

CONFERENCE COMMITTEE ON THE APPLICATION OF STANDARDS

EXTRACTS FROM THE
RECORD OF PROCEEDINGS

INTERNATIONAL LABOUR CONFERENCE

ONE HUNDREDTH SESSION
GENEVA, 2011

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

INTERNATIONAL LABOUR OFFICE
GENEVA

ISBN 978-92-2-125380-8 (print)
ISBN 978-92-2-125381-5 (Web pdf)

First edition 2011

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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 publication is thus structured in the following way: (i) the General Report of the Conference Committee on the Application of Standards; (ii) the observations of the Committee of Experts on the Application of Conventions and Recommendations concerning the individual cases selected by the Conference Committee; (iii) the report of the Conference Committee on the Application of Standards on these individual cases; (iv) the Report of the Conference Committee following the special sitting concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29); and (v) the report of the Committee on the Application of Standards: Submission, discussion and approval. It is to be hoped that this new format and this structure will translate into a wide 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 218 members (118 Government members, four Employer members and 96 Worker members). It also included 14 Government deputy members, 81 Employer deputy members and 128 Worker deputy members. In addition, 33 international non-governmental organizations were represented by observers.¹

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 Social Security (Minimum Standards) Convention, 1952 (No. 102), the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), the Income Security Recommendation, 1944 (No. 67), and the Medical Care Recommendation, 1944 (No. 69).² The Committee was also called on by the Governing Body to hold a special sitting concerning the application by Myanmar of the Forced Labour Convention, 1930 (No. 29), in application of the resolution adopted by the Conference in 2000.³

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 of

¹ 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.

² Report III to the International Labour Conference – Part 1A: Report of the Committee of Experts on the Application of Conventions and Recommendations; Part (2): Information document on ratifications and standards-related activities; Part 1B: General Survey concerning Social Security and the Rule of Law.

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

Experts on the Application of Conventions and Recommendations and to the information document on ratifications and standards-related activities. During the first part of the general discussion, the Committee also considered its working methods with reference being made to a document submitted to the Committee for this purpose.⁴ A summary of this part of the general discussion is found under relevant headings in sections A and B of Part One of this report.

6. The second part of the general discussion dealt with the General Survey concerning social security and the rule of law carried out by the Committee of Experts. It is summarized in section C of Part One 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 D of Part One of this report. The adoption of the report and closing remarks 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 was 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.⁵ 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).
11. Following the adoption of the final list of individual cases⁶ by the Committee, the Worker members emphasized that, although it had always been difficult to draw up the list of

⁴ Work of the Committee on the Application of Standards, ILC, 100th Session, C. App/D.1 (see Annex 1).

⁵ ILC, 100th Session, Committee on the Application of Standards, C. App./D.4/Add.1.

⁶ ILC, 100th Session, Committee on the Application of Standards, C. App./D.4/Add.1(Rev.) (see Annex 2).

individual cases, the experience this year had proved to be exceptionally difficult. The preliminary list of cases communicated to governments in May 2011 had been the product of a compromise between the concerns “of” and “within” the Workers’ group and the Employers’ group. However, a change had been seen over recent years in the approach adopted by the Employer members to the work of the Committee. In 2010, they had challenged a large number of commonly accepted principles recognized as safeguards for the Committee’s work, and they had indicated that tripartite governance in supervising the application of standards was jeopardized. Indeed, in that process, a significant amount of responsibility was incumbent on the social partners entrusted with the practical operation of the Committee, including drawing up the list of individual cases. The list had to be established jointly and the rule that held sway could not be that one of the parties always had to give way to the other. And yet it was becoming ever more difficult to reach consensus. The Worker members wanted priority to be given to the most serious cases and the most flagrant violations of workers’ rights. The Committee’s mission was to participate in supervising the application of ratified Conventions free from any pressure of an ideological nature or related to internal politics in the countries concerned. Very careful preparatory work had been carried out within the group with a view to submitting the most balanced possible list. Out of respect for that work, the Worker members wished to provide certain explanations concerning the two major absentees from the list of individual cases, namely Japan and Colombia.

12. The inclusion of a case on the list constituted a clear signal to the government concerned that the situation in relation to compliance with ILO Conventions could not continue on its territory. It provided an indication that the international community was aware of a situation of disregard for workers’ rights. However, even though the case of Japan was not on the list in relation to the Forced Labour Convention, 1930 (No. 29), the Government’s representatives could not return home with a feeling of impunity. Already in 2009 and 2010, it had not been possible to include the case on the list, despite the efforts made by the Worker members to propose a compromise. There still remained in Korea today 74 survivors over 85 years of age. The respect due to those women and to those still living in Japan, made it necessary to seek an alternative solution with the collaboration of the Government, employers and the Office, for purely humanitarian reasons.
13. Furthermore, Colombia had been on the preliminary list for the Labour Inspection Convention, 1947 (No. 81), which was a governance Convention that was essential for the application of other Conventions. However, the Employer members had refused the inclusion of the case on the list. For many years, there had been serious problems in Colombia of non-compliance with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), but the last report of the Committee of Experts did not contain an observation on the application of that Convention in Colombia. In its General Report, the Committee of Experts indicated that it preferred to make a full evaluation of the application of the Convention when it had available to it the report of the high-level tripartite mission that was due to visit the country in February 2011 and when it had received the Government’s detailed report on the application of Convention No. 87, which was due in 2011. The Worker members expressed disagreement with the approach adopted by the Committee of Experts and emphasized that trade unionists continued to be murdered and that impunity persisted in the country. The Worker members, whose spokesperson had participated in the high-level tripartite mission, fully supported the conclusions contained in the mission report. They approved the draft list of individual cases and called for the conclusions of the high-level tripartite mission to be read out to the Committee, as they constituted an important tool for its role of supervising the application of standards.
14. The Employer members agreed with the Worker members that the adoption of the list of individual cases had been particularly difficult this year. In recent years, the adoption of this list had become more difficult partly because of the introduction of the preliminary long list

of individual observations. Instead of being put together from the bottom up, the list needed to be reduced by up to 20 cases which was harder to do. In this regard, it had to be noted that 25 observations had to be selected from the over 800 observations made by the Committee of Experts, half of which related to the application of Conventions Nos 87 and 98. The Employer members would have liked to see more cases relating to the application of technical Conventions and of the fundamental Conventions related to forced labour, discrimination and child labour. Moreover, while recognizing the importance of fundamental Conventions for workers' rights, the Employer members observed that 80 per cent of the cases on the list related to fundamental workers' rights to the exclusion of other important technical ILO standards such as those relating to the protection of wages and hours of work.

15. Each member of the Committee had different priorities. A case could not be discussed without there being a specific observation in the report of the Committee of Experts. This year, there was no observation on Colombia with respect to the application of Convention No. 87. Therefore, the Committee could not discuss this case. The proposal to discuss Colombia with respect to the application of Convention No. 81 was simply a pretext to discuss Convention No. 87. Colombia was a country that, especially since 2005, had done everything the ILO and ILO tripartite missions had asked of it, and addressed additional freedom of association issues that were part of a Free Trade Agreement. Moreover, with respect to labour inspection, the Government was in the process of greatly expanding the number of inspectors. No country was perfect but it was an abuse of the supervisory process and of this Committee to insist continually on the discussion of a case with respect to which the Government was moving positively and rapidly in response to the ILO supervisory process.
16. A similar logic applied to the case of Japan, for which, notwithstanding the continued observations by the Committee of Experts, it had been recognized that everything that could be done had been done. There were no current violations regarding "comfort women", which had been recognized by suggestions made last year and this year that there would be a first, last and final discussion of this case in this Committee. The Government had fulfilled all its obligations following the end of the Second World War and this had been recognized by the Committee of Experts in its 2001 observation. The Government had apologized with sincerity and remorse several times over the years. It had provided almost 946 billion yen to several Asian countries during the 1950s and the 1960s as reparations, and an Asian Women's Fund had been established in July 1995 to provide support to former "comfort women". The Government had made significant efforts to support the fund with 4.8 billion yen until the dissolution of the fund in March 2007. This year the Government had taken further steps by meeting with the "comfort women" directly.
17. Further to the request of the Worker members for the conclusions of the high-level tripartite mission that had visited her country in February 2011 to be read out to the Committee, the Government member of Colombia sought clarification regarding the Committee's procedures. She recalled that the work of the Committee was based on the report of the Committee of Experts, which intended to assess the progress made and examine the report of the mission, together with the Government's submission, at its next meeting in November 2011. She therefore wondered how the conclusions of the mission report could be read out five months before they were to be examined and noted by the Committee of Experts. She reaffirmed the commitment of the Government of Colombia to pursue the recommendations made in connection with the mission.
18. The Deputy Legal Adviser to the Conference replied to the point raised by the Government member of Colombia as to the legal basis for providing information to the Committee on the conclusions of the high-level tripartite mission to Colombia. She recalled that, procedurally, the Committee was still engaged in the discussion of the General Report of the Committee of Experts. The Worker members had requested to hear the conclusions of the high-level

tripartite mission mentioned in paragraph 80 of the General Report of the Committee of Experts to which the Employer members had no objection so long as the substance of the conclusions were not discussed in the Committee. Since the mission took place in February 2011, the information could not have been included in the General Report itself. The reading of the conclusions would thus supplement the report and serve as a point of information to assist the Committee in the discharge of its mandate under article 7 of the Standing Orders of the Conference.

