
307	5 Apr. 10	Pending		Pending	Assessment in process
308	6 Apr. 10	No		Closed	Not within mandate, freedom of the press
309	6 Apr. 10	Pending		Pending	Assessment in process
310	6 Apr. 10	Pending		Pending	Assessment in process
311	6 Apr. 10	Pending		Pending	Assessment in process
312	11 Nov. 09	Yes		Closed	External trafficking for forced labour – referred to ILO Thailand – 51 victims rescued
313	8 Apr. 10	Pending		Pending	Assessment in process
314	8 Apr. 10	Pending		Pending	Assessment in process
315	8 Apr. 10	Pending		Pending	Assessment in process
316	9 Apr. 10	Pending		Pending	Assessment in process
317	21 Apr. 10	Pending		Pending	Assessment in process
318	21 Apr. 10	Pending		Pending	Assessment in process
319	23 Apr. 10	Pending		Pending	Assessment in process
320	29 Apr. 10	Pending		Pending	Assessment in process
321	3 May 10	Pending		Pending	Assessment in process

Case	Date received	Accepted	Intervention date	Status	Comments
322	4 May 10	Pending		Pending	Assessment in process
323	5 May 10	Pending		Pending	Assessment in process
324	6 May 10	Pending		Pending	Assessment in process
325	7 May 10	Pending		Pending	Assessment in process
326	7 May 10	Pending		Pending	Assessment in process
327	7 May 10	Pending		Pending	Assessment in process
328	7 May 10	Pending		Pending	Assessment in process
329	7 May 10	Pending		Pending	Assessment in process
330	7 May 10	Pending		Pending	Assessment in process
331	7 May 10	Pending		Pending	Assessment in process



**D. Conclusions adopted by 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, 98th Session, June 2009)**

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 2009 for a further 12 months. The Committee also noted the discussions and decisions of the Governing Body of November 2008 and March 2009. It also took due note of the statement of the Government representative and the discussion that followed.

Since its last session, the Committee acknowledged some limited steps on the part of the Government of Myanmar: the further extension of the Supplementary Understanding for another year; certain activities concerning awareness raising of the complaints mechanism established by the Supplementary Understanding; certain improvements in dealing with under-age recruitment by the military; and the distribution of publications relating to the Supplementary Understanding.

The Committee was however of the view that these steps are totally inadequate. The Committee, recalling the conclusions reached in its special sitting at the 97th Session of the Conference (June 2008), again placed emphasis on the need for the Government of Myanmar to work proactively towards the full implementation of the recommendations of the Commission of Inquiry appointed by the Governing Body in March 1997 under article 26 of the Constitution. It also recalled the continued relevance of the decisions concerning compliance by Myanmar with Convention No. 29 adopted by the Conference in 2000 and 2006 and all the elements contained therein.

The Committee fully supported all of the observations of the Committee of Experts and the decisions of the Governing Body referred to above, and had the expectation that the Government of Myanmar would move with urgency to implement all the actions requested.

The Committee strongly urged the Government to fully implement without delay the recommendations of the Commission of Inquiry and the comments and observations of the Committee of Experts, and in particular to:

- (1) take necessary steps without any further delay to bring the relevant legislative texts, in particular the Village Act and the Towns Act, into line with Convention No. 29;
- (2) amend paragraph 15 of Chapter VIII of the new Constitution in order to bring it into conformity with Convention No. 29;
- (3) ensure the total elimination of forced labour practices that were still persistent and widespread;
- (4) ensure that perpetrators of forced labour, whether civil or military, were prosecuted and punished under the Penal Code;

- (5) issue an authoritative statement at the highest level clearly confirming to the people of Myanmar the Government's policy for the elimination of forced labour and its intention to prosecute perpetrators;
- (6) approve a simply-worded brochure in accessible languages on the functioning of the Supplementary Understanding; and
- (7) eliminate the continuing problems in the physical ability of victims of forced labour or their families to complain and immediately cease harassment, retaliation and imprisonment of individuals who used or facilitated the use of the complaints mechanism.

The Committee specifically called on the Government of Myanmar to take every opportunity, including through the use of all of the various media channels available, to increase the awareness of the people as to the law against the use of forced labour, their rights under that law and of the availability of the complaints mechanism as a means of exercising those rights.

The Committee, whilst acknowledging the continued use of joint awareness-raising seminars/symposia, called on the Government and the ILO Liaison Officer to redouble these efforts towards ensuring a full understanding on the part of all officials (military and civil), as to their responsibilities under the law.

The Committee noted with serious concern the continued human rights violations in Myanmar including the detention of Daw Aung San Suu Kyi. The Committee called for her release and that of other political prisoners, as well as labour activists. It further called for the immediate release of those persons who were associated with the operation of the complaints mechanism and who were currently incarcerated.

The Committee called for the strengthening of the capacity available to the ILO Liaison Officer to assist the Government in addressing all of the recommendations of the Commission of Inquiry and to ensure the effectiveness of the complaints mechanism, and expected the Government to cooperate fully in that regard.

## **E. Document before the Governing Body at its 306th Session (November 2009) and conclusions of the Governing Body**



INTERNATIONAL LABOUR OFFICE

GB.306/6  
306th Session

Governing Body

Geneva, November 2009

### **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. This report updates the activities of the ILO Liaison Officer in Yangon since the 98th Session (2009) of the International Labour Conference. It covers information on the operation of the Supplementary Understanding regarding complaints on the use of forced labour; various other activities undertaken by the Liaison Officer, Mr Stephen Marshall, and his assistant Ms Piyamal Pichaiwongse; a report on the final outcomes of the post-cyclone Nargis project response; and brief information on ILO participation in the UN country team activities in Myanmar.
2. For ease of reference, Appendix I contains the conclusions concerning Myanmar of the 304th Session of the Governing Body (March 2009); Appendix II presents details of activities undertaken between the 304th Session of the Governing Body and the 98th Session of the Conference; Appendix III includes the conclusions of the special sitting on Myanmar of the Committee on the Application of Standards of the 98th Session of the Conference; and Appendix IV contains the updated register of cases.

#### **Activity under the complaints mechanism**

3. The level of activity under the Supplementary Understanding has increased both in respect of the number of complaints received and the follow-up work required for the treatment of complaints. While a total of 152 complaints had been received by 15 May 2009, that number has increased to 223, as at 28 October 2009. This represents an increase of 71 new cases compared to 31 new cases for the same period in 2008. These latest cases include 52 cases of alleged under-age recruitment, 17 cases of alleged forced labour with two cases having been assessed as outside the Liaison Officer's mandate. Over the period, 48 cases have been submitted for investigation and 29 cases have been closed with varying degrees

of satisfaction. Currently 58 cases either await a response from the Government or are under continuing negotiation, and 18 cases are being assessed for possible submission.

4. This increase in complaints received appears to result from heightened awareness generally of citizens' rights under the law, the maturing and expansion of the facilitators' network, and an increased readiness to present complaints. However, it would not be correct to interpret this as an increase in the incidence of forced labour or under-age recruitment. Awareness levels, particularly in rural areas, remain low and the confidence to complain will not be assisted by recent incidents of complainant and facilitator harassment, which have received considerable media coverage. This issue is addressed separately below.
5. The Government Working Group for the Elimination of Forced Labour continues to respond to complaints through the good offices of the Ministry of Labour (MOL). A constructive meeting was held with the full Working Group following the 98th Session of the International Labour Conference and regular meetings are held with the Director-General of the Labour Department who has delegated responsibility for operational activity. When a victim of under-age recruitment is identified with proof of age and sufficient indication as to his whereabouts, he is regularly discharged from the military. Although most allegations of forced labour continue to be denied by the Government, parallel action is usually taken by the authorities to ensure that the practice does not continue and that further complaints are not received from that area. In the assessment process, every attempt is made to ensure that complaints submitted are genuine. Government responses at times reflect the sensitivity to what is perceived as political activism, and unfortunately this sometimes outweighs the facts of the case.
6. The complaints mechanism contained in the Supplementary Understanding remains, as the name indicates, complaints driven. The ILO Liaison Officer does not have the authority to initiate complaints or formally raise a case solely on the basis of his own observation or information.
7. While the declared objective of the Government is to put an end to the use of forced labour and to the recruitment of under-age children, this cannot be achieved by passive educational activity alone; the imposition of meaningful penalties on perpetrators is a necessary additional component. This continues to be a concern, particularly in respect of cases involving military personnel. The continued and repeated illegal recruitment of children by military personnel in the same recruitment centres and regiments attests to this need.
8. Assessment missions have been undertaken in Magway Division and a joint mission to Bago Division is planned for 30 October 2009 to follow up on a case in which the facts are in dispute.

## **Awareness raising**

9. A number of joint awareness-raising activities have recently been undertaken. A joint ILO/MOL seminar has been held in Rhakine State with participants representing both the civil and military authorities. A joint presentation was made to a senior township judges refresher training programme. The ILO Liaison Officer, accompanied by a Department of Labour representative, visited villagers and socio-economic project committees set up by the company Total in nine villages in the proximity of the Yadana pipeline. This provided an opportunity to observe the situation in the region and discuss the rights and responsibilities of the local population under the law.

10. An interview with the Liaison Officer on the law and practice concerning forced labour was printed in the biweekly edition of *Eleven magazine*, a widely distributed and read publication. An awareness-raising seminar in Magway Division, an area from which numerous and serious complaints have been sourced, is scheduled for 5 November 2009. An ILO-sponsored workshop on the law and practice in respect of forced labour including under-age recruitment is scheduled to be held in December 2009 for United Nations and selected international non-governmental organizations programme staff from both their Myanmar headquarters and the field. Some 16,000 copies of the translation of the Supplementary Understanding have been circulated. Unfortunately, the Government has not yet agreed to the production of a simply-worded brochure outlining the law against forced labour and the procedures available to exercise rights under the law.

## Harassment and judicial actions

11. A number of serious cases of apparent harassment and judicial retaliation against complainants, facilitators and other persons associated with complaints have taken place in the reporting period. All arise out of 11 complaints from 328 farmers over the use of forced labour in Magway Division. Seven of those cases stem from Aunglan Township and one serious case from Natmawk Township. Six of these eight complaints remain unresolved despite lengthy negotiations. In three of those cases agreements for their resolution have been reached but they have not been satisfactorily applied. Serious harassment, including lengthy and intense interrogations and judicial action, has taken place against complainants at various stages of the process, some of it in obvious retaliation for their attempts to apply the settlement arrangements.
12. In one case (case 129) complainants in a previously resolved complaint (case 001), in which forced labour was proven, have again been subjected to forced labour on the same land. They have been refused access to their traditional land contrary to the settlement reached, which had granted them the right to return to their land. Three of them, U Nyant Myint, Ko Thura Aung and Ko Kalar have been detained and charged with causing damage to government property in respect of the trees which they were forced to plant on their land, which was the basis for the original complaint.
13. In another case (case 066) the ILO Liaison Officer and a Government Working Group representative negotiated a comprehensive written agreement for the resolution of a complaint concerning the confiscation of land as a penalty for refusing to undertake forced labour. Part of that settlement granted the complainants the right to return to their traditional land and to grow crops as they determined. Subsequently, 12 persons have been charged and sentenced to prison terms ranging from nine months to four years and nine months, for trespass on that land and damage to property as they prepared the land for the next harvest. A 13th complainant has been imprisoned for failing to repay his agricultural loan at an old interest rate which was to have been lowered as part of the settlement. It is understood that in its determination of the case, the court referred to the written agreement for settlement under the Supplementary Understanding as “unofficial” and concluded that it therefore provided no grounds on which its judgement should be based.
14. In respect of another forced labour case (case 109), the agreed settlement for the return of land confiscated by the army or the allocation of replacement land has not been implemented. In addition, the facilitator, U Zaw Htay, and his lawyer remain in prison despite the call for their release included in the conclusions of the 304th Session of the Governing Body. Individual complainants have been interrogated in military premises by senior personnel on the way complaints to the ILO have been prepared, and have been required under threat to sign confessions, which in practice undermine their fellow complainants and the ILO complaints process.

15. It would thus appear that there is a serious “disconnect” between the desire of the central government authorities to stop the use of forced labour and the behaviour of the local authorities, both civilian and military, who do not accept settlements reached, continue traditional forced labour practices, and harass those who attempt to exercise their rights under the law. Previous reports of the Liaison Officer have already referred to this disconnect. Given the seriousness of the situation, the Liaison Officer has formally proposed to the Working Group that joint action be taken to consider all of these issues collectively with a view to achieving lasting solutions. This proposal has not as yet been accepted, although the agreement to a joint awareness-raising seminar in the region (referred to in paragraph 10 above) can be seen as a small first step in that direction.
16. There is nothing new to report on the cases of imprisoned activists who have been mentioned in earlier conclusions of the Governing Body. Su Su Nway, U Min Aung and the six labour activists Thurein Aung, Kyaw Kyaw, Wai Linn, Nyi Nyi Zaw, Kyaw Min and Myo Min remain in prison, despite repeated calls from the Governing Body for their release.

## **Children in armed conflict**

17. The ILO Liaison Officer, on behalf of the Country Task Force on Monitoring and Reporting on Children and Armed Conflict (CTFMR), has accepted responsibility for the monitoring, reporting and intervention activity in respect of the Security Council Resolution 1612 (2005). This work falls within the scope of the ILO Forced Labour Convention, 1930 (No. 29), and within the application of the Supplementary Understanding.
18. The first meeting between representatives of the CTFMR and the Government Working Group established for this purpose was held on 20 and 21 August and a second meeting is scheduled for 3 November 2009. The primary objective is the agreement of a joint CTFMR/government action plan.
19. The Government Committee on the Prevention of Military Recruitment of Under-age Children reports considerable activity in the training of military personnel on the law concerning under-age recruitment.
20. As at 28 October 2009, 102 complaints concerning under-age recruitment had been received, of which 89 have been submitted under the Supplementary Understanding. As a result, 59 children have been discharged from the military, 30 cases are still under Government investigation or are the subject of ongoing communication, and nine await ILO initial assessment prior to submission. All children discharged through this process are referred to UNICEF for reintegration and rehabilitation support through the services of their partner organizations.
21. With the support of funding received from the Government of Germany a small sub-unit has been established for dealing with under-age recruitment cases under the Supplementary Understanding, as well as for monitoring and reporting on the child soldier situation nationwide. A programme officer has been selected and will join the staff once the Government has processed the submitted visa application.

## **ILO post-Nargis infrastructure project**

22. The workplan between the ILO and the Ministry of Labour on the infrastructure project in the Irrawaddy Delta area expired on 30 September 2009. During the period 31 October

2008 to 30 September 2009 the project undertook work in 65 villages in the cyclone-affected area. A total of 159 community contracts were governed by community committees established for the purpose. Some 7,404 people were engaged for a total of 80,491 days of work, under the technical supervision of the ILO engineering team, building 87.6 kilometres of raised concrete footpaths, 25 jetties, 55 bridges and 40 latrines. Awareness-raising seminars on employment rights, forced labour, and under-age recruitment were held throughout the project for project employees with a further 7,000 or more villagers in attendance. The Government announced that it was unable to extend the project period owing to the workload prior to the parliamentary elections. The Liaison Officer is hopeful that similar activities could be considered at a later stage. The whole ILO engineering team has now been engaged by the United Nations Development Programme (UNDP) to continue work on that organization's infrastructure programmes.

## **UN Country Team activities**

23. As part of the UN Country Team, the ILO assumes an active role on the nationwide Inter-Agency Protection Group and the Human Rights Subgroup. The Human Rights Subgroup has met the Government Human Rights Body on one occasion and is awaiting agreement for a further meeting with the objective of identifying common human rights priorities for joint action.

Geneva, 4 November 2009.

*Submitted for debate and guidance.*

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**Decision on the 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)**

**Governing Body conclusions**

*The Governing Body:*

- (a) took note of the report of the Liaison Officer and listened with interest to the statement made by the Permanent Representative of the Government of the Union of Myanmar;*
- (b) in the light of the information available, and considering the interventions made during the debate, it concluded as follows:*
  - full compliance with the Forced Labour Convention, No. 29 (1930), implementation of the recommendations of the Commission of Inquiry and the complete elimination of the use of forced labour in Myanmar have not yet been achieved; all activity must be targeted to this end;*
  - the Governing Body recalls its previous conclusions and those of the International Labour Conference and reconfirms their continuing validity; this concerns particularly accessible material in local languages for awareness raising and the need for an authoritative statement by the senior leadership against the continued use of forced labour and the need to respect freedom of association;*
  - the Governing Body notes the Government's cooperation regarding the complaints submitted, as well as the joint Government/ILO awareness-raising activities; in continuing the arrangements under the Supplementary Understanding, the capacity of the ILO to deal with complaints throughout the country should be strengthened; cases of forced labour should be reported and followed up consistently so that the practices cease and the perpetrators are prosecuted and punished; particular attention should be paid to monitoring infrastructure projects such as oil and gas pipelines; the Governing Body calls for and encourages progress towards achieving greater compliance with the international obligations of Myanmar, including Convention No. 29, particularly where local practices do not respect the aim of abolishing forced labour;*
  - the Governing Body is deeply concerned about the continued imprisonment of a number of persons who have complained of being*



*subjected to forced labour or who have been associated with such complaints; this is in total contradiction with the Government of Myanmar's own commitments under the Supplementary Understanding and puts into question the good faith necessary for the implementation of the Supplementary Understanding; if this situation is not promptly remedied, it will undermine the advances made to date; the Office should continue to examine potential legal implications of the failure to comply with Convention No. 29;*

- the Governing Body calls for the immediate release of all persons currently detained being complainants, facilitators and others associated with the Supplementary Understanding complaints mechanism, as well as for the unconditional release of all imprisoned political and labour activists;*
- the Governing Body repeats its previous call for the Government of Myanmar to facilitate, as provided for in article 8 of the Supplementary Understanding, the adjustments to the staff capacity of the Office of the Liaison Officer so that an increased workload could be met; this includes the presence of an additional international recruited professional appointed by the ILO.*



**F. Document before the Governing Body at its 307th Session (March 2010) and conclusions of the Governing Body**



INTERNATIONAL LABOUR OFFICE

GB.307/6  
307th Session

Governing Body

Geneva, March 2010

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**FOR DEBATE AND GUIDANCE**

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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)**

**I. Introduction**

1. Activity since the last report to the Governing Body <sup>1</sup> has been targeted at operationalizing the conclusions of that debate (see Appendix I). Progress has been made in a number of areas as reported below. A mission was undertaken from 17 to 24 January 2010 by Mr Kari Tapiola, Executive Director, accompanied by Ms Karen Curtis, Deputy Director of the International Labour Standards Department with special responsibility for freedom of association, and Mr Drazen Petrovic, Principal Legal Officer in the Office of the Legal Adviser. A summary of the outcomes of the mission is reported below. During the mission an extension of the trial period of the Supplementary Understanding was signed, covering a further 12 months from 26 February 2010.

**II. Operation of the Supplementary Understanding**

2. Since the last report, 65 new complaints were received. Of these, 35 were assessed as falling within the scope of the Supplementary Understanding and were submitted as cases to the Government Working Group for the Elimination of Forced Labour (Working Group) for investigation towards resolution; 23 cases required further assessment or information before eventual submission; and seven cases were considered not to be within the ILO's forced labour mandate (see Appendix II).
3. Over the same period, 35 cases were closed with the case register recording various degrees of satisfaction with the resultant outcomes.

<sup>1</sup> GB.306/6.

4. In the period between the Supplementary Understanding's inception in February 2007 and 9 March 2010, a total of 289 complaints have been received. From these, 198 were accepted as cases, of which 70 remain open either awaiting Government responses or being the subject of continuing communication, and 29 either require more information prior to submission or are currently under assessment. The Government continues to respond to complaints lodged in a timely manner.
5. The structure of complaints has changed somewhat in recent time. The vast majority of new complaints are specific to under-age recruitment with six complaints on what can be considered as traditional forced labour received since the last report. Whilst there are indications from some parts of the country that the actual incidence of forced labour imposed by civilian authorities has diminished to some extent, this on its own would not account for the reduction in complaints. The use of forced labour, particularly by the military, remains an issue throughout the country. In the view of the Office, the imprisonment of persons associated with the use of the complaints mechanism may have had an effect on the reduced confidence to lodge forced labour complaints. No similar consequences have been reported by those who have filed complaints on under-age recruitment. The recent prison releases, the planned brochure campaign and continuing awareness-raising activity (see below), will hopefully increase confidence in the functioning of the complaints mechanism as set out in the Supplementary Understanding.
6. The Government underlined its concerns that the complaints mechanism should not be used for political ends and that the protection provisions of the Supplementary Understanding should not be used to justify activities that are contrary to the law. The Liaison Officer continued to insist that each complaint would be examined strictly on the basis of the facts reported.