19. The representative of the Secretary-General read out the text of the conclusions of the high-level tripartite mission to Colombia.
20. 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. Following the working methods enumerated in Document D.1 (see Annex 1), the cases included in the final list were automatically registered. This year, the registration began with countries with the letter “F”.

Working methods of the Committee

21. 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.
22. The Worker members welcomed the fact that the problems posed by the presentation of the list of 25 individual cases and by the lack of restraint of certain speakers had for the most part been resolved by the strict measures proposed with regard to time management. 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. They nonetheless regretted that the limited time frame meant that it was impossible to discuss cases where progress had been recorded. The Committee of Experts’ ability to highlight instances of progress was the most effective way of focusing on the Committee’s work and analyzing its impact. It might be possible to arrange for those cases to be discussed separately under a new procedure, even if it meant an extra item on the agenda. The Employer and Worker members could then discuss cases that they found interesting independently of one another – though they could of course choose the same case if they wished. Proceeding along those lines would do justice to the work of the Committee of Experts, which once again at the present session had outlined in detail the general approach it had followed in identifying instances of progress and of good practice.
23. In their view, another important question was how, within a short time frame, to transmit a set of conclusions that were as substantial as possible to the Committee responsible for the recurrent item discussion. New avenues needed to be explored, and the Governing Body was to be congratulated on its decision in future to schedule the discussion of the General Surveys one year before that of the recurrent item on the same subject. The intention behind the change was for the General Survey discussion to be taken better into account in preparing the discussion on the recurrent item; it was a perfect illustration of how the ILO’s tripartite constituents sought to ensure the proper implementation of the 2008 ILO Declaration on Social Justice for a Fair Globalization, which was a forward-looking document in terms of the commitments and political choices of member States, their concerns about the

diminishing rights of workers and the desire to breathe new life into the ILO's standard-setting activities by introducing a mechanism for revising standards that was closely linked to the conclusions arrived at in discussing the General Surveys as well as to the 2008 Declaration.

24. The Government member of Austria, speaking on behalf of the group of the Government members of the Industrialized Market Economy Countries (IMEC), recalled that in 2010, the new phase of the Social Justice Declaration implementation process led the Conference Committee to synchronize the instruments to be studied under the General Survey with the yearly recurrent item. While appreciating the Office's efforts in elaborating improved questionnaires which resulted in an increased response rate and their better quality, IMEC suggested that in order to improve readability, it would be useful to strive for a shorter report and provide an executive summary. IMEC looked forward to the realignment of the reporting cycle in future years when General Surveys would be examined by the Conference Committee one year before the respective recurrent discussion, which would allow the Conference Committee's messages to receive better attention. IMEC hoped that this new approach would increase the impact of the standards system.

Homage to Mr Kurshid Ahmed

25. The Worker members wished to thank Mr Ahmed, the Worker member of Pakistan, for his significant contributions to the Committee as a long-standing member. Mr Ahmed deserved the respect of this tripartite Committee for his hard work in favour of decent work and for his commitment to workers' rights on this Committee, throughout the previous 39 years. The Chairperson joined the Worker members in thanking Mr Ahmed, a friend and colleague with whom he had worked within the framework of the Governing Body. The Employer members recalled Mr Ahmed's long-serving membership of the Committee, and expressed appreciation for his contributions, not only with regard to his own country, but to the discussion of all cases. His presence had been a constant force on the Committee and would be missed. Mr Ahmed thanked the speakers for the words of encouragement. He recalled that this Committee was a pillar of the supervisory system, and was essential to the respect of fundamental rights and the promotion of social justice. He underlined that the strengthening of the Committee must be continued, and that he looked forward to the good work of the Committee in the future.

B. General questions relating to international labour standards

General aspects of the supervisory procedure

26. First of all, the representative of the Secretary-General indicated that it was her privilege to bring to the Committee's attention important developments relevant to its discussion. She highlighted that this year marked the 100th Session of the Conference as well as the 85th anniversary of both this Committee and the Committee of Experts. The International Labour Standards Department had issued a publication, *The Committee on the Application of Standards of the International Labour Conference: A dynamic and impact built on decades of dialogue and persuasion*, to emphasize the significance of this Committee's work as an essential component of the ILO supervisory mechanism. She recalled that the supervision of standards, as well as their adoption, lay with the International Labour Conference and that this Committee was the supervisory body set up to fulfil a primary duty of the Conference. This Committee's role was unique in the overall architecture of the ILO supervisory system, vested with both the authority of the highest ILO tripartite body and the credibility of its

members who were actors in the real economy. Referring to the 1926 Conference resolution, which created this Committee and the Committee of Experts, she recalled that the complementarity between the work of both Committees was a core feature of the ILO supervisory system. It embodied the primary unique advantage of the ILO, its tripartite structure and its standards system, as recalled by the ILO Declaration on Social Justice for a Fair Globalization (2008). The preliminary legal examination of reports by an independent body prior to this Committee's tripartite examination was key to any serious effort at supervision.

27. The speaker indicated that the Committee of Experts had paid close attention to its relationship with this Committee and, in its General Report, had proposed reinforcing this relationship, through more in-depth exchanges of views on matters of common interest. This issue had been discussed during the special sitting with the Vice-Chairpersons of this Committee, and the Office would explore the possibilities for this purpose, taking into account the views of this Committee.
28. Turning to this Committee's working methods, the representative of the Secretary-General highlighted that, in the interest of an efficient, objective and transparent conduct of its work, this Committee had adapted its methods of work on the basis of tripartite dialogue and consensus. The achievements of the Tripartite Working Group on the Working Methods of the Conference Committee, which were reflected in document D.1, were the result of this process. In particular, it was proposed to continue the automatic registration of cases, as well as the new arrangements on time management. The Tripartite Working Group had also discussed the question of countries who registered after the adoption of the final list of cases, as well as further improvements in the adoption of this list to ensure a better balance between types of Conventions and among regions.
29. Regarding the General Survey, the speaker underlined that the current General Survey of the Committee of Experts on social security represented the second of the new generation of General Surveys under the Social Justice Declaration, aimed at ensuring the concrete impact of the regular supervisory bodies on the achievement of ILO objectives. The outcome of this Committee's discussion would be presented to the Committee for the Recurrent Discussion on Social Protection and the Tripartite Working Group had proposed changes to the working schedule of this Committee to allow for a genuine exchange in this regard. Concerning the substance of the General Survey, the speaker highlighted that it was the first time that the Committee of Experts had provided such a comprehensive survey on social security. One of the main added values of this General Survey was that it gave more legal precision and space to the definitions of some key principles of international social security law.
30. On the coordination of the subjects of General Surveys with those of the recurrent discussions, the representative of the Secretary-General recalled the decision of the Governing Body to have the General Survey discussed by the Conference Committee a year ahead of the recurrent discussion, to allow more time for the integration of the results of the discussion of the General Survey in the preparation of the recurrent discussion. She underlined that such changes were an exemplary case of the ILO tripartite constituency making adjustments to safeguard the implementation of the Social Justice Declaration.
31. Turning to the issue of supervision and technical cooperation, the representative of the Secretary-General highlighted the important actions that had been taken to ensure a more systematic integration between the work of the supervisory bodies and technical cooperation. This Committee had made more systematic references to technical assistance in its conclusions and where the Office had been able to provide sustained assistance, important progress had been made. However, this Committee and the Committee of Experts had emphasized that this integrated assistance needed to be stepped up. The Office had been invited by the Committee of Experts to examine ways of helping countries through technical

cooperation programmes aimed at strengthening the reporting capacities of labour ministries, and to focus more on the durability and quality of reporting. This past year, the Committee of Experts had highlighted the need for technical assistance in the case of 60 countries.

32. In this connection, the speaker announced that the Governing Body had approved, in March 2011, the allocation of US\$2 million to enable the International Labour Standards Department, in close collaboration with the other units concerned and the field offices, to put in place a follow-up to the comments of the supervisory system, regarding both reporting obligations and implementation of ratified Conventions. She indicated that this one-time allocation (for the 2012–13 biennium) would enable the Office to assist 20 member States to address their reporting backlog, and enable another 20 countries to begin to address some of the long-standing gaps in law and practice. This Committee, with the Committee of Experts, would play a major role in the design and review of the results of this initiative and the selection of countries, which should be mainly based on criteria such as regional balance and political commitment, would be informed by this Committee's work.
33. With a view to highlighting the important role of the supervisory bodies in informing the Office of the priorities for technical assistance, the representative of the Secretary-General referred to the follow-up to the report of the Commission of Inquiry established to examine the complaints concerning the observance by the Government of Zimbabwe of Convention No. 87, and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), made by delegates to the 97th Session (2008) of the International Labour Conference. The Office was assisting the Government of Zimbabwe in implementing the recommendations through a technical assistance package developed by the ILO, the Government and social partners which was launched in Harare in August 2010.
34. She then explained that the Standards Department was aggregating the information from its four databases, in the context of the NORMLEX project, with a view to providing simplified access to international labour standards and related information. The NORMLEX information systems, and the upcoming online reporting system, represented an opportunity to improve and streamline certain processes in the management of the activities of the Standards Department, which should translate into cost savings. She stressed that, in the past ten years, the number of reports handled by the Department had increased by 19.6 per cent and the number of communications submitted by workers' or employers' organizations by 174.3 per cent.
35. The representative of the Secretary-General then emphasized that recent events, such as the economic and financial crisis or the uprisings in the Arab world, exemplified the need for the ILO to provide integrated assistance to countries in need to foster more balanced economic and social development. In this context, international labour standards provided the indispensable normative and rights-based foundation of the Decent Work Agenda and constituted an important component of a rights-based approach to development.
36. The speaker then highlighted the major challenge of the growing informal economy, which had been reinforced by the economic crisis. Amongst the numerous obstacles in the application of international labour standards to workers in this sector, she pointed out weak labour inspection. Within the framework of a general discussion, the Conference would consider the question of labour administration and labour inspection, two important subjects for the effective implementation of international labour standards.
37. The representative of the Secretary-General then recalled that this year marked the second normative discussion on decent work for domestic workers with a view to the adoption of a new standard, which would mark an important step towards the recognition and inclusion of domestic workers in national employment laws and social protection schemes. Moreover, she identified rural workers as a significant category of workers to which attention should be

paid, as more than 75 per cent of the world's poor belonged to this category, lacking effective protection, due to significant gaps in coverage and barriers to ratification and implementation. The ILO could make an important contribution to addressing the persistent decent work deficits in rural areas.