### **III. Awareness raising**

7. Since the last report, the Assistant to the Liaison Officer made two presentations to UNICEF-led recruitment officer training programmes and one presentation to middle-level government officials on the obligations under international labour standards as part of a five-day UNITAR training seminar. A two-day seminar was held for 54 field staff from UN organizations and international NGOs on the law relating to forced labour, observation skills and information reporting processes. Presentations were also made to field staff of UNHCR and UNDP as part of their in-house staff development and planning processes. A further joint ILO–Ministry of Labour presentation has been made to a training course for deputy township judges.
8. Broad in-country publicity resulted from seven different articles that were published in various domestic newspapers with nationwide coverage. These covered such matters as the renewal of the Supplementary Understanding with reference made to the complaints mechanism; the Government's agreement to the publication of an easily understandable brochure; the Penal Code and Military Regulations in force on forced labour including under-age recruitment and how complaints can be lodged under the Supplementary Understanding; the non-harassment guarantees under the Supplementary Understanding; the imprisonment of military personnel for the recruitment of minors; and the recent publication of an ILO booklet on the rights of migrant domestic workers in Thailand.
9. During the meeting of the ILO mission with the Minister of Labour, U Aung Kyi, it was confirmed that the Government agrees to the publication of a brochure, in Myanmar language, explaining in simple terms the law pertaining to forced labour, including under-age recruitment, and the procedure for lodging a complaint. The Working Group has

proposed that a comprehensive discussion with the Liaison Officer on the previously submitted draft text takes place after the current Governing Body session.

**10.** Proposals made for the next three joint awareness-raising seminars are as follows:

- in Northern Rhakine State in follow up to a number of reports of continuing use of forced labour in that area;
- community and local authority seminars along the proposed path of the Myanmar–China pipeline in accordance with the November 2009 Governing Body conclusions;
- in Bago Division, which is an area with a high incidence of reported complaints.

#### **IV. Under-age recruitment and child soldiers**

- 11.** In addition to his work in respect of under-age recruitment complaints under the Supplementary Understanding, the Liaison Officer continued to play a role as part of the Country Task Force for Monitoring and Reporting (CTFMR) under Resolution 1612 of the Security Council. As reported above, at the invitation of both the armed services and the Ministry of Social Welfare, presentations were made at training courses for recruitment officers. The CTFMR met the Government Committee for the Prevention of the Recruitment of Minors to discuss further the substance of a proposed joint action plan against under-age recruitment. The ILO mission also met this high-level committee. The meeting was constructive and assisted in clarifying the role of the ILO, under both the Supplementary Understanding and as part of the CTFMR, as well as providing the opportunity to discuss practical matters associated with the application of the Supplementary Understanding. The Government Committee has been very active in training of military personnel and itself monitors the performance of recruiting centres in respect of recruitment of minors.
- 12.** Two authorized inspection visits to recruitment centres were undertaken in conjunction with the CTFMR, while the Liaison Officer accepted an invitation to visit the Military Service Academy (officers training) and the Military Services Technological Institute (engineer officer training) establishments.
- 13.** Since the last report, one officer has been dismissed from the military and sentenced to one year's imprisonment with hard labour in a civilian prison and two privates were sentenced to military imprisonment with hard labour for three months and one month respectively, having been convicted for breach of the military regulations on under-age recruitment. There were no notifications during the period under review of sentences being imposed under the Penal Code.
- 14.** As of 9 March 2010, in all 154 complaints alleging under-age recruitment have been received resulting in 84 children being discharged to date.

#### **V. Extension of the Supplementary Understanding trial period**

- 15.** In addition to constructive and open discussions in Naipyidaw with the Minister of Labour and the Government Committee for the Prevention of the Recruitment of Minors, as reported above, the ILO mission held an extensive meeting with the Working Group for the Elimination of Forced Labour. The operation of the Supplementary Understanding was reviewed after a discussion which reconfirmed the principles contained in it and addressed

practical issues for the further advancement of the policy for the elimination of forced labour. The extension of the Supplementary Understanding trial period was agreed upon for a further 12 months from 26 February 2010 without change.

16. After a visit to Bagan, the mission travelled to Aungmye Township to discuss with local authorities, villagers and, in particular, the families of imprisoned complainants. In Yangon the mission met with the UN Country Team, the diplomatic corps and a group of the volunteer facilitators supporting the application of the complaints mechanism. Meetings were also held with the Myanmar Federation of Chambers of Commerce and Industry following which a proposal is under consideration to possibly produce a Myanmar language version of "Combating forced labour: A handbook for employers". The mission also met with the Workers' Co-ordination Committee established for the election of a Workers' delegate to the International Labour Conference.
17. The mission was extended full cooperation and courtesy by the Government. It was not, however, possible for it to visit certain persons who have been associated with the complaints procedures and are currently in prison.
18. The mission could note a certain number of steps forward. It is reasonable to expect that the increased publicity, continuing awareness-raising activities and the yet to be distributed brochure will increase public understanding of rights provided under the law. It is similarly expected that the continuing operation of the Supplementary Understanding, supported by the ongoing training of government personnel (civil and military) will increase understanding on the responsibilities that the law imposes on all.
19. The granting of the still awaited visa for the engagement of an additional international professional staff member would better ensure the ability to support Government efforts for the full elimination of forced labour in Myanmar.

## **VI. Freedom of association**

20. The national Constitution adopted in 2008 contains an article providing for freedom of association and the right to organize. The Government of Myanmar has recently announced its intention to introduce a Trade Union Act into the new Parliament which will result from the national elections to be held this year. During the visit of the ILO mission, a meeting took place with senior civil servants from several ministries and the Supreme Court at which Ms Karen Curtis made an extensive presentation on Convention No. 87. An open discussion took place on the Government's principles and concepts of the proposed legislation, leading to a request from the Government for further exchanges and advice on the issue.

## **VII. Release of imprisoned persons**

21. The report to the 306th Session of the Governing Body (November 2009) pointed out that 17 complainants or persons otherwise associated with the operation of the Supplementary Understanding had been imprisoned. Discussions on the circumstances and implication of the sentences of these persons took place during the ILO mission. The Government reviewed the situation and, following this, 13 of the persons were released. One of them had completed his sentence, 11 were released following a significant reduction of their sentences following an appeal to the district court and lawyer U Pho Phyu was released following the reduction of his sentence on judicial review.

22. The Liaison Officer undertook a follow-up assessment mission to Aunglan Township from 5 to 7 March 2010. He made site visits, met the released farmers and the families of those still in detention, and held consultations with groups of complainants on the current situation and the way forward in respect of their various cases.
23. The Court of Appeal decision concerning two of the remaining imprisoned complainant farmers is awaited and negotiations continue in respect of the release of one further farmer and the facilitator U Zaw Htay. No other persons mentioned in earlier Governing Body conclusions have been released.

## **VIII. Other forced labour-related activity**

24. At the invitation of the Government, through the UN Resident Representative, the Liaison Officer and his assistant joined the UN Special Rapporteur on the situation of human rights in Myanmar on his mission to the Rhakine State. This provided useful opportunities to meet and discuss forced labour issues with local government officials, UN and international NGO field staff and community members in both Rhakine State and, in particular, Northern Rhakine State. The mission provided the opportunity for a visit to labour activist U Kyaw Min in Buthidaung prison. He is in good health, and the prison conditions have improved over the last six to eight months.
25. As part of the UN Country Team subgroup on human rights, the Liaison Officer has been able to meet the Government Human Rights Committee to discuss procedures and obligations under the Universal Periodic Review process (Myanmar hearing 2011). Training on the human rights-based approach to programming has started for UN staff and, by agreement with the Government, is planned for senior government officials in the near future.
26. Again, in conjunction with the appropriate UN Country Team grouping, the Liaison Officer and his assistant are supporting the Government in respect of the forced labour aspects of human trafficking and labour migration.

Geneva, 12 March 2010.

*Submitted for debate and guidance.*

# **307th Session of the Governing Body of the International Labour Office (March 2010)**

## **SIXTH ITEM OF THE AGENDA**

### **GB.307/6**

#### **Conclusions concerning Myanmar**

The Governing Body took note of the report of the Liaison Officer, the statement made by the Permanent Representative of the Government of the Union of Myanmar and the subsequent discussion. In light of the debate, it made the following conclusions:

1. The recommendations of the Commission of Inquiry for compliance with the Forced Labour Convention, 1930 (No. 29), have still not been implemented, and the primary objectives of the eradication of forced labour in both law and practice, as well as ending the impunity which allows forced labour to continue, remain unachieved. Sustained action at all levels, including by the local authorities, is necessary.
2. The further extension until 25 February 2011 of the trial period of the Supplementary Understanding, agreed during the High Level ILO mission visit, is noted as an encouraging step. The complaints mechanism established by the Supplementary Understanding continues to function, particularly in cases of the recruitment of minors into the military. There is a need for the national application of a proper and accountable recruitment system.
3. It is imperative that the Government strictly ensures, in accordance with the provisions of the Supplementary Understanding, that there is no judicial or retaliatory action, or any other form of harassment of complainants, their representatives, facilitators and/or any other relevant persons involved in the complaints. Without this, the necessary confidence in the complaints mechanism is absent. It is crucial that access to the complaints mechanism is facilitated.
4. Certain positive developments have been noted regarding the earlier conclusions of the Governing Body, such as: the Government's agreement in principle to a simply worded brochure in the local language; increased local media reporting on the rights contained in the Supplementary Understanding; the continuation of joint awareness-raising seminars and training; and the imposition of prison sentences on certain military as well as civilian personnel for the use of forced labour and under-age recruitment.
5. In considering these steps the Governing Body looks forward to an early agreement on the brochure wording and its wide distribution in the near future, particularly in rural areas. It further encourages the continuation of joint awareness-raising and training activities, which should be broadened further to encompass the wider community.
6. While welcoming the release of 13 out of the 17 persons imprisoned for activities which have been the subject of procedures under the Supplementary Understanding, the Governing Body calls for the urgent release of the four persons associated with the operation of the Supplementary Understanding who remain in prison (U Zaw Htay, U Htay Aung, U Nyan Myint and Maung Thura Aung).



7. The Governing Body strongly reiterates its call for an early release of all of the imprisoned labour activists referred to in its previous conclusions (these include, among others, Su Su Nway, U Min Aung, U Myo Aung Thant, U Thurein Aung, U Wai Lin, U Nyi Nyi Zaw, U Kyaw Kyaw, U Kyaw Win and U Myo Min).
8. The Governing Body expresses serious concern at the delay in the approval of the visa application submitted for an additional international professional staff member to strengthen the capacity of the Liaison Officer to meet the growing work demands under both the initial Understanding and the Supplementary Understanding. It trusts that the Government will take immediate action to remedy this situation.
9. The Governing Body shares the concerns expressed in this debate and during the 98th Session of the International Labour Conference (2009), concerning the absence of freedom of association rights, which is an area intimately linked to the elimination of forced labour. The Governing Body welcomes the fact that the January 2010 ILO mission discussed with the Government the basic principles of trade union legislation. The Governing Body thus urges the Government to continue to seek and make use of information and advice from the Office so that early progress can be made concerning the legal framework for respecting freedom of association.
10. The Government should take immediate steps, without waiting for any future legislative action, to guarantee in practice the right of workers to organize freely in accordance with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), ratified by Myanmar, in order to promote and defend their occupational interests. This is particularly important in the context of any industrial conflicts.



REPORT OF THE COMMITTEE ON THE  
APPLICATION OF STANDARDS

SUBMISSION, DISCUSSION AND APPROVAL





## Thirteenth sitting

Thursday, 17 June 2010, 2.30 p.m.

*President: Mr de Robien*

### REPORT OF THE COMMITTEE ON THE APPLICATION OF STANDARDS: SUBMISSION, DISCUSSION AND APPROVAL

*Original French: The PRESIDENT*

We will now move on to the examination of the report of the Committee on the Application of Standards, which is contained in *Provisional Record* No. 16, Parts 1, 2 and 3. The Officers of the Committee are as follows: Chairperson: Mr Paixão Pardo; Employer Vice-Chairperson: Mr Potter; Worker Vice-chairperson: Mr Cortebeeck. The Reporter is Mr Horn. I invite them to come up to the rostrum. I now give the floor to the Reporter.

*Mr HORN (Government, Namibia; Reporter of the Committee on the Application of Standards)*

It is a pleasure and an honour to present to the plenary the report of the Committee on the Application of Standards.

The Committee is a standing body of the Conference, empowered under article 7 of its Standing Orders to examine the measures taken by States to implement the Conventions that they have voluntarily ratified. It also examines the manner in which States fulfil their reporting obligations, as provided for under the Constitution of the International Labour Organization.

The Committee on the Application of Standards provides a unique forum at the international level to discuss application of international labour standards by member States. This tripartite forum brings together representatives of the real economy, drawn from all regions of the world, who have experienced times of economic boom and bust, and have agreed on action to ensure recovery and jobs.

The operative approach for the Committee's work is oversight through dialogue, which is also the ILO's hallmark. Fruitful dialogue between the Committee and the Committee of Experts and with member States is key in this regard. The Committee works closely with, and to a large extent on the basis of, the report of the Committee of Experts. Furthermore, it is the established practice for both Committees to have direct exchanges on issues of common interest. This year the Committee had the pleasure of welcoming once again the Chairperson of the Committee of Experts who attended the first week of its session as an observer, with the opportunity to address the Committee.

One issue of common interest is the fulfilment of reporting obligations by member States. The work of both Committees hinges primarily on the infor-

mation contained in the reports submitted by governments. This year, the Committee noted that the strengthened follow-up put in place by the Committees, including enhanced and targeted technical assistance from the Office, has provided positive results. At the same time, serious difficulties remain, as was demonstrated by the slight decrease in reporting this year and the number of late reports. The Committee called on the Office to intensify its technical assistance to member States to enable them to fulfil their constitutional reporting obligations.

The Committee held 17 sittings during which it received information from 46 governments on the situation in their respective countries.

For the past four years, the Committee's working methods have been examined by its tripartite working group which has held eight meetings to date. This ongoing examination has brought important evolutions. It has reinforced the dialogue among the members of the Committee in an area that can give rise to controversial issues. It has developed tripartite ownership with respect to the governance of the Committee. It has permitted measures that proved insufficient in practice to be readjusted. This year, as a result, enhanced measures concerning time management were strictly enforced by the Chairperson and largely respected by the delegates. In addition, individual cases were automatically registered for discussion and evenly distributed over the second week, on the basis of a rotating alphabetical system. These measures brought an unprecedented efficiency in the conduct of the Committee's work. At the same time, the Committee agreed to implement them in a pragmatic manner so as to preserve its fundamental role as a tripartite forum for dialogue on international labour standards. The working group will continue to discuss further improvements and readjustments.

The report before the plenary is divided into three parts, corresponding to the principal questions dealt with by the Committee.

The first part addresses the Committee's discussion on general questions relating to standards and the General Survey of the Committee of Experts this year concerns employment instruments as well as its consideration of the report on teaching personnel of the Joint ILO-UNESCO Committee of Experts.

The second part takes up the discussions on 25 individual cases examined by the Committee, and its related conclusions.

The third and last part concerns the Committee's special sitting on the questions of observance by

Myanmar of the Forced Labour Convention, 1930 (No. 29).

I will recall the salient features of the Committee's discussion in respect of each of these questions.

The highlight of the first part of the Committee's work was its examination of the Committee of Experts' General Survey concerning employment instruments. This year, the Conference Committee and the Committee of Experts had a fundamental responsibility. Through the General Survey and related discussions, they had to concretize the normative dimension of the recurrent discussion by the Conference on employment. Thus, they were to guide the future standards-related actions of the ILO in a field that is vital for attaining decent work for all, especially in times when unemployment stands at its highest level ever recorded.

The Conference Committee decided to take up, at an early stage of its work, the General Survey concerning employment instruments to ensure a timely coordination with the Committee for the Recurrent Discussion on Employment and to provide a meaningful contribution to the overall ILO plan of action. The Committee's discussion was followed by the swift adoption of a brief summary and conclusions.

In its conclusions, the Committee invited member States that had not yet done so to ratify as a matter of priority the Employment Policy Convention, 1964 (No. 122), and to consider ratifying the Human Resources Development Convention, 1975 (No. 142), and the Private Employment Agencies Convention, 1997 (No. 181). It also underlined that the ILO should provide technical assistance, including capacity building, to member States and social partners, with a view to the ratification and effective implementation of the instruments. The summary and conclusions were transmitted to the Committee for the Recurrent Discussion on Employment and completed with oral presentations by the Officers of the Committee on the Application of Standards.

The interaction between the two Committees has been very fruitful. Indeed, the conclusions of the recurrent discussions which were before the Committee have fully taken into account, and reinforced, the conclusions of the Committee on the Application of Standards.

The result achieved highlights, in particular the Conference Committee's remarkable capacity, through dialogue, to discharge its core mandate and to be simultaneously responsive to contemporary challenges. In meeting the important institutional challenge that is raised in the Declaration on Social Justice for a Fair Globalization, the supervisory system has contributed also to the ILO's crisis response activities, and the need to move towards a path of inclusive global development and fair globalization creating opportunities for all.

With respect to its core work concerning the 25 individual cases, the Committee succeeded in achieving a balance between the different regions as well as covering a greater variety of subject matters. It discussed a rather high number of cases dealing with child labour, coinciding with the theme of this year's Global Report under the 1998 Declaration. One of the child labour cases covered the issues of domestic workers, one of the standards-related items on the agenda of the Conference.

The Committee's conclusions on these cases constitute an authoritative and effective compass to guide member States in meeting their commitments

under the Conventions that they have ratified. The Committee underlined the seriousness of the issues arising from the application of ratified Conventions, recognizing at the same time the need of certain countries for specific ILO assistance. As it now has been doing for the last five years, the Committee has called for or requested technical assistance in 20 of the 25 individual cases examined.

The special sitting to examine developments concerning the question of the observance of the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29), was held pursuant to the resolution adopted by the Conference in 2000. While it acknowledged some limited steps on the part of the Government, the Committee once again placed emphasis on the need for the Government to work proactively towards the full implementation, without delay, of the recommendations of the Commission of Inquiry and the comments of the Committee of Experts.

The Committee decided to include in its report special paragraphs on the following cases: the application by the Central African Republic of the Minimum Age Convention, 1973 (No. 138); and the application of Myanmar and Swaziland of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

In accordance with the Committee's working methods, the case of the application by Myanmar of Convention No. 87 was also listed as a case of continued failure, over several years, to eliminate serious discrepancies between its law and practice and the Convention.

To sum up, this year, in addition to fulfilling its important monitoring role as regards the application of ratified Conventions, the Committee has made a lasting contribution in enabling the ILO to discharge in an effective manner its core responsibilities and to rise to the challenges resulting from the global crisis, so as to build recovery and growth through decent work. It has been an enriching experience to participate in its work.

I would like to thank the Chairperson and Vice-Chairpersons of the Committee for their competence, the efficiency and the spirit of cooperation, which has enabled this Committee to carry out its work.

I would like to recommend that the Conference adopt the report of the Committee on the Application of Standards.

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Mr POTTER (*Employer, United States; Vice-Chairperson of the Committee on the Application of Standards*)

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On behalf of the Employers' group, I commend the report of the Committee on the Application of Standards to this plenary today and recommend its adoption.

My presentation this year is divided into two parts. First of all, I will present the Employers' group perspective on the Committee's work and, secondly, share a few personal reflections on the Committee, after 29 sessions of the International Labour Conference. As a consequence, my presentation will be a little bit longer than usual, but this is a testament to the depth of my feelings on the importance of the ILO's supervisory system.

The Employers' group reaffirms its support of the ILO's supervisory system and our commitment to strengthen it and keep it relevant and effective. We would also like to express our respect for, and the value we attach to, the Committee's fact-finding

role, which was established in 1926. The ultimate responsibility for the ILO's supervision of standards lies with the ILO's tripartite constituency, namely the International Labour Conference, pursuant to article 23, paragraph 1, of the ILO Constitution, and article 7 of the Standing Orders of the Conference. Tripartism, which is integral to democracy, is messy and time-consuming, but is essential to establishing global consensus on the meaning, scope and implementation of ILO standards. Beyond the scope of the International Labour Conference, the constituents and the Governing Body have very little awareness of the day-to-day supervisory process. The 2010 report of the Committee of Experts on the Application of Conventions and Recommendations contains over 800 observations concerning individual assessments of compliance with ratified Conventions. At present, the report is submitted to the Governing Body for its information, but is never discussed in the Committee on Legal Issues and International Labour Standards or the Governing Body itself. This year, our Committee examined just three per cent of the Committee of Experts' observations, not counting the hundreds of direct requests.

The bottom line for the Employers' group is that tripartite governance needs to be restored with respect to the application of standards. We believe that the inclusion of constituent views in the Committee's Annual Report (Report III, Part 1A), is essential, as this provides an opportunity for constituents to state their views on standards and supervision-related issues. Such a report would strengthen the credibility and acceptance of ILO standards.

In previous years, the Employers have objected to mini surveys or commentaries outside the general survey process under article 19, and for good reason. The working assumption of the ILO tripartite constituency, and the Employers in particular, is that the meaning and scope of any Convention, or category of Conventions, can be found in the text of the Conventions, the negotiating history, and the Committee of Experts' General Survey.

Last year, we expressed concern over three of the five general observations of which two relate to the new reporting requirements. We asked that these reporting requirements be cleared through LILS and the Governing Body. In this year's report, we have been unable to determine what the Office and the Committee of Experts have done regarding any of our comments. This creates the impression that there has been a breakdown in the tripartite governance process. This year, we would like to express our concern over a new reporting requirement with respect to four wages Conventions. As have asked for them to be cleared by the Committee on Legal Issues and International Labour Standards and the Governing Body, as we did last year.