38. Referring to the increased reference to international labour standards in free trade agreements and corporate social responsibility initiatives, and to the launch of the United Nations Indigenous People's Partnership signed by the ILO, OHCHR, UNDP and UNICEF to promote dialogue and build partnerships on indigenous peoples' issues on the basis of ILO Convention No. 169 and the UN Declaration on the Rights of Indigenous Peoples, the speaker expressed the view that these examples pointed towards the necessity of keeping a robust body of international labour standards which responded to the changing needs of the world of work, which could be accomplished through standards policy, as mandated by the Social Justice Declaration.
39. In this regard, consultations on standards policy, ongoing since 2005, had received new impetus during the last two sessions of the Governing Body. The standards-related aspects of the conclusions of recurrent discussions and discussions of General Surveys could potentially provide a new framework for reviewing the status of ILO standards and identifying new standard-setting items. Since General Surveys and recurrent reports could not cover all standards relating to a strategic objective, it was necessary to complement these reports and their discussions in order to get a comprehensive picture of all standards relating to a strategic objective. She referred to the emerging consensus with respect to the setting-up of a standards review mechanism which would consist of tripartite working groups operating under the auspices of the International Labour Standards Segment of the LILS Section of the newly reformed Governing Body. The speaker mentioned the Tripartite Meeting of Experts, held in April 2011, which examined the Termination of Employment Convention, 1982 (No. 158), and the Termination of Employment Recommendation, 1982 (No. 166), as a possible modality for the tripartite working groups envisaged under the standards review mechanism. The Governing Body would further discuss the establishment of a standards review mechanism in November 2011 on the basis of concrete proposals prepared by the Office.
40. In conclusion, the representative of the Secretary-General emphasized that the highlighted developments would guide the work of the Office for the next year; the supervisory bodies would continue the examination of cases of non-compliance and reinforce their mutual dialogue; technical assistance efforts under the ILO time-bound initiative to reduce the standards gap would be strengthened; and the Governing Body would further discuss the establishment of a standards review mechanism. All dimensions of the ILO standards system were operating at full capacity, reaffirming the importance of international labour standards in dealing with today's internationalized world of work.
41. The Committee welcomed Mr Yozo Yokota, Chairperson of the Committee of Experts. He welcomed the opportunity to speak as evidence of the good working relationship between the two Committees which carried out a supervisory function. These two Committees, one with a tripartite composition and the other with the composition of independent experts, had been working together to promote, protect and enhance the rights and quality of life of all the workers in the world.
42. The speaker then turned to the meeting of the last session of the Committee of Experts, indicating that the workload had been heavy. The Committee of Experts had welcomed four new members, three of whom took full part in the work of the Committee. Moreover, the Committee of Experts had enjoyed the opportunity to exchange opinions with the Vice-Chairpersons of this Committee over the Internet. This meeting had been very useful, but the

Committee of Experts hoped that a personal meeting would be possible during its next session.

43. Referring to collaboration with other international organizations, the speaker indicated that the Committee of Experts had held an annual meeting with members of the United Nations Committee on Economic, Social and Cultural Rights in November 2010 on the theme “the realization of social rights in light of current austerity measures”. Moreover, in accordance with the arrangements made between the ILO and the Council of Europe, the Committee of Experts had examined 21 reports on the application of the European Code of Social Security, and as appropriate, its Protocol.
44. Turning to the methods of work of the Committee of Experts, the speaker indicated that since 2001, this subject had been discussed in the “Subcommittee on Working Methods”, to rationalize and streamline the functioning of the Committee of Experts. During the last session, the Subcommittee had undertaken a close examination of the comments made by the members of this Committee and from the informal tripartite consultation that had been held in 2010 on the question of the interpretation of ILO Conventions. The Committee of Experts had reached an agreement on a number of points, on the basis of the conclusions of the Subcommittee. Firstly, the Committee of Experts had noted that general observations were valuable tools to be used occasionally to draw attention to matters that were of broad application across a number of countries and to understand general trends in the application of a particular Convention. Secondly, the Committee of Experts had confirmed the criteria for cases of “progress” particularly, when a State had taken some measures in response to the request made by the Committee of Experts but it did not reflect a situation of overall compliance and it was limited to a specific issue in question. Thirdly, it was agreed that the Committee of Experts would express “satisfaction” to acknowledge that a government had taken positive measures to implement the provisions of a Convention through, for instance, the adoption of new legislation or an amendment to existing legislation. Fourthly, the Committee of Experts had held that, while its mandate did not require giving definitive interpretations of the provisions of Conventions, there were occasions when it had to consider and express its views on the legal scope and meaning of certain provisions of Conventions, where appropriate, in order to supervise the application of Conventions. Lastly, the Committee of Experts had followed the previously established criteria for “cases of good practice”, meaning that a government had taken innovative or creative measures to enhance the objectives of a Convention, or to resolve difficulties in the application of a Convention, beyond simple compliance with its provisions. The speaker indicated that the Committee of Experts had not identified any specific cases of good practice at its last session.
45. The speaker then addressed the issue of reporting obligations. At the last session, 2,990 reports under articles 22 and 35 of the ILO Constitution had been requested, and by the end of the session, 2,002 reports (67 per cent) had been received by the Office. The late submission of reports due had been a problem, and the Committee of Experts hoped that, for its next session, a larger number of reports would be submitted within the time limits and would contain the required information.
46. Turning to the General Survey, the speaker highlighted that its theme was “Social security and the rule of law”. The speaker then recalled that the Report of the Director-General for 1999, entitled “Decent work” had challenged the ILO “to find solutions that increase protection and embrace respect for basic principles of social security”. Moreover, under the Decent Work Agenda, member States had been called upon to set a national strategy for “social security for all” and in 2003, the ILO had launched the Global Campaign on Social Security and Coverage for All. In 2008, the Declaration on Social Justice for a Fair Globalization had given the phenomenon of globalization a social dimension and had reorganized the ILO’s mandate under the four strategic objectives, the second of which was social protection.

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47. The speaker underlined that the General Survey looked back through the history of the Organization's standard-setting activity, which comprised three generations: "social insurance", "social security" and "social protection". The first of these covered the years 1919 to 1939, during which Conventions had been adopted to address the risks of maternity, employment injury, occupational disease, sickness, old age, invalidity, survivors and unemployment. The second such generation covered the years 1944 to 1964, during which Conventions had been adopted related to income security, armed forces, medical care, minimum standards, maternity, and equality of treatment. The third of these generations covered the years 1965 to 1988, during which Conventions had been adopted related to employment injury benefit, pension system, health system and maintenance of rights. It was against this background of the ILO's activities in the field of social security that the Committee of Experts had analysed the most up-to-date Conventions. The Committee of Experts noted with satisfaction that, despite the complex and technical nature of the chosen social security instruments, 116 governments had submitted a total of 424 reports. The Committee of Experts had also made full use of reports submitted under articles 22 and 35 of the Constitution by those member States that had ratified Conventions Nos 102 and 168.
48. The speaker indicated that the four surveyed instruments totalled more than 700 paragraphs, containing separate provisions. As it had not been practical to analyse these provisions article by article, the approach contained in the report form analysed the instruments by major issues, grouping the legal provisions in order to circumscribe the regulatory space. In accordance with this approach, the analysis of national legislations led the Committee of Experts to make a number of observations on relevant legal developments. This included the identification of the main types of mechanisms in member States for settling individual claims regarding the right of the beneficiary to complain and appeal in social security. The speaker emphasized the importance of this finding, as it detailed the mechanisms through which the provisions of the surveyed instruments could be properly applied. More particularly, the speaker pointed out that Convention No. 168 provided that the available complaint and appeal procedures should be simple and rapid. The Committee of Experts had noted that the Social Security Act in the *United States* required that notices about programme benefits be written in simple and clear language, and this legislation had led to the reflection on the expression "simple and clear language". In this regard, the Committee of Experts had stressed that decisions by the relevant administrative body should be explained to individual claimants in writing in simple and easy to understand terms.
49. In conclusion, the speaker underlined the unanimous view of the members of the Committee of Experts that the two Committees were the core of the ILO's supervisory mechanism and that many persons' right to life, health, safety and personal aspirations depended on this joint work.
50. 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.
51. At the outset, the Employer members welcomed the publication by the Office of the study on the impact of the Committee on the Application of Standards over the last 85 years. This publication also highlighted the impact of close collaboration of this Committee, the Committee of Experts and the Office. The Employer members once again expressed appreciation of the experts' invitation to exchange views with them during the December 2010 session of the Committee of Experts, as well as of the continued use of the format of dialogue on issues that began in 2006 rather than statements of position.
52. However, in the context of an expert's question during the December 2010 exchange of views concerning where she could find the Employer members' position on the right to strike, the Employer members wished to raise the following questions with regard to the

attention and awareness of the members of the Committee of Experts to the work of the Committee on the Application of Standards. These questions were driven in part by the fact that, although each of the experts was very accomplished in his or her own right, relatively few were labour and employment law experts, economists, experts on human resources or human rights. Moreover, the Employer members wondered about the individual orientation given to new experts when they joined the Committee of Experts on the supervisory machinery and the roles of the two Committees. They also requested information on whether the experts were given an in-depth briefing on this Committee's work of the preceding June when they met in November–December each year and whether the expert responsible for particular Conventions read in their entirety all of the country cases concerning the Conventions for which he or she was responsible. Finally, when an expert was assigned a particular category of Conventions, they queried whether he or she was given the most recent General Survey and whether a new expert would know where to look to find the comments of the Employer and Worker members on a particular Convention.

53. 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 Section, 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. 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.
54. With regard to cases of progress, the Employer members noted that a pilot project had been undertaken by the Office to construct a methodology for the measurement of progress specifically towards the application of Convention No. 87 and Convention No. 98. In order to develop this methodology, they suggested that statistics be kept of cases of progress *by Convention* and compared with cases of non-compliance and that the measurement of progress be further refined by developing *qualitative criteria*. The Employer members requested that this exercise be undertaken with extreme care and that ACT/EMP and ACTRAV be fully involved in the development of this methodology which they expected would eventually be used to develop parameters to measure progress in the application of other ratified Conventions.
55. Turning to the question concerning specific Conventions, the Employer members pointed out that their position on the issue of the right to strike had been stated on many occasions in this Committee in the context of the 1983 and 1994 General Surveys on Convention No. 87 and Convention No. 98, as well as in the context of many discussions on individual cases concerning Convention No. 87, in the plenary when this Committee's report was adopted and in the *International Labour Review*, Volume 144, Number 3, pp. 253–289 (2005). Although the Employer members had raised concerns for several decades over the experts' observations on the right to strike and the definition of essential services, the experts had not taken into account these views or responded to the analysis by the Employer members of the preparatory and negotiating history of Convention No. 87. If the experts did such a review, they would easily conclude that their observations on the right to strike and essential services were not in line with the text and the preparatory and negotiating history of Convention No. 87. In the context of the experts' proposal to create additional opportunities of direct

exchange of views between the two Committees in paragraphs 13 and 17 of the General Report, the Employer members requested the opportunity to discuss the right to strike at the earliest opportunity.

- 56.** With specific reference to the Indigenous and Tribal Peoples Convention, 1989 (No. 169), the Employer members were pleased to note that the general observation on Convention No. 169 in the experts' report followed the Vienna Convention on the Law of Treaties in taking into account the preparatory and negotiation history in its general observation. They recalled that the previous year they had not questioned that several articles of Convention No. 169 required consultation with indigenous and tribal peoples. Rather, they had complained about the corrective action requested 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, the implementation of infrastructure projects and the exploration and exploitation of natural resources. With respect to the consultation requirements, the Employer members recognized the essential importance of consultations by governments with indigenous and tribal peoples *before* undertaking any programmes for the exploration and exploitation of such resources. Where consultations had not been conducted, the Employer members were of the view that the government concerned should take immediate steps to correct this failure with urgency. They were pleased to see that the experts had confirmed the Employer members' views that consultations did not require agreement or consensus with the people consulted. Moreover, the Committee of Experts had stated that it was not a court of law and as a result could not issue injunctions or provisional measures, and the Employer members thanked the experts for taking into account tripartite constituent views.
- 57.** With regard to the Labour Clauses (Public Contracts) Convention, 1949 (No. 94), the Employer members noted that out of the eight observations on this Convention this year, six expressed regret that no government report had been received. Two other observations noted that the governments concerned had not provided any clear or new information to the issues raised by the Committee of Experts. The conclusion to be drawn was that ratifying countries, including developed ones, either did not see the need to report on the Convention or did not find it necessary to make efforts to implement it. The Employer members were of the view that the Convention had lost its relevance and recalled that the next denunciation period for this Convention was September 2012–13.
- 58.** Turning to Convention No. 158, the Employer members recalled that it was one of the most contentious ILO Conventions. The Employer experts from the Tripartite Meeting of Experts held in April 2011 pointed out that the Convention did not represent a universal model of employment protection. Many countries, such as Switzerland, Austria or Singapore, followed a different approach whereby they put the emphasis on enabling workers to find a new job as soon as possible, although these countries did provide for a certain legal protection against abusive dismissal. Thirty years after its adoption, only 36 countries had ratified Convention No. 158. While the flexibility provided for in the Convention was very limited, the Committee of Experts had further limited flexibility through its narrow interpretation of the Convention's provisions. For example, in the observation on Turkey concerning the application of adequate compensation in *Article 10*, the experts had concluded that "a penalty of three times the notice pay ... might be considered inadequate compensation for the purposes of *Article 10* of the Convention". Interpretations of this kind created additional uncertainty and made ratification of the Convention an incalculable risk. In these circumstances, ILO member States would be well advised not to ratify the Convention or to denounce it in the next denunciation period in November 2015–16.
- 59.** The Worker members highlighted that this year marked the 100th Session of the Conference as well as the 85th anniversary of this Committee. They welcomed the recent publication by the Office of a study on the Committee entitled *Dynamic and impact built on decades of*

dialogue and persuasion. Thanks to its close collaboration with the Committee of Experts and with the Office, the Committee contributed to a more balanced world economy by promoting social justice. The study drew attention to the ILO's unique role in defending the notion that economic development must go hand in hand with social development and that today more than ever its mission was to improve the lot of workers everywhere. It gave reason to hope that the ILO would develop innovative projects with concrete objectives under binding conditions so as to reassert the primacy of law in the observance of democratic principles.

60. Regarding the interaction between the General Survey and the recurrent items, the Worker members observed that in 2010 a first major modification was made to the format of the General Surveys, which now included an analysis of several instruments in the light of the Social Justice Declaration. The Committee would in future have to deal more rapidly with General Surveys that were larger than before and seek a consensus on the matter. The Committee of Experts' task, too, was even more complex than in 2010, in that the four instruments selected – Conventions Nos 102 and 168 and Recommendations Nos 67 and 69 – contained technical provisions and derived from different generations of social security standards. It was encouraging to note that the Committee of Experts had largely succeeded in its role and had overcome any obstacles and fears that might have arisen by presenting a document that, in its new composition, was still a legal survey. The General Surveys would thus retain their pedagogical value undiminished, thanks to their conformity with the goals of the Social Justice Declaration. The Worker members recognized therein the skill with which the Committee of Experts had embarked upon its task, and they preferred not to comment on the attempts to challenge the competency of its experts.
61. Regarding the tripartite meeting that was set up to consider Convention No. 158, the Worker members expressed their reservations with its outcome and follow-up, given that they would be unable to support a process of revision that systematically led to unilateral requests for Conventions to be repealed. Ultimately, the objective should be to take a very careful look at a number of complex issues surrounding the General Surveys and the Social Justice Declaration so as to arrive at jointly agreed conclusions that were conducive to social progress, within the framework of a globalization that was based both on a form of economic growth and on the promotion of workers' rights. If that was to happen, then all future discussions concerning the General Surveys needed to be reflected in detail and in a properly documented manner in the *Provisional Record* so that appropriate lessons could be drawn from the machinery set in motion by the Social Justice Declaration.
62. It was the understanding of the Worker members that according to the criteria of the Committee of Experts, cases where it expressed its "satisfaction" or "interest" did not in any way imply that the countries concerned were in full compliance with the ILO's standards. There were instances where international labour standards might be applied only partially or posed certain problems, and the countries concerned could not use their presence on the list of interesting cases to try and avoid their own case from being examined by the Committee. It was therefore important that more time be devoted to cases where progress had been recorded, so that the Committee could hear what the workers of the countries concerned felt about the situation.
63. Finally, it was their view that the report of the Committee of Experts should contain a specific chapter on governments' follow-up to the conclusions reached at the preceding session, without its entailing any modification to the regular submission of national reports. It would also be most useful if a section of the General Report could be devoted to a summary of that information, some of which already appeared in the report, especially with respect to the findings of the various high-level missions.