It would appear that the Committee of Experts have not taken into account that concerns expressed by Governments and the Employers' group, during the tripartite debate and the 2008 General Survey on labour clauses in public contracts. These comments focused on the discriminatory aspects of the Labour Clauses (Public Contracts) Convention, 1949 (No. 94), its negative impact on job creation and tax payers, and its inconsistency with European Union legislation. Twelve years after the Cartier Working Group decided that the Convention should be re-examined by the Governing Body, this review is long overdue.

As part of its contribution to tripartite governance, the Employers' group commented, in general terms, on the overall Committee of Experts' observations on the Indigenous and Tribal Peoples Convention, 1989 (No. 169), the Termination of Employment Convention, 1982 (No. 158), and the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). We direct the Committee of Experts to our comments on these three Conventions in the general discussion, and ask the Committee of Experts to reply to them in their next report. When the Committee of Experts look at the second part of our report we ask them to look at the entire discussion of the case, and not just the conclusions. As they do with Governments, the Committee of Experts need to take into account the point of view of both the Workers' and Employers' groups, and any concerns they may have.

In particular, with respect to the Indigenous and Tribal Peoples Convention, 1989 (No. 169), we direct the Committee of Experts to the summarized detailed discussion of the legislative history of the consultation clauses found in the Convention, in the case involving Peru. It is clear that, as consent is not required before economic activity begins, the Committee of Experts request that governments "suspend the implementation of an existing project, the exploitation or exploration of activities and implementation of infrastructure projects and the exploration and exploitation of natural resources", pending compliance with the consultation provision of the Convention, is incorrect. We request the Committee of Experts to amend their view so as not to jeopardize the wellbeing of the citizens concerned, especially during the global recession.

The Employers' group is also concerned with an Expert's observation concerning Belarus that includes provisions of the Termination of Employment Convention, 1982 (No. 158), which the country has not ratified, in its obligations under the Employment Policy Convention, 1964 (No. 122), which it has ratified. Our view is that Convention No. 122 does not prohibit short-term contracts, as is the case under Convention No. 158.

It is worth pointing out that none of the current members of the Committee of Experts were on the Committee when the Committee of Experts conducted their most recent General Survey on Conventions Nos 87 and 98 in 1994. Since 1953, the Employers' group has expressed deep concerns regarding the expanding, detailed regulation of the right to strike under these two Conventions, because the legislative history and language of the two Conventions make it clear that their provisions do not expressly provide for this right. There can be no detailed regulation of matters that are not explicitly provided for under a Convention. Nonetheless, without responding to the Employers' group position, which we have stated over the course of several decades, the Committee of Experts have continued their detailed critique of ratifying countries' strike policies.

Once again, the Employers' group once again respectfully asks the Committee of Experts to reconsider their interpretations relating to the right to strike. The Employers' group requests that its view, as well as those of other constituents be set out in detail in a general observation on the two conventions in the upcoming Report III (Part 1A), as well as in future reports, and further request a supple-

ment to this year's report which contains the employers position.

There have been a number of cases where significant problems regarding implementation and compliance with voluntarily ratified conventions have appeared. There is no case more important to the Employers' group than that of the Bolivarian Republic of Venezuela, where the Government continues to suppress and interfere in the internal affairs of the most representative employers' organization, FEDECAMARAS, and seeks to eliminate the private sector through the expropriation of property. Without a private sector, there is no tripartism or freedom of association for employers, both of which are cornerstones of the ILO and are fundamental to the implementation of Convention No. 87. This case, which has been discussed over the course of the last 15 years, constitutes a continuing failure to implement the Convention. It would be tragic if the discussion on a freedom of association case in Geneva resulted in the arrest of persons attending this Conference on their return home, or the arrests of others associated with FEDECAMARAS and the trade unions.

In view of our support in virtually all of the Workers' group cases on the list of cases, the lack of support from the Workers' group in this one case is very disturbing, has potential consequences and seriously undermines our otherwise good relations and ability to work together.

The special sitting to examine developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29), continues to make clear that there remains a substantial gap in this country's commitment to abolish forced labour in law and practice. Concrete action to abolish and eliminate forced labour is required of the Government. The Committee designated Myanmar, for Convention No. 87; the Central African Republic, for Convention No. 138, and Swaziland, for Convention No. 87, as special cases in Part I of our report.

As a result of the 2008 Declaration on Social Justice for a Fair Globalization, this year's General Survey concerning employment instruments was aligned with the Committee for the Recurrent Discussion on Employment. The Committee of Experts adjusted the traditional General Survey format to deal with six ILO standards – four Conventions and two Recommendations – in order to make a contribution to the recurrent discussion on employment.

Although there is value to looking at these instruments in an overall context, we think that something very valuable is being lost. The real value of General Surveys is to help constituents better understand what their voluntarily ratified treaty obligations are and what they mean. This is undermined by mechanically aligning General Surveys to the schedule of the recurrent reviews. Instead, it should be a relatively simple thing to determine if there are any gaps or a need to update the subject matter of prior General Surveys, necessitating a new or refreshed General Survey. If not, let us return to the previous form and substance of General Surveys. We are concerned in this respect with future General Surveys, in particular, the General Survey on the eight fundamental conventions in two years.

In contrast to the Conventions and Recommendations that are the subject of most General Surveys, this General Survey highlights the intersection and interrelationship of economics and labour standards.

The current global recession highlights that coherence with ILO standards requires that those standards should not impair the achievement of full, productive and freely chosen employment, as provided under Convention No. 122. Convention No. 122 provides a flexible, promotional economic policy framework that can be adapted to national circumstances.

The global recession is challenging existing dogmas and concepts about employment and shows the complexity of the relationship between employment and other economic, tax and social policies. Government action must focus on employment and employability, supported by labour market policies that activate the labour force into work, increase productivity, make work pay, raise workers' standard of living, and provide for labour market mobility.

There is now widespread recognition that small and medium-sized enterprises (SMEs) are the critical engine in generating employment opportunities and growth. The Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), is an important instrument that highlights the importance of SMEs in the creation of employment and the need for promotion of SMEs in any policy aimed at full, productive and freely chosen employment. Job growth will be led by SMEs, even though SMEs have been one of the biggest victims of the economic and jobs crisis.

The Employers' group did not support either of the Committee of Experts' recommendations for new employment policy standards because there are no gaps in the current framework and, in our view, a consolidated instrument would create confusion. The Employers' group requests the Committee of Experts to take into account our view on their interpretation and application of a few of the employment policy instruments and respond in its next Report III(1A) to the Conference.

Let me now turn to some personal reflections on the core part of our work – the cases. I make them now because my opinion is that the working relationship between the Workers' and the Employers' groups and some governments is at a tipping point.

The reason that I have kept coming back to this Committee over 29 sessions of the International Labour Conference is because of the opportunity to facilitate implementation of voluntarily ratified ILO standards and, as a consequence, improve the working and societal conditions for workers' and employers' organizations and their members. If it were up to me, we would abandon the general discussion and General Survey debates and just address implementation of ratified ILO standards.

My overall approach to the list of cases and the discussion of cases is a human rights values approach. It is composed of the following elements: rule of law, balance and fairness, good faith, analysis, pragmatism, the Committee of Experts' observations, assessment of the history of the case, the efforts being made by the Government, whether those efforts are sustainable and, ultimately, doing the right thing. Too often in our Committee, we look at the current situation, taking a short-term view of the case, and do not take into account the history of the case, the improvements or lack of improvements, the Government's good faith, and the level of government effort. Even if the situation continues to be serious, we need to look at all of these factors to be fair to the Government but also to reinforce the purpose of the supervisory machin-



ery which is to prod and motivate the Government to full implementation of the labour standards that they have ratified.

Each year, I read every observation that the Committee of Experts makes in Report III(1A). Out of that review, independent of an overall Employer view, I typically come up with a list of 50–60 observations that cover the spectrum of ILO standards, but are particularly focused on the eight fundamental Conventions. I fully understand and appreciate the priority that the Workers' group attaches to freedom of association, but many cases involving forced labour, child labour, discrimination, health and safety, and wages and hours, cry out to be addressed. However, under our current approach to the list of cases, they are effectively ignored or vetoed by our Committee because they are not on the list. These "orphan cases" are left to the follow-up by the Committee of Experts and the Office.

For this reason, you have heard me say many times in our Committee that there needs to be more diversity in subject matter in the list of cases with regional balance, and not coming back to the same cases year after year if the Government is making sustained efforts to improve the situation, even if the case remains serious. The act of selecting a case is a veto of another case, regardless of one's point of view. Reasonable, thinking people of goodwill can disagree on whether one case is more appropriate than another to be on the list in applying the criteria in our working methods. A disagreement is not a veto.

Since the 1980s, there has been a significant change in our Committee's approach to conclusions. During the Cold War there was a heavier emphasis on sanction through a special paragraph in serious cases. With the fall of the Berlin Wall, there began a transition that placed greater emphasis on technical cooperation, technical assistance, high-level missions, and high-level tripartite and bipartite missions. You can see that this year, with 20 of our conclusions recommending technical assistance and eight providing for missions. Taking a 29-year perspective, my assessment is that we have successfully motivated more governments to do the right thing, make progress and implement their obligation to apply and implement the ratified labour standards in law and practice by the assistance-mission approach than via the special paragraph route. The hammer of a special paragraph and a continuing failure to implement is appropriate when the Government is absolutely unwilling to take any, or at best minimal, steps.

In our Committee, we need to recognize that there is a several month lag between the Government's report to the Committee of Experts and the Committee's observations to the Conference and the discussion in our Committee. In making the Employers' group statement and considering the conclusions, I listen very carefully to what the Government has done since its report to the Committee of Experts, what it says it will or will not do, and updated facts in the case. In sum, what experience has demonstrated to me is that the hammer is not the most effective way in most cases. Most cases require a facilitation approach. Occasionally, there is the intransigent government and there is only one way to go – the hard way.

In closing, I would like to thank the Office for its excellent support in the development of our work. It needs to be recognized that the Office initiative to

convene an ongoing working party several years ago on the working methods of our Committee has yielded positive results, culminating this year in the scheduling of five cases each day and a time clock that made the hours of work reasonably decent.

Our Chairperson deserves special thanks for the firm parliamentary running of the meetings this year and his understanding of the cases in formulating the conclusions. Our Reporter with his wry and subtle humour kept us on balance. In particular, I want to thank the Worker spokesperson for his continued collaboration, thoughtfulness, problem-solving approach and goodwill.

I would also like to thank the Employers' group for helping me prepare and present several of the individual cases, as well as staff of the IOE and ACT/EMP for their ongoing support before, during and after this Conference.

In conclusion, I reaffirm the Employers' group's continued support for the ILO supervisory machinery. We support this report without reservation.