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64. A Worker member from Colombia requested that the Committee observe a minute of silence to mourn the assassination of two trade union leaders in Colombia. The Chairperson granted this minute of silence to respect workers from all over the world who had died at the workplace or for having exercised their fundamental rights at work.
65. 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 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. He observed that the ILO's response to the employment and social policy consequences of the economic and financial crisis continued to be a major part of its activities since the last Conference. He stated that to prevent a downward spiral in labour conditions, the 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.
66. IMEC welcomed the Committee of Experts' continuous efforts to enhance the quality of reporting and it encouraged the Committee of Experts to continue with the current format of the report developed in the recent years. IMEC appreciated the clarifications on the criteria for identification of "cases of good practice" and "cases of progress" and the highlighting of cases where practical guidance to member States through technical cooperation was needed. Regarding the idea of creating additional opportunities for the direct exchange between the two Committees, in addition to the two Vice-Chairpersons of the Conference Committee, the Chairperson of the previous session of the Conference Committee should also be invited to participate in such meetings. IMEC hoped for quick replacement of leaving experts within the Committee of Experts.
67. Finally, IMEC was pleased to note that the Office continued good cooperation with international treaty bodies and the Human Rights Council, including in the framework of the Universal Periodic Review Process. It also appreciated the Office's efforts to support the ILO supervisory bodies and called upon the Director-General to ensure that the essential work of the Standards Department was among his top priorities.
68. The Employer member of Ecuador observed that the Committee of Experts needed to take fully into account the comments of the social partners, as a way of strengthening social dialogue and guaranteeing that tripartism, which was the basis of the ILO, was respected. He regretted that in one particular case the Committee had failed to take into consideration the comments of an employers' organization regarding the application of the Convention.
69. The Employer members thanked the Worker members for putting forward ideas with regard to the discussion of cases in the Conference Committee, particularly that relating to the follow-up to conclusions by governments, which deserved further consideration by both the Employer and Worker members.

Fulfilment of standards-related obligations

70. The Employer members pointed out that even though many changes had been made in reporting requirements in recent years to reduce the burden of member States, failure to meet constitutionally mandated reporting requirements continued to be a serious problem that undermined the supervisory system. It was particularly notable that there were 669 cases involving 51 countries where no replies had been received to comments made by the experts. This was regrettable and undermined the supervisory system as well as the credibility of the

government concerned. Until such reporting failures improved, the Employer members believed that it was in this Committee's interest to place on the list of individual cases each year at least one of the cases where the experts had provided an observation in Part II of Report III (Part 1A). They requested that the experts specifically footnote, in the General Report, cases where they have formulated an observation for the failure to respond to comments to help this Committee find them more easily, or alternatively, somehow highlight these cases in the footnote where all failure to respond to comments could be found, and put them in the table of contents.

71. The Worker members observed that there had been little improvement in the enforcement of obligations related to ratified Conventions, in terms either of the proportion of replies or of the observance of deadlines. The failure of certain member countries of the European Union (EU) to meet the deadlines contrasted with the encouraging information noted by the Committee of Experts with regard to the contributions of the workers' organizations. The Worker members emphasized the importance of technical assistance, as a means of helping countries both to fulfil their reporting obligations and to implement the Conventions. The Committee now systematically suggested technical assistance for all countries that were prepared to demonstrate their good will. The one-time supplementary budget allocation of US\$2 million for the year 2012–13 was very much to be welcomed in this connection, inasmuch as the choice of countries that were offered such technical assistance would be determined in part by the discussion of the individual cases.
72. IMEC shared the deep concern of the Committee of Experts that the number of comments to which replies had not been received had significantly increased over the past two years. As comments were becoming more comprehensive and complex, it could be helpful to highlight the essential questions to which the governments were requested to reply. In this regard, IMEC believed that technical cooperation was the key for an enhanced follow-up of cases of serious failure and the Committee of Experts' indications were helpful for the Conference Committee to continue with more systematic references to technical assistance in its conclusions.

The reply of the Chairperson of the Committee of Experts

73. With respect to the point raised by the Employer members on various Conventions, the speaker indicated that he had taken due note of the issues raised, and would bring these matters to the attention of the Committee of Experts at its forthcoming session in November–December 2011. Concerning the issue of tripartite governance and ILO standards supervision, he underlined that the Committee of Experts was a neutral and impartial body in an organization with a tripartite governance system.

The reply of the representative of the Secretary-General

74. 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 address the queries raised by the Employer members regarding the expertise of the members of the Committee of Experts. First of all, she pointed out that members of the Committee of Experts were appointed by the tripartite Governing Body, on the basis of a recommendation of the Officers of the Governing Body. The expertise of the members of the Committee of Experts respected a number of criteria agreed to by the Officers of the

Governing Body. Moreover, the majority of the members of the Committee of Experts were labour law experts, whilst the others were experts in public, international or human rights law. With regard to the orientation that the Office provided to new experts, she emphasized that every new expert was given a thorough briefing upon their arrival in Geneva. Prior to their arrival in Geneva, they were provided with a wide range of documentation which they were expected to read, and which included the following: (i) the ILO Constitution; (ii) Parts I, II and III of the *Record of Proceedings* of this Committee; (iii) an internal handbook for members of the Committee of Experts developed by the Office; (iv) a handbook on procedures entitled “Handbook of procedures relating to international labour Conventions and Recommendations”; (v) a complete set of Conventions and Recommendations; (vi) a copy of the Global Jobs Pact and of the 2008 Social Justice Declaration; (vii) a copy of the *Rules of the game*; (viii) a copy of the *Digest of decisions and principles of the Freedom of Association Committee*; (ix) copies of preceding General Surveys with attention drawn to the most recent General Survey; and (x) information on ratifications and standards-related activities as well as technical assistance provided by the Office between two sessions of the Committee of Experts.

75. In addition, she personally provided a briefing to every new expert on the functioning of the Committee of Experts as well its interaction with this Committee. She pointed out that no new expert examined a set of Conventions assigned to him or her alone; he or she examined these Conventions along with another longer-standing member of the Committee of Experts. The Office provided all experts with the best possible support.
76. Finally, she reaffirmed the commitment of the Department to upscale technical assistance to ILO member States and social partners on their standards-related obligations. In particular, the Office would provide a lot of training to the tripartite constituents on the specific areas of standards-related activities which were more challenging. The Office would be as responsive as it could since member States needed not only to ratify but also to implement the ratified Conventions.

C. Reports requested under article 19 of the Constitution

General Survey on social security and the rule of law

77. The Committee held a discussion on the General Survey concerning social security instruments in the light of the 2008 Declaration on Social Justice for a Fair Globalization⁷ of the Committee of Experts on the Application of Conventions and Recommendations. In an effort to align the General Surveys with the recurrent item reports, the Governing Body decided that the General Survey would cover two Conventions – the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), and two Recommendations – the Income Security Recommendation, 1944 (No. 67), and the Medical Care Recommendation, 1944 (No. 69).
78. The General Survey took into account information in the reports communicated by 116 member States (424 reports in total) under article 19 of the ILO Constitution. According to its usual practice, the Committee of Experts had also made full use of the reports

⁷ ILC, *General Survey concerning social security instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization*, Report III (Part 1B), 100th Session, Geneva, 2011.

submitted under articles 22 and 35 of the ILO Constitution by those member States that have ratified Conventions Nos 102 and 168. Observations and comments received from 47 organizations of employers (six reports) and workers (41 reports) from 32 countries were also reflected.

Recurrent discussion and purpose of General Surveys

79. The Employer members stated that this was a General Survey with a determined focus, as it indicated that there was now a clear need for the adoption of new complementary approaches to help guide future policy choices of ILO constituents, thus undermining the bona fides and relevance of the Conventions Nos 102 and 168, which had been determined to be up to date by the Governing Body. Such proposals were beyond the mandate of the Committee of Experts, as ILO standards policy and the proposal of new standards were the prerogative of ILO tripartite bodies. The Conference Committee on the Application of Standards was not a policy committee, and there was nothing in the Social Justice Declaration, 2008, or the recurrent review process requiring the Committee, or the Committee of Experts, to address policy issues. Furthermore, by mainly laying the groundwork for a number of proposals to further develop ILO standards in the field of social security, the General Survey did not provide an in-depth analysis of the existing standards. The purpose of the General Surveys was to help the tripartite constituents to better understand how to be in compliance, and the value of the classical General Survey was that the majority of the text is devoted to clarifying what the instruments require; indicating the variety of ways countries have implemented the provisions; emphasizing the inherent flexibility of most standards; and indicating where implementation falls short of the requirements of the standard. Having a copy of the relevant ILO standards appended to the Survey also facilitated constituents' understanding of the instruments. It was extremely useful for the Committee to receive a holistic picture from the Committee of Experts of what full implementation of the ILO instruments means in law and practice.
80. The General Survey on social security had limited value to the central supervisory purpose of the Committee, namely compliance of full implementation of voluntarily ratified Conventions, as it did not provide information on the technical challenges that ratifying States have had or how they have addressed them to the satisfaction of the Committee of Experts. Most of the General Survey was about the evolution and trends in social security, and the relationship between social security and the ILO strategic framework, and it was difficult to discern what either of the Conventions required. Social security standards were complicated and presented challenges to implementation which it would have been helpful to explain in the Survey. The Employer members stressed that the Committee of Experts are to be neutral fact finders to facilitate the work of this Committee, and not the work of the recurrent review committee. This kind of General Survey, going beyond the classical General Survey, was not relevant to the Committee, and there was no purpose in discussing such a survey. In this context, they made reference to article 7 of the Standing Orders of the Conference.
81. The Worker members welcomed the way the Committee of Experts had addressed the challenges of social security. Overall, the General Survey gave extremely good direction both for national policy and for the policies of the international community in the area of social security for the future and for the work of the Committee. In this regard, they particularly emphasized the sections dedicated to the manner in which the standards on social security were linked to other ILO standards. For example, a link was made between social security, on the one hand, and the right to freedom of association, collective bargaining and collective action, on the other. Indeed, in many countries, the first forms of social security were born out of the right of workers to organize and to assist each other financially. In addition, the right to collective bargaining and the right of collective action

were not restricted to labour issues in the strict sense, but touched equally on the field of social security. Social security was also important in the fight against poverty and child labour. Tripartite dialogue was equally relevant because it was necessary to actively involve the social partners in social security policy.

- 82.** The Government members of Argentina, France and Spain expressed their Governments' keen interest in the General Survey, which offered a sweeping array of information and proposals. The Government member of Austria also indicated that the General Survey was very comprehensive and informative and appreciated the many good practice examples from the various countries. The record number of replies to the questionnaire clearly highlighted the importance given to the subject.
- 83.** The Government member of Canada stated that the alignment of the theme of the General Survey with this year's recurrent discussion on social security was useful and timely and that the readjustment of the article 19 reporting cycle would serve to maximize the input of the Committee on the Application of Standards into such discussions. Future reports should be more focused in order to address the application of ILO instruments in accordance with the mandate of the Committee of Experts and not venture into broader policy analysis and recommendations. While welcoming the enhancements which facilitated the reading of the report, like the bolding of certain parts and the "story lines" on good practice provided in a number of sections, she indicated that an executive summary would have been appreciated, given the length of the report.
- 84.** The Worker member of Spain welcomed the General Survey, which reminded the Committee of the shared principles behind social security instruments, notably the overall responsibility of the State, social solidarity, compulsory coverage, collective financing, and participation of the social partners, and was critical of privatization and of consequent failures to comply with basic principles. The General Survey advocated social protection based on rights, not on charity, and reiterated the need to strengthen the legal framework established by current social security standards. There was a certain disparity between the General Survey by the Committee of Experts and the report of the Office on the recurrent discussion. The speaker stated that he did not share the pragmatic approach taken by the recurrent discussion report when it indicated that results mattered most and, therefore, it was not necessary to maintain standards on which the structure of social security systems should be based, which to a certain extent justified the privatization of social security. No social policy should leave the welfare of those it covered to the whim of the markets.

Support for the basic principles of social security

- 85.** Recalling Article 22 of the UN Declaration on Human Rights, the Employer members stated that the right to social security was a qualified right, dependent on the organization and resources of each state. The principle of social protection through social security should be supported, provided that it was well managed, was responsive to the national circumstances and was flexible. If these factors were taken into account, social security could play an important role in ensuring a balanced labour market, maintaining and improving levels of employment, improving skills, productivity and competitiveness. Significant changes in the labour market had occurred since the adoption of the existing social security instruments, associated with globalization, changes in production systems, changing demographics, labour mobility, and advancements in gender equality. While sustainable social security systems were a precondition for the functioning of modern economies and societies, the ideal of full horizontal and vertical social security coverage was not achievable in the foreseeable future. Sustainable enterprises that provided full productive employment were not only the basis of decent work and wealth creation, but also for social security. The emphasis of the

Committee of Experts on a rights-based approach therefore diverted attention from the fact that social security was dependent on the economic means and development of a state.

- 86.** The Employer members did not consider it credible, in the light that few developing countries had ratified the Conventions, to state that “social security has evolved into an instrument for promoting economic development ...”, predicated on the view that the “ILO mandate in social security ... has largely outgrown the standards with which it has to be implemented”. ILO standards were minimum standards and not the ceiling or the objective. By suggesting unachievable, unsustainable standards, the Committee of Experts had gone well beyond its mandate. In the current economic environment and the overall level of development worldwide, the Income Security Recommendation, 1944 (No. 67), and the Medical Care Recommendation, 1944 (No. 69), were unattainable. The main contribution of the General Survey to the recurrent review on social security was to establish that social security frameworks were expensive, were not within the means and capacity of the majority of countries as the classic system did not extend to the informal, rural and subsistence sectors which comprised the bulk of the economies in these countries, and could jeopardize the financial stability of national economies and the global economy.
- 87.** The Worker members recalled that attempts to reduce the level of social protection, or to oppose the strengthening of social security, had occurred several times in the past since the first oil crisis of 1973 in the name of rebalancing public finances. In the early 1980s, social security had suffered a wave of blind neo-liberalism that had shrunk public powers. More recently, the ideology of the active welfare state had hardly recognized social security as an objective in itself, threatening to reduce it to a simple lever of employment policy. At the turn of the twenty-first century, concerns were expressed about the rising costs of aging and the inability to maintain social security without drastic intervention. It had been workers in developing countries who had suffered most from this situation, with the delayed introduction of social security systems or, in cases where such systems existed, had suffered the effects of structural adjustment programmes imposed by the IMF and World Bank. The situation had been exacerbated because the development cooperation programmes and the fight against poverty had mistakenly overlooked the need for a strong social security system. Thus, the Millennium Development Goals had long paid little attention to the importance of social security in meeting the goal of halving extreme poverty. It had been a great achievement by the ILO to succeed in making decent work a top priority. The Worker members welcomed the fact that, in line with that objective, the theme of a decent life had attracted much attention in recent years. Those two concepts were indeed inextricably linked as reflected in the Social Protection Floor Initiative.
- 88.** Only since the beginning of the global financial and economic crisis at the end of 2008 had the ILO’s approach to social security received support and many observers had begun to understand the importance of social security as an automatic stabilizer and how its strengthening could contribute towards averting the risk of a deep economic depression, concerning not only unemployment, but also pensions, health care and family support. The most striking examples in that regard were the advances reported in the United States on health care and the beginnings of a real social security system in China. Great advances had been made in the context of the Global Jobs Pact, adopted by the Conference in June 2009, which explicitly called on countries to strengthen their social security, and notably to extend the duration and coverage of unemployment benefits. Two years later, what remained of those commitments? It appeared to have been a return to “business as usual”. Worse, in many countries, social security had become the main target of consolidation programmes in public finance, and welfare recipients were the main victims of strategies to exit a crisis that they had not caused. The phenomenon was particularly marked in European countries which, under pressure from the EU and the IMF, had had to adopt stringent consolidation programmes, which neglected not only the ILO’s principles of social security but also the requirements for social dialogue and tripartism. Other countries faced the negative effects of

international free trade agreements on their social security systems, with the risk of privatization of pension systems and health care. Pressure was also exerted by multinational companies on the social protection systems of some countries.

- 89.** The Worker members expressed full support for a rights-based approach to social security since social security was not a favour granted but a human right, with the obligation for the State to guarantee this right and for the social partners to cooperate fully in it. That presupposed doing everything to protect insured persons against arbitrary factors, to protect the funding of social security against upheaval in the financial markets and budget cuts, to ensure access to social entitlements and to safeguard their binding nature. An example had been set by States, which had incorporated the right to social security in their Constitution. The Worker members had also supported the explicit choice – based precisely on the rights-based approach – in favour of a public, collective and jointly funded social security system, which would not be abandoned to free market forces or to the willingness or unwillingness of employers to fund it. That choice was based on the observation that it was precisely in the countries that had opted for private, market-driven models, especially for pensions, that the financial crisis had been disastrous. The case of Chile, which had been the subject of a discussion by the Committee in 2009, was one regrettable example amongst those of many other countries, particularly in Latin America. As the Committee of Experts had emphasized, collective funding and social solidarity were inextricably linked and “the way to progressive development of social security lies in strengthening and extending social solidarity as the manifestation of the collective values of social cohesion, mutual assistance, ... compassion and care for the weak”.
- 90.** Social security was a necessary lever for economic development and should not be regarded as an obstruction to economic growth or a public expense, but as an investment. It could therefore become a component of job recovery strategies. As stressed by HE Ms Tarja Halonen, President of the Republic of Finland, during her address at the opening of the Conference, Finland and other Nordic countries had based their systems on the welfare society model, while remaining among the most competitive countries in the world. It was to be hoped that the ILO would manage to convince financial institutions, such as the IMF and the World Bank, of this logic. On the other hand, the specific objectives of social security could not be neglected. In that regard, a worrying trend was emerging, consisting of reducing social security to a mere instrument of economic and employment policy. In national and international political debates, heavy emphasis was being placed on the need to reform social security in order to increase the rate of employment. As the Committee of Experts had rightly emphasized, social security could not be a substitute for an active employment promotion policy. Social security was currently experiencing modernization and adaptation to the new problems of society and to political challenges. The latter included: the substantial share constituted by the informal economy, which often escaped social security coverage; the increasingly precarious nature of jobs and careers, which also gave rise to a social protection deficit, especially for young people; and the question of equality between men and women and its consequences in terms of family benefit rights, the pension age and survivors’ benefits (on the last point, the anachronistic nature of certain provisions of Convention No. 102, which refers only to widows and not to widowers, should be noted).
- 91.** Finally, the Worker members observed that the General Survey could have devoted greater importance to the issue of migration as a social security challenge for policy-makers. The General Survey skirted over the issue, dealing with it only briefly in relation to equality of treatment for migrants and minimum rights for undocumented migrants. However, the issue deserved more sustained attention, especially from the ILO, because of the greater intensity of migratory flows and the problems it posed, in particular for the portability of rights, and because of the methods by which certain countries tried to discourage immigration by making access to national social security rights more complex.