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*Original French: Mr CORTEBEECK (Worker, Belgium; Worker Vice-Chairperson of the Committee on the Application of Standards)*

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This year, 2010, is one which we will not forget. First of all, because it was the year of methodological changes – and I can already say that I have a positive appreciation of those changes – and, second, because we were afraid that it may be the sign of a development which would undermine the supervisory machinery with regard to the application of ILO standards. Our tripartite Committee, of course, is one of the pillars of that supervisory system. Only the future will be able to tell whether this is actually happening.

The first major change concerns the format of the General Survey, which for the first time covered several instruments connected with the subject of employment. The discussion on the General Survey at this, the 2010 session of the Conference, was, in fact, the first specific phase of a new process, which marks a break from practices which were adopted over many years concerning the General Survey. Like any break, it was and remains at the same time a source of renewal, but also a source of questioning. The General Survey in the present 2010 format was linked first of all to the implementation of the first of the four strategic objectives taken up in the ILO Declaration on Social Justice for a Fair Globalization of 2008, namely promoting employment by creating a sustainable institutional and economic environment. It was also linked to the follow-up to the resolution, *Recovering from the crisis: A Global Jobs Pact*, adopted by the International Labour Conference at its 98th Session in 2009, particularly its section concerning principles to promote recovery and development, which repeats the contents of the Conventions and Recommendations dealt with in this year's General Survey.

The General Survey deals with elements of the supervisory machinery for the application of standards and more political elements. It is in this way that our Committee had to present a report for the Committee for the Recurrent Discussion on Employment. We had to launch this procedure, which would make it possible for the Committee on the Application of Standards to transmit useful conclusions to the Committee for the Recurrent Discussion on Employment.

This occupied a great deal of our time during the first week of the session. We were, I believe, obliged to carry out this double discussion, which had to be both legal and political in nature. The social challenges which are imposed on us because of the economic crisis, and the need to seek solutions to bring about a recovery where the interests of workers throughout the world are not forgotten, meant that we had to be successful with this new challenge.

I would like to mention the specific context of the General Survey a little bit later, but I want to dwell for a few moments on the impact of this new procedure on our working methods. I must confess that, faced with the change in the format of the General Survey, which is from now on to be devoted to a package of standards, our fear was that we would lose the benefit of a legal and pedagogical process with a high added value. I have often said, but I do not mind repeating it, that traditional General Surveys are legal elements that are essential to the supervisory system; they are an oversight tool, but also a tool for applying pressure in the framework of this struggle against deregulation, and are also an exercise linked with the need for better legislation.

General Surveys have also served to help those Governments which have not yet made up their minds to show them what alternative approaches exist for a better application of the law, to the benefit of the social partners, to prevent abusive legislative measures from being adopted by governments.

With the 2008 Declaration and the Global Jobs Pact, we entered a transversal political phase. This Declaration does not mean that we have to give up any standard-setting strategy in favour of voluntary regulation, or in favour of the logic of social responsibility, which is left purely and simply up to the discretion of enterprises.

This Declaration nevertheless calls for evaluation. In its Part III, it provides for the fact that the impact of the Declaration, in particular the extent to which it has contributed to promoting the aims and purposes of the ILO, through the integrated pursuit of the strategic objectives, will be the subject of an evaluation by the Conference, which will then decide whether it is useful to carry out further evaluations or whether there are other appropriate forms of action. This necessary evaluation must be integrated into our future working methods, or we will run the risk of failing to achieve one of the missions of the 2008 Declaration.

Allow me to say that we do, in fact, agree with the words of warning which were formulated by the Chairperson of the Committee of Experts on the Application of Conventions and Recommendations, with regard to the difficulty that exists in examining several instruments together and at the same time. The General Survey from now on will become an exercise to find a common position around a unifying topic. Work was less difficult this year, thanks to the more or less programmatic nature of some of the provisions of the Employment Policy Convention, 1964 (No. 122), which was seen as the cement holding together all the instruments examined in the General Survey. I am sure it will be much more complex in 2011, with the topic of social security and the examination of the Social Security (Minimum Standards) Convention, 1952 (No. 102), and the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), which are much more detailed and prescriptive.

There was a great risk of confining ourselves to sending to the Committee for the Recurrent Discussion on Employment a simple summary of points made during the course of the tripartite discussions in our Committee. In fact, a summary of the positions was addressed to that Committee, but it was accompanied by brief but interesting conclusions. These conclusions reflect the agreement of the Employers, Workers and a number of Governments to promote the ratification as a matter of priority of Convention No. 122, but also the Human Resources Development Convention, 1975 (No. 142), and the Private Employment Agencies Convention, 1997 (No. 181). They emphasize the linkages between all the Conventions and Recommendations which were covered by the General Survey.

It is also important that the Committee on the Application of Standards issued an invitation to the member States and the ILO, to strengthen the efforts which they are deploying to pool their information and their skills in the areas covered by these instruments.

The conclusions also call for the provision of technical assistance, including capacity building for member States and social partners, in order to promote the ratification and implementation of the instruments in question.

These conclusions contain two important points for the Workers' group: first of all, confirmation of the ongoing work to promote the four Conventions related to employment and the affirmation of the importance of social dialogue in the effective application of these instruments, which are extremely useful at a time of crisis. Secondly, the Workers welcome the fact that their request has been met to provide broader information and more reliable statistics. So, this first exercise, I think, can be seen as satisfactory.

The second major change concerns time management and the list of individual cases. Very strict measures were adopted this year for the first time in order to ensure effective time management for the presentation of the 25 cases finally selected, in order to determine the order in which the Governments would appear on the final list. It was important to have a balanced time management between Workers, Employers and Governments so that everyone can be heard in a calm atmosphere and in full.

I think we can welcome, generally speaking, the discipline which prevailed in the Workers' group from Monday to Friday evening. I would like to thank the workers from a country which did appear on the list who took the initiative to share their speaking time with colleagues of another ideological or political tendency prevailing in their country. I think that it is a sign of great maturity to be able to adopt such behaviour and it is an observance of pluralism and trade union democracy, for which we are fighting here.

Colleagues belonging to other trade union tendencies are not enemies of each other; it is question of solidarity, which characterizes and strengthens the trade union movement. We must not forget this, and we must say it again publicly at a time when the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the jurisprudence emerging from it is being openly disputed. The right of workers of any international tendency to express their views must be recognized without their being interrupted, treated with disdain or heckled.

The conclusions of our Committee should cover the interests and points of view of everyone. Any other approach would amount to terrorism. And while this may not please the Government of Burma, I am not the spokesperson for a group of terrorists.

The sharing of time between tendencies did not happen in all parts of the Committee. Moreover, the respect for others was compromised at certain points in time and, to be precise, on Saturday, 12 June, in the afternoon. Things went more smoothly after that and that is very good. It would be very dangerous for us all if the mutual respect, which prevails amongst the three groups in the Committee, were to disappear.

The third major change was that of the radical change of tone as far as the Employers were concerned. Obviously, we and the Employers are not speaking the same language. The very essence of social dialogue, and social consultation, is based on seeking a compromise between interests which, by their nature, will diverge. We are called upon to find some kind of agreement for the greater benefit of the social peace which guarantees economic peace. The crises, first of all financial and then economic, which we have experienced since the end of 2008, have radicalized positions around the room concerning the balance which should be sought in trying to bring about a solution to the major challenges which arise because of the crises.

Until this year, our feeling was that we shared with the employers total confidence in the pillars of the supervisory machinery, that is, the Committee on the Application of Standards and the Committee of Experts. Clearly, this year, our Worker members of the Committee on the Application of Standards will go back home to our countries with a feeling that something has changed in the behaviour of the Employers, which makes us fear a more fundamental calling into question of the aims of the ILO. I even think that we are not the only ones to have this feeling. The statement made at the end of our Committee's work by the representative of the Government of Austria, on behalf of the 38 industrialized market economy countries (IMEC), does give us some comfort in the idea that our fear, with regard to the crisis of confidence, is shared by others.

The Employers' group did not call into question the work of the Committee as such, but the attack carried out against the Committee of Experts will, *de facto*, have this effect of calling it into question.

The Employers' group has launched an offensive against a large number of principles which are jointly accepted and recognized as guarantors of our work, as part of the supervisory machinery.

The Employer members clearly stated on several occasions that, in their view, the tripartite governance in the supervision of the application of standards has been compromised and that there was some kind of fault in the process of tripartite governance.

We unfortunately heard an attack against the Committee of Experts, an attack which, fortunately, a large number of Governments did not wish to support.

I would refer you, once again, to the position of the 38 IMEC countries, who also emphasized the important role of the social partners in the practical functioning of our Committee. I would add that this functioning has to be based on a consensus which,

unfortunately, is becoming more and more difficult to attain.

We had to reiterate our confidence in the Committee of Experts, who we believe to be scrupulously impartial, and we believe that they take a very intellectual approach. The Committee of Experts must do their work with the information provided by the three parties that make up the Committee. We are also responsible for the quality of their work.

The Employers have also led an attack on the right to strike, or at least, on the extensions of the application of the right to strike that were endorsed by the Committee of Experts.

The Employers have continued by reproaching the Committee of Experts for the way in which they foresaw the content and the application of the principles enshrined in the Indigenous and Tribal Peoples Convention, 1989 (No. 169). That was the case when we looked at Peru. Then, they questioned whether this Convention has anything to do with labour law.

We recalled that the Convention aims to draw attention to the specific contribution of indigenous and tribal peoples: cultural diversity and social and ecological harmony of mankind, as well as international cooperation and comprehension.

This Convention, although it was initially intended to address the issue of the peoples of the Amazon, contains a very modern message of the kind which we should propose in order to recover from the crisis with the ambition to do better in future and to make sure that the world will look different after the crisis.

The real problem connected with this is the supremacy of economic interest over all other discussions or reflections which we expect people to entertain concerning social justice at the heart of the system, and as the only remedy to the crisis.

The fourth difficulty was linked to how our case list had been drawn up. The drawing up of this list this year, once again, was a particularly difficult exercise and everything indicates that this will also be the case in future.

Over the last few years, there has been a tendency towards horse trading, which has emerged for Workers and Employers. I believe there is no room for blackmailing, for horse trading, or for vetoes.

Some governments have already learnt to respect this point of view. Some employers' organizations should also accept this, and learn this, otherwise there is a risk they will make our work impossible.

We were not able to talk about the United Kingdom because the employers of that country opposed the discussions for obscure reasons. Nevertheless, it was a case that was well investigated by the Committee of Experts, calling to question a country of Western Europe, which is a member of the European Union, and connected with a symbolic Convention, which is often used for other regions and continents, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

This case would have raised a very important question for all of us, on the limits to the exercising of the right to strike by workers who are affiliated to a trade union threatened with legal action for damages and interests, leading to a risk of insolvency for that trade union. How far can one go with this concept of proportionality?

We have not been able, either, to talk about Colombia, because Colombian employers opposed the

discussion. The idea to send a high-level tripartite mission in September 2010 seems to be a sign of recognition that there are serious problems that must be overcome.