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92. The Government member of France indicated that strengthening social protection was one of the four priorities of the French presidency of the G20, which could play a very useful role in that area. Since the Pittsburgh and Washington Summits, and the adoption by the ILO, in 2008, of the Declaration on Social Justice for a Fair Globalization and, in 2009, of the Global Jobs Pact, a certain momentum was clearly building up. France had always attached special importance to social protection as being conducive not just to social justice and labour stability but also to economic growth. The speaker congratulated the ILO on the efforts it had been deploying for almost a decade in favour of social coverage for all. That did not mean promoting a single social model, but rather encouraging all countries to adopt a basic social security standard that was adapted to their particular economic and social circumstances. It was possible to make progress in that area while respecting the sovereignty of each State. Ratifying ILO Conventions was of course important, but it was equally important to contribute to the effective implementation of the fundamental principles and rights of social security everywhere.
93. The Government member of the United Kingdom also recognized the critical role of social protection in poverty reduction, particularly in helping persons enter or return to the labour market. He welcomed the expansion of social protection systems in middle-income countries in the last decade, but noted that coverage remained scarce in low-income countries, where the challenge of sustainable domestic financing was qualitatively different.
94. The Government member of Morocco recalled that the right to social security was a specific social and economic right of constitutional rank in various countries, and that it was therefore naturally the subject of international instruments. Establishing and ensuring the effectiveness of a social security system required provisions that were capable of responding to the different risks to which individuals were exposed.
95. The Employer member of Spain referred to the observations in the General Survey concerning the “retreat of the welfare state in the 1990s”. While in agreement with the General Survey’s findings on the odd effects of unemployment, he could not endorse the statement that “emphasis on competition [hampered] fair and human treatment of workers”, or the statement that “deregulation of the labour market [threatened] social cohesion”. On the contrary, healthy competition contributed to social cohesion.

Convention No. 102

96. The Employer members stated that the General Survey demonstrated that ILO social security standards were more relevant and achievable in developed countries. They objected to an interpretative declarative statement on the adaptation of certain provisions of the Convention as this could have the same result as revising the standard, which was beyond the authority of the Committee of Experts. A review of the report forms was also of concern, as the changes might deviate from the text of the Convention.
97. The Worker members expressed the view that the implementation of Conventions Nos 102 and 168 should be examined so as to widen their application from the point of view of increasing the number of ratifications of these Conventions and increasing social security coverage in every country. Expressing strong support for the specific recommendations made by the Committee of Experts for future work on social security standards, the Worker members stressed that the efforts to encourage as many countries as possible to ratify Convention No. 102 should not be undermined. It was to be hoped that certain big countries would take this step, as Brazil had done in 2009, and Argentina was planning to do. In this respect, if removing various anachronisms from the text of Convention No. 102 would help, without weakening the level of protection, it should be done without hesitation.

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- 98.** The Government member of France stressed that Convention No. 102 was a highly valued instrument in terms both of its overall conception and of the level of the standards it promoted and that it was still altogether relevant for a number of countries. If the obsolete terminology and the definition of the standard beneficiary posed an obstacle to its ratification, any simple and rapid solution that might be proposed to resolve the difficulty would be supported in order to promote equal treatment of men and women. The most efficient solution would seem to be to devise an interpretative statement of principle, combined, if necessary, with an adaptation of the report forms.
- 99.** The Government member of Austria indicated that the status of Convention No. 102 should not be questioned nor diminished and cautioned that, in future, even industrialized countries which have ratified the Convention could take a defensive line on this Convention in the context of pension reforms and continuing deterioration of pensions. A time could come when the Convention may actually help avoiding further deterioration of the situation. A discussion on a revision or adaptation of Convention No. 102 would only lead to greater flexibility and lack of commitment regarding its substantive provisions. Under the present circumstances, a far-reaching instrument like Convention No. 102 could no longer be negotiated.
- 100.** The Government member of the United Kingdom also indicated that existing ILO social security Conventions, including Convention No. 102, should not be changed, as modification would carry the risk of the loss of the benefits it provided. However, the speaker expressed tentative support for the development of interpretative guidance on the provisions of Convention No. 102, or the review of the report forms of the social security Conventions, provided that these actions would not extend the scope of the existing Conventions and that new initiatives would not cut across matters of national competence.
- 101.** The Government member of Morocco reported that Morocco had begun the procedure for ratifying Convention No. 102. The social security system in Morocco had developed significantly since it was established in 1972 and today provided all the benefits set out in Convention No. 102, except unemployment benefits, on which tripartite talks had resulted in the preparation of a draft unemployment benefit scheme to be adopted in the near future. Social protection was also one of the priority areas discussed in the context of the national tripartite agreements concluded since 1996. In that regard, the last agreement, signed in April 2011, provided for the expansion and strengthening of the social protection system.
- 102.** The Government member of Argentina informed the Committee that her Government had just ratified Convention No. 102 and that the instrument of ratification would be deposited in the coming days. Social security was indispensable to guarantee access to fundamental rights for those most in need. The improvement of the living conditions of the population required a social policy and constituted an investment because increases in the minimum income had an impact on the internal market and on consumption. The privatization of the pension system implemented in the 1990s, which had led to unacceptable and insufficient minimum benefits, had been resolved through nationalization. This made it possible to guarantee a higher minimum income and upward mobility for retired persons through sustained increases based on rises in contributions and subsidies from public finances. A universal allowance had been established for children below the age of 18 whose parents were unemployed. This extension had been fundamental for the eradication of child labour by giving incentives to ensure the integration of children in schools and access to permanent medical controls. Argentina had also introduced the possibility for the social partners to reach agreements in the framework of collective bargaining, in order to provide social protection to temporary rural workers.
- 103.** The Government member of Canada stressed that ILO standards, such as Convention No. 102, could play an important role in promoting the extension of social security for all.

Canada's social security system covered all nine contingencies addressed in the Convention. The discriminatory and overly detailed provisions of Convention No. 102 pose serious barriers to its wide ratification, not only in Canada but in many parts of the world. The Convention was the product of post-war industrial society and reflected the labour market and family structure existing in the 1950s and 1960s. It did not reflect societal evolution, including the high level of female labour market participation. Even though the Committee of Experts had identified some possible ways of addressing these issues, rigid positions, including those of the Committee of Experts, with respect to maintaining existing levels of benefits, made necessary changes unlikely.

- 104.** The Employer member of Uruguay considered that, despite the fact that Convention No. 102 set minimum standards that some countries could not attain, calls were made for the promotion of the Convention and for the strengthening of the legal framework. These calls did not correspond to the new realities. While the gender language could be clarified through an interpretative declaration, the speaker did not agree with the adoption of a Protocol or a new Convention and considered that solutions would not be found to the problem of the informal economy through a new Convention.
- 105.** The Worker member of Spain considered that the Committee on the Application of Standards should request the ILO to make greater efforts to promote Convention No. 102. With regard to adapting Convention No. 102, there were three options: (1) to make limited revisions to the Convention; (2) to adopt a Protocol integrating gender-neutral language; or (3) for the Committee of Experts to prepare an interpretation of certain provisions of the Convention. The second and third options would strengthen the foundations of Convention No. 102.

Convention No. 168

- 106.** The Employer members considered that the low level of ratification of Convention No. 168 highlighted the flaw of establishing an advanced set of standards for industrialized countries which were not ratified by them and were ignored by developing countries. With such low levels of ratification, they did not consider it sensible to promote more and higher and more comprehensive social security standards. The low levels of ratification of these standards highlighted the lack of economic means to support existing frameworks or to support their expansion. It was not evident that equipping this Convention with a flexibility clause would improve its acceptance. While some ILO social security standards continued to be valid, there were also provisions that were outdated or not applicable in less-developed countries.
- 107.** The Worker members raised the question of how to facilitate ratifications of Convention No. 168 since, with only seven ratifications, it had certainly not met expectations. They further referred to the manner in which social security resources were more and more frequently used to finance employment policy and stressed that if the returns were lower than the mobilized resources, social protection would bear the cost. The fundamental principles of social protection were sometimes ignored within the framework of policies developed to get unemployed people into work. In particular, pressure was brought to bear on unemployed people, but also increasingly on people with illnesses or disabilities, to accept any job at all. Such practices ran completely contrary to the notion of suitable employment that protected unemployed people from workfare-type approaches. Going beyond social security standards, this also constituted a negation of the fundamental principle enshrined in the Declaration of Philadelphia that labour was not a commodity.
- 108.** The Government member of Canada stated that the fact that Convention No. 168 had been ratified by only seven countries spoke of its lack of universality. The Committee of Experts acknowledged that poor ratification of this Convention might be explained by the fact that its

standards of protection against unemployment were relevant only to countries with developed formal economies and labour market policies.

- 109.** The Government member of the United Kingdom indicated that the low rate of ratification of the Convention indicated that the introduction of a flexibility clause, to promote ratification, might be worth pursuit.
- 110.** The Employer member of Spain considered that a more detailed analysis should have been included in the General Survey on the real reasons behind the low number of ratifications of Conventions Nos 102 and, especially, 168. More explanations were therefore needed on the link between systems to protect against unemployment and the effectiveness of active labour market policies and, in particular, on integration and coherence between the provisions of Conventions Nos 168 and 102 with a focus on “flexicurity”, which, in his opinion, was necessary in order to modernize social protection systems. It was doubtful that Convention No. 168 could be considered as a reference in the current debate on the Social Protection Floor. Increasing the length and coverage of benefits was not in itself always positive, but needed to be seen in the context of promoting employment.