We were not able to obtain a special paragraph to strengthen our conclusions on the case of Guatemala because the employers of that country were against it. However, in Guatemala, a trade unionist is an endangered species about to become extinct and not at all protected.

Cases involving Latin America, or at least some countries of Latin America, have become taboo for Employers. We see with some pessimism the recognition of the fact that economic interests and international commercial agreements being concluded with a number of Latin American countries are taking precedence over the rights of workers, which are in grave peril.

We did not consider it a priority to talk about the cases of the Bolivarian Republic of Venezuela or Burundi. By not dealing with those cases we could have freed up some time for cases of more serious violations of the rights enshrined in ILO Conventions, but we agreed to put them on our definitive list, since the right to veto has no place in our forums.

The selection of 25 cases is a very long and difficult exercise. We have to choose a very small number of cases from a report which actually contains around 800 cases.

It is true that cases of violations of Convention No. 87 and Convention No. 98 are given priority on our list, but that is quite understandable and legitimate. Of these 25 cases, we had to take the double-footnote cases. There were seven double footnotes submitted to us this year by the Committee of Experts. Our Committee examined all seven cases out of respect for the opinion of the Committee of Experts.

Countries do not, of course, appear on the list by chance. Governments that do not appear on the final list should not fail to read the report of the Committee of Experts. They must take note of the observations and the criticism which is levelled at them by this specialized Committee.

There is very useful information in the reports, which can be beneficial to employers, workers and governments.

Some governments that criticise the Committee of Experts should take the opportunity to rectify any possible errors made by the Committee of Experts or to provide further, missing information. They should take this opportunity to carry out a constructive dialogue with the ILO. It is not a question of just going home and heaving a great sigh of relief. You have to carry out work internally in the country, using the report of the Committee of Experts and ask the ILO for assistance if necessary.

The case of Ethiopia is a good example. Although it was on our preliminary list we could not talk about the case because we did not have enough time. The Workers' group is waiting for the Government to follow up to the Committee's comments. Although there are no remaining trade union prisoners in Ethiopia, the Government should do its utmost to implement the provisions of Convention No. 87 straight away, in law and in practice.

It was impossible for us to take this into account on our list of progress cases. We would have liked to do so to help some governments demonstrate their efforts to usefully put into practice the obser-

vations of the Committee of Experts. I think we should find a system which would help us to note these cases of progress.

We still have one particular regret, which is the issue of the case of Japan and Convention No. 29. This case does not appear on the list of cases examined by the Committee of Experts in their 2010 report, but we noted that it would be included in the 2011 reporting cycle. We hope that for next year a solution might be found for the victims of this degrading situation, which would make it possible to restore the dignity of these women who were forced to serve as sex slaves.

As the conclusions of our Committee show, a large number of cases mentioned this year were coming back to the Committee on Standards after several not entirely successful previous attempts to obtain reports from them, as well as offers of technical assistance which did not yield any specific results, and after direct contact missions, committees of enquiry and high-level visits. I am thinking of Belarus, the Czech Republic, Costa Rica, Guatemala and the Islamic Republic of Iran for the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), as well as Swaziland and Turkey. This is not an exhaustive list.

Despite all this, our Committee decided in several cases to place its trust in the Governments who came to tell us about their efforts and who committed to conforming to the provisions contained in the Conventions of the ILO.

We hope this shows that respect for the standards of the ILO remains a goal that is broadly shared by all member States in all regions of the world. We hope that these governments agree, without reservation, to implement the provisions of the conclusions that concern them.

Out of 25 cases, 20 will be provided with technical assistance. We would urge that governments consider this technical assistance not as some kind of sanction, but rather, as a helping hand to assist in their implementation of ILO Conventions at the national level. Eight different missions have been set, one of which has been mandated to a high level politician in Guatemala. Three special paragraphs were added to the conclusions for Burma and Swaziland for Convention No. 87 and the Central African Republic for Convention No. 138. A large number of conclusions contained very clear requests, which should facilitate the countries' task of informing the Committee of Experts within a very precise deadline.

The presence in our Committee of several Ministers of Labour, and high-ranking officials shows that governments pay a great deal of attention to the application of ILO standards.

I would like to express my thanks to the Workers' group for the excellent work that they have done over the last three weeks. I would like to thank them for the preparatory work they conducted before the Conference and for their collaboration and team spirit, which are essential elements for the success of the Committee's work. I would also thank the Officers of the Workers' group.

I would also like to thank the other Officers of our Committee and colleagues in the ILO for the technical and legal assistance they gave us, as well as the International Trade Union Confederation (ITUC).

I would like to ask you to approve the report of our Committee.

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*Original Portuguese: Mr PAIXÃO PARDO (Government, Brazil; Chairperson of the Committee on the Application of Standards)*

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Further to the remarks of previous speakers, I would like to highlight one or two points.

During the first week of our work, we were able to examine the General Survey on the recurrent theme of employment, the conclusions of which contributed to discussions within the Committee. In the second week, we managed our time well and were able to look at 25 cases – five per day. In this regard, the Committee's conclusions must be observed and appropriate follow-up ensured.

In our deliberations, we sought to be constructive in solving problems related to the application of international labour standards. We should therefore undertake analysis and follow-up thereof without fearing measures of retaliation, such as those described by some tripartite constituents here.

I would like to mention the enormous amount of work done by our Reporter who displayed his ability during the examination of the cases of serious failure to comply with obligations. I would like to thank the Vice-Chairpersons for their professionalism and all the work that they have done, and I extend my thanks to the members of their groups, as well as the secretariat. I also thank everyone for the spirit of cooperation they showed in helping us to manage our time so well.

We wish to underscore the importance of the contribution of ministers of labour to the work of our Committee, both in the general discussion and in dealing with individual cases.

I am well aware that we can and must improve our procedures, particularly with regard to the adoption of the list of cases and behaviour during meetings, avoiding outbursts that do not conform to parliamentary norms. In preparing for future meetings, however, we should not overlook the positive, and we should therefore return to consideration of positive cases.

*(The speaker continues in French.)*

I would like to thank the President of the Conference for his support for our Committee.

*(The speaker continues in Portuguese.)*

In conclusion, I would like to invite the Conference to approve the report of the Committee on the Application of Standards.

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*Original French: The PRESIDENT*

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I now open the discussion on the report. I would remind you that the report has already been adopted by the Committee, and therefore it cannot be changed at this stage.

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*Mr SAIDOV (Government, Uzbekistan)*

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We are making this statement due to the conclusion of the Conference Committee on the Application of Standards on the implementation of the Worst Forms of Child Labour Convention, 1999 (No. 182), in Uzbekistan.

Firstly, the written report of Uzbekistan for the period from 2008 to 2010 on the implementation of Convention No. 182 is absolutely ignored in the Committee's conclusion. The report, in accordance with the requirements of the ILO, contains full information on the substance of Articles 7 and 8 of the Convention. This report was submitted on 6 June this year by official note.

Second, the conclusion of the Committee does not take account of the proposal contained in the statement of the delegation of the Republic of Uzbekistan at the Committee's meeting on 7 June 2010.

Third, the conclusion of the Committee is biased, narrow, selective and politically motivated in its attitude towards Uzbekistan's implementation of the provisions of Convention No. 182. The Committee's decision is based on non-verified and non-objective materials of selected mass media.

Fourth, the Committee's request for further details and the order to accept an ILO mission of observers is unfounded.

Fifth, the conclusion of the Committee has repeatedly used definitions of systematic and continuous use of child labour, which do not exist in international labour law. In connection with the above, the delegation of the Government of Uzbekistan states the need to take into account and include this statement in the official records and report of the Conference. We are disappointed by the abuse of the ambiguity in the provisions of the rules of procedure of the Committee, ignoring the decisions and positions of the Government and the reference to established practice.

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*Original Arabic: Mr HAMAD MOHAMED FUDULLA (Government, the Sudan)*

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The Sudan would like to share some observations as regards Part I of the report of the Committee on the Application of Standards, notably paragraphs 238 and 239 of the report. We would also like to comment on the five last lines of page 13 in Part II of the report.

As regards the first part of the report, the Sudan would like to ask the Conference to withdraw one sentence. I know what the President said as regards the impossibility of making any changes at this stage; the Conference is sovereign. Therefore, I call upon the Conference to withdraw this sentence from the first part of the report. It also features in the second part of the report, in the last five lines on page 13 relating to verification of the situation of the Sudan as regards the Forced Labour Convention, 1930 (No. 29). None of the speakers, Workers, Employers or Governments, mentioned such a condition. The interventions, such as that made by the Employers' delegate, only mentioned technical assistance, which confirms that no verification has been requested. Where did this phrase and the condition of verification come from?

We call upon the Conference to delete this sentence, which represented a prior condition to assistance. These sorts of irregularities frequently occur with regard to the Sudan. Firstly, the Sudan had supplied the information requested to the ILO. The Director of the International Labour Standards Department had confirmed receipt of the report. Unfortunately, this report was not submitted to the Committee of Experts, hence the Committee's conclusion that the Sudan had not met its obligations in terms of submission of reports. We have received an apology for this; we have been told it was "misplaced".

My second point is something that arose during the current session: the secretariat of the Committee stated that the Sudan had not submitted its letter of credentials for this 99th Session, which meant we had to produce it again. This was a mistake for which we have also received apologies. Now a condition has been added that was not mentioned in the

debates and which has not been mentioned by any speakers. We would like to know where it came from and how the decision was taken in the absence of the Government representative from the Sudan. We would ask the Officers of the Conference, despite the statement of the President of the Conference saying that amendments cannot be made, to submit this issue to the Director-General so that there can be an investigation into the matter. We also ask the Conference to delete this phrase on page 13 of Part II that refers to verification, because the Sudan does not want technical assistance that was subject to conditions that no speaker had mentioned. The Sudan, having received a communication from the secretariat of the Committee requesting it to submit all the amendments it believed were necessary to the documents prepared, submitted a request for amendment, which was refused. We sent a detailed letter on this subject directly to the secretariat. We also sent copies of this letter to the Employer representatives and the Worker representatives on the Committee on the Application of Standards.

The Sudan requests an inquiry into how these conclusions were reached.

In view of the above, we believe that this is a clear case of bad faith. The Sudan has stated that it suspects that the Committee has underlying political motives. We affirm this impression today, and we recall that various speakers have mentioned the fact that the activities or the work of the Committee were not free of political motives.

However, this statement was removed from the provisional record. We would like to protest against the bad faith shown to us. The Sudan rejects this conclusion and the provisional record that contains inaccurate information on statements that were not made during meetings.

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*Original French:* The PRESIDENT

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We have noted what you said. I can assure you that this will be reflected faithfully in the *Provisional Record* of this sitting.

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Ms DEMBSHER (*Government, Austria*)

I am making this statement on behalf of the 38 industrialized market economy countries, the IMEC group.

IMEC fully endorses the report of the Committee on the Application of Standards. IMEC has already delivered a detailed statement in the Committee on the Application of Standards at the adoption of its report and we would like to highlight some elements here again.

IMEC supports, and has always supported, the important role of the Committee on the Application of Standards in the ILO supervisory system.

IMEC recognizes that none of the ILO supervisory bodies is infallible. Nonetheless, we continue to strongly support the independence, objectivity and the impartiality of the Committee of Experts. The Committee of Experts is a critical element in the supervisory system that is uniquely equipped to promote the application of international labour standards in all countries, regardless of the prevalent economic, social and cultural conditions.

To the extent that there may be inaccuracies in the Committee of Experts' report, we believe that this may demonstrate the need, to which IMEC has called attention on many occasions, for adequate resources to enable the International Labour Stan-

dards Department to cope with its dramatically increased workload. Once again, we call on the Director-General to ensure that the essential work of the Standards Department is among its top priorities.

Many of the difficulties that the Committee encountered this year revolved around the composition of the list of individual cases. IMEC recognizes that this is a process that is always difficult. It is often very emotional and in the end requires significant compromise. Agreement on the list of cases is essential for the successful functioning of the Committee on the Application of Standards, but IMEC continues to firmly believe that governments should not be involved in this process. We therefore urge the Workers' and Employers' groups, between now and the International Labour Conference in 2011, to find a way to bridge the differences between them, so that the work of the Committee will be more productive and harmonious next year.

IMEC is confident of the Workers' and Employers' groups' commitment to the Committee's methods of work, and therefore believes that the finalization of the list by the Workers' and Employers' groups will in future continue to be based on constructive and respectful consultations and will lead to a balanced list of cases consistently following the selection criteria for cases agreed by the social partners themselves.

IMEC also supports the working methods of the Committee and welcomes the innovative modifications that were introduced this year. At the same time, we support the continuation of the Working Group on the Working Methods of the Conference Committee in the belief that additional adjustments can be made that will further enhance the Committee's efficiency and effectiveness and thus enhance credibility as a critical component of the ILO supervisory system.

Finally, IMEC emphasizes that reasonable people can disagree and we staunchly stand by the full freedom of expression in the Committee on the Application of Standards and all bodies of the ILO. We also believe that protection of the right of expression requires that opinions be expressed in an atmosphere of respect and dignity. We therefore deeply regret that decorum was not maintained in the final sitting of the Committee. We hope that this will not occur again. It would be unfortunate if the Committee would have to consider more drastic measures to permit full and frank debate within the boundaries of respect and decorum.

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*Original French:* The PRESIDENT

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We have noted your words and they will be reflected faithfully in the *Provisional Record* of this sitting.

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Mr TROTMAN (*Worker, Barbados*)

I wish to indicate to you, first of all, our appreciation for the comments made by the members of IMEC and their criticism of the way in which workers and employers have not been able to reach satisfactory arrangements regarding selection and finalization of the reports. We promise you that we shall be meeting as soon as possible in productive discussions with employers to have a more satisfactory working relationship in those two areas: the selection of the list and determination of final parties.

My main purpose for seeking to have the floor is to indicate to you, regarding the selection of Burma, that we in the Workers' group from Barbados are

not sure that Burma has always been able to fully understand our concerns regarding the welfare of the workers in that country. And so, we have decided that, in an effort to make that Government understand more fully that we are not opposed to the country, we are, however, very concerned about the freedom of the people of the country, not only regarding forced labour, but also regarding their fundamental principles and rights at work. We have drafted a complaint under article 26 of the ILO Constitution against the Government of Myanmar for non-observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

This has been signed by me, for and on behalf of the Workers' group, and by a number of other members who serve at various levels within the Workers' group. We have made sure that the secretariat has become aware of this document and we merely wish to serve notice to the Government, and indeed to all members of this Conference, and to seek your support in pursuit of it at the appropriate time.

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Mr AHMED KHURSHID (*Worker, Pakistan*)

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May I take this opportunity on behalf of the Workers' delegation of Pakistan to associate myself with the good work which has been done by the distinguished members of this Committee, under the leadership of the Chairperson of the group, assisted by the Reporter.

Our distinguished Chairperson and spokesperson of the Workers' group led us in this Committee, to which I was brought along with others of my able colleagues. We also appreciate the work of the Employer Vice-President, who has led us for 29 years. But I must say that, although this is a committee of international labour standards, we have all been violating those international labour standards, even late working on Saturday evening, as well as up to 9.30 p.m. on some days in order to fulfil our responsibilities.

We also appreciated the presence of members of the staff who helped us carry out our work. This Committee is the heart of the Conference and of a supervisory system that is unique in the UN family of organizations, and it is considered to be the conscience of the world by virtue of its upholding the fundamental rights of workers.

There are still many countries that have not ratified the core Convention on freedom of association, which has been the lifeblood of the Organization since its inception. Almost 52 per cent of the population of the world is not covered, and we therefore urge member States to ratify it to demonstrate their commitment to the ILO Constitution, to the 1998 Declaration and to the 2008 Declaration, along with that of all member States and Workers and Employers who have committed themselves to uphold the core standards.

There were 800 observations in the report of the Committee of Experts, but we were only able to tackle 3 per cent of them because of lack of time. We therefore appeal to all the governments that were listed in the report to comply with their obligations by ratifying the core Conventions, as called for by the Committee of Experts. This Committee deals with the ratification of the Convention, and it is obligatory for member States under the Constitution to bring their law and practice into conformity with its principles.

The supervisory system, which was established in 1926, has been acclaimed as one of the best systems of its kind. The membership of the Committee comprises jurists of international repute from every continent, even the Vice-President of the International Court of Justice. I therefore submit that the suggestion that it be overseen by a tripartite group would ruin its objectivity and independence. We firmly support its remaining as it is, especially as we have improved its functioning by inviting the Chairperson of the Committee to our discussion and having our tripartite delegation meet the Committee of Experts so that we may share some of their views.

I have been attending the ILO Conference for 38 years, so I remember the Cold War. During the Cold War this Committee of Experts was considered by the Employers as second only to the Bible. When some Eastern European country challenged its finding they were always hard put to it to defend and promote their interests, because they had no right to strike, no right to democratic pluralism. We were all together then. But now the Employers' group is singing a different tune. With all due respect, I think they should look up the record of those days when the Committee of Experts received more respect from the employers themselves for its independence and objectivity. I am not saying that it imposed sanctions on the States during the Cold War. In those days too, there was a technical cooperation arrangement with member States to help them bring their laws and practice into conformity with the Conventions, except in the case of South Africa which was expelled because of its apartheid regime.

Regarding the right to strike that too is matter of historical record, and it has been considered by the Committee of Freedom of Association and Committee of Experts since its inception as an important means for the workers to defend and promote their rights. Otherwise they become victims of forced labour. It is the right to strike which has given workers the leverage to have meaningful dialogues with the employers and come to agreements. That does not mean that it is an end in itself, but it does provide the means to have a positive and constructive dialogue on an equal footing with the employers and to maintain cordial relations. This right has been available to the workers for a long time. It is a fundamental right and therefore to attack it is not acceptable.

The international financial crisis and globalization have created conditions of precarious employment and contract jobs in many countries and have given rise to a lot of unemployment. The Committee of Experts has rightly asked governments to allocate more resources to skills development and lifelong learning in order to raise workers' employability. At the same time, we expect the ILO and other multilateral organizations to exert more pressure on the IMF and the World Bank to allocate more resources for the public service, which they are trying to reduce, thereby making it less easy to provide the workforce with meaningful skills and education, which is essential.

The recommendation made by the Committee of Experts concerning migrant and women workers is also important. It is those who provide employment and a good environment for the workers who deserve assistance from the State, not the capitalists who simply speculate.



Although we insisted that the United Kingdom and Colombia be on the list of individual countries to be discussed, the Committee of Experts pointed out that they could not be put on the list for reasons which have been explained by our spokesperson. However, we trust that the governments in point will make every effort to bring their legislation into line with the ILO's Conventions and will seek technical assistance where there is a gap between their laws and the principle they have ratified.

To conclude, I fully support the report and thank all the members of the staff and of the Committee for their efforts.

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*Original French: The PRESIDENT*

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Thank you, Mr Ahmed. We are very impressed by what you said, and particularly by your standing of 38 years on the Committee. That does give you the right to share with us the experience that you have accumulated over so many years. Allow me to congratulate you.

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*Mr LWIN (Government, Myanmar)*

With regard to the comments made by the representative of the Workers' group, Myanmar would like to state the following: for the sake of record, and without prejudice to law, we reserve all our legal rights under law in this matter.

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*Original Spanish: Mr FUNES DE RIOJA (Employer, Argentina)*

As the Employer Vice-Chairperson of the Governing Body, I would like to mention the concerns that have been raised by the distinguished Government delegate of Austria. I know that she was speaking on behalf of the IMEC countries and she was referring particularly to the matter of drawing up the list of cases to be discussed and the need for dialogue, which has been reiterated on a number of occasions. We have expressed our willingness to engage in dialogue for many years.

That is something that has not changed, which does not take away from the fact that sometimes we have very complicated situations to deal with and that, therefore, we must ensure that the process of drawing up the list of cases is transparent and takes into account everyone's opinion and, indeed, the

general opinion of the Conference when the report is adopted.

Having said that, I would like to put on record the fact that the concerns expressed by our spokesman reflects the viewpoints of all the employers, not only the employers who are represented on the Committee on the Application of Standards but also the opinions of the entire Employers' group, who believe that much can still be done to improve even further the Organization's supervisory mechanisms and to ensure that governments, employers and workers have the guarantee that the rights and principles for which we fight in this Organization and determine our presence here, are indeed respected.

More than once, I have made the point that our defence of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and international labour rights and fundamental principles are not only determined by our own interests, the rights of employers, but also by the interests of workers. We would like to see that feeling reflected reciprocally in all cases where violations on the freedom of association of employers and their organizations are discussed.

We intend to continue to develop further dialogue, as the Worker Vice-Chairperson indicated, and obviously we endorse what he said in this respect. I would like to make it clear that the Employer Vice-Chairperson in his statement reflected not only the viewpoint of the Workers' group but also the viewpoint of the Employers' group. We are here to engage in dialogue, discuss issues, and show ourselves to be effective and transparent.

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*Original French: The PRESIDENT*

If there are no further requests for the floor, we shall now proceed to the approval of the report of the Committee on the Application of Standards as a whole. If there are no objections, may I take it that the Conference approves the report of the Committee as a whole. that is, Parts I, II and III?

*(The report, as a whole, is approved.)*

*(The Conference adjourned at 6.15 p.m.)*