Guidelines on the sound governance of social security

- 111.** The Employer members indicated that the economic crisis had made clear that guidelines on sound governance were needed and that the social security systems in many countries were not sufficiently crisis resistant due to a lack of prudent finance prior to the crisis. Social security systems should be well administered, sustainable, and the State should assume responsibility through the creation of reserve funds. Employment and social security policies should be coordinated and aligned with fiscal policies. The adoption of a new ILO social security instrument focusing on undeclared work, social security evasion and fraud, while relevant appeared, however, premature.
- 112.** The Worker members considered that guidelines should be drawn up on “good governance” and challenges linked to fighting social fraud should be identified. They underlined that there was a growing need to put an end to social fraud, which undermined the financial basis of social security and the whole society. This aspect fell within the broader framework of “good governance” of social security, which was not yet sufficiently well covered by ILO standards. As to the challenge of monitoring the management of private funds, the financial crisis had demonstrated the vulnerability of such funds and therefore the vulnerability of those who believed that they were covered by them. The Committee of Experts had drawn a particularly hard conclusion, noting that “such notions as accountability, transparency, solidarity, participatory management, prevention, etc., [were] absent from the vocabulary of many private social security schemes”. They recalled that some countries were now establishing a link between social benefits and economic and budgetary means and not respecting the provisions of Convention No. 102 requiring that the amount of benefits should increase at the same rate as the cost of living. Referring to the pressure exerted, particularly at European level, against automatic adjustment mechanisms and the need to ensure that the income of unemployed people increased at least at the same rate as that of salaried workers in general, the Worker members appreciated the fact that the Committee of Experts considered automatic adjustment of benefits to be the most advanced practice in this respect.
- 113.** Several Government members expressed their support to the proposals made by the General Survey with regard to the need for sound governance and protection of social security funds and for the development of guidelines or codes of practice that would provide more technical advice. They stressed that the ILO should act as a clearing house of best practices and focus on information gathering, research and analysis and the dissemination of good practice. The ILO should also support information exchanges and collaboration between governments and

the social partners, as well as other international organizations working in the field of social security, in order to avoid duplication of efforts.

Social security coverage

- 114.** The Government member of India indicated that in recent years the social protection policy was shifting from a scheme-based approach to a rights-based approach for all workers, including unorganized workers who constituted 93 per cent of the workforce. The flagship Mahatma Gandhi National Rural Employment Guarantee Act was probably the best example. Under this scheme, rights to work were given to 23 million beneficiaries. The Right to Education Act provided a guarantee to free and compulsory education to all children below 14 years of age. The National Health Insurance Scheme guaranteed the right to health to 54 million beneficiaries. The Government was also contemplating the Right to Food Security Act. There was a clear need for adoption of new complementary approaches to ensure that the social protection system was in tune with the changing demands of the international environment in the light of political, economic and social developments. Social protection should be implemented depending on the social and economic circumstances in member States. While there could be no uniform social security model, each country had to determine a national strategy for working towards social security for all. This should be closely linked to its financial resources, employment strategy and other social policies. An endeavour of this magnitude would require a multi-dimensional, well-integrated and efficiently delivered structural response that would include legislation, suitably tailored welfare schemes, enhancement of social awareness, involvement of stakeholders and committed social partners, especially employers. Proper emphasis should also be placed on better supervision through an efficient enforcement machinery and sustainability of the social assistance schemes. Though the State had a priority role in the facilitation, promotion and extension of social security coverage, it should largely also be a shared responsibility of the social partners through public/private partnerships and corporate social responsibility initiatives.
- 115.** The Government member of Senegal indicated that social security increasingly appeared to be the way ahead for finding acceptable and effective solutions to problems caused by the growth in poverty. Hence, decent work could only be properly promoted by a realistic strengthening of social security at national level. Although the General Survey focused on a rights-based approach to social security, the goal of halving poverty by 2015 should also lead to redefining the concept of social security and going beyond the unjust models of growth which had been implemented so far. Even though Senegal had made progress in the field of social security, as noted in the General Survey, it was still facing problems related to the performance of existing formal and alternative social security systems, which showed the limitations in their capacity to respond to various needs and manage all risks. Hence, Senegal had launched a number of initiatives at sector level and had undertaken to harmonize them by placing the preparation of an integrated, multi-sector national social protection strategy on the agenda of the Poverty Reduction Support Credit which it was negotiating with the World Bank. Real promotion of decent work should involve vigorous advocacy vis-à-vis all stakeholders to defend the establishment of a social protection floor, which had now been accepted by everyone. In that regard, technical cooperation had a major role to play.
- 116.** The Government member of Ethiopia indicated that his country had placed great emphasis on the expansion of social security coverage as part of the fight against poverty. The Government had set the goal of transforming the country into a middle-income one by the year 2020 and had launched a five-year Growth and Transformation Plan (GTP), the main objective of which was to transform the economy from agriculture-led to industry-led. Important measures were taken in 2011 to expand social security: the Health Insurance Proclamation has been enacted; the Social Security Proclamation for civil servants was

amended; a new proclamation on social security for the private sector is expected to be adopted by the Parliament very soon; the amendment of the developmental social welfare policy, which had served since 1989, was well under way; finally, the national employment and national occupational safety and health policies were being drafted and consultations with stakeholders were under way.

- 117.** The Government member of Oman, speaking on behalf of the countries forming part of the Council of Ministers of Labour of the Gulf Cooperation Council (GCC), which include Bahrain, Kuwait, Oman, Saudi Arabia, Qatar, United Arab Emirates and Yemen, indicated that the GCC countries had progressive legislation on social security providing effective social protection to workers through a social protection network. The GCC went even further by expanding the scope of that protection to include all GCC citizens when they are employed in any member State of the Gulf Council.
- 118.** The Employer member of Ecuador stated that the General Survey indicated that the Constitution of Ecuador was one of the most advanced, giving details of social security benefits which, in reality, did not exist in his country. In the same paragraph, it was stated that the social security system in Ecuador was based on redistribution, supplemented by a system based on private initiative and individual contributions. Although this was laid down in the Constitution, there were no private contributions owing to a 2002 decision of the Supreme Court of Justice that had suspended the relevant provision. Furthermore, of an economically active population of more than 5 million, only 2 million were covered by social security. The debts accumulated by the State were unknown, the last actuarial study having been carried out by the Ecuadorian Social Security Institute in 2004. Ecuador was therefore not the best example for other countries.
- 119.** The Worker member of Kenya stated that the longstanding contributory social security scheme was in the process of being transformed into a provident scheme. Informal workers could now voluntarily join the scheme and pay contributions depending on their wishes and abilities. All employers, including those with a single employee, including domestic employees, were under an obligation to contribute to this scheme. Under the Bill of Rights Chapter every person had the right to social security and the State was obligated to provide appropriate social security to persons who were unable to support themselves. However, the Government was faced with dwindling economic growth due to high oil prices and other economic factors. The governments of developing countries needed assistance in order to put in place universal social security schemes covering all citizens.
- 120.** The Worker member of Pakistan referred to the impact of the financial crisis resulting in increased income gaps and poverty, and urged ILO constituents to take measures to extend their social security schemes to all workers, including workers in the informal economy and migrant workers. There was a need to promote gender parity and well-designed and managed social security systems based on transparency and sound governance. While Pakistan was the sixth largest country in terms of labour force, the Government had, in spite of this challenge, taken measures to ensure the extension of social security protection to all workers. These measures included the entitlement to old-age and survivor benefits, the entitlement to medical care, disability and sickness benefits, and the establishment of a welfare fund providing, inter alia, for scholarships. Finally, there was a need for political will to assist countries in their efforts to extend social protection, in particular, through measures to ensure fair trade, the transfer of technology, debt relief and assistance in democracy building.
- 121.** The Worker member of Senegal emphasized that in developing countries the key issue remained that of the eligibility of the informal sector for social protection. The problems also included coverage for the risk of illness in the private sector in cases where employers, faced with cash-flow problems, failed to pay their contributions to the system, thereby depriving workers of protection. In the public sector, the insured person's share often had to be paid in

cash and many workers did without medical care because of the reduction in their purchasing power. Difficulties also remained with regard to retirement and surviving spouse's benefits, the amounts of which were very small. The lists of occupational diseases had not been updated for a very long time and so they did not take account of any new risks. The situation was no better with regard to maternity protection, benefits for industrial accidents and family allowances, because of the transition from public establishments to private institutions.

A global social protection floor

- 122.** The Employer members stated that they had always expressed support for initiatives that could extend social security coverage, including the ILO Global Campaign and the ILO Global Jobs Pact. A realistic social security floor should be based on ramped-up ILO technical assistance and advice. The affordability of a social protection floor was an important policy principle. Each country had very particular characteristics that required a specific national approach, and many positive and different social security practices already existed. A progressive approach should be taken towards the implementation of any of the components of the Social Protection Floor, within the economic means and capacity of each member State. Such schemes required transparent implementation to avoid corruption and good governance to ensure efficiency. A floor should be funded nationally in the context of national priorities and budgets to ensure long-term stability. Any new fiscal burdens on businesses would jeopardize their sustainability in an already challenging global economic context. A social protection floor should not create incentives to remain inactive but should encourage the formalization of the informal economy, making a distinction between the poorest in need of assistance and those who could financially contribute. Additionally, the social partners should be involved in national task forces to consider and support the implementation of components of the Social Protection Floor appropriate at the national level. As regards the proposal of the Committee of Experts that the existing body of standards should be complemented with a new high-impact instrument sensitive to the realities of less-developed countries, the Employer members stressed that it was not acceptable to establish standards only relevant to developed countries and to have another set of standards that specifically addressed less-developed countries' needs.
- 123.** The Worker members expressed strong support for the specific recommendations made by the Committee of Experts for future work on social security standards and, in particular, to the need for a new instrument as part of the "social security staircase" approach, with a view to adopting a global social security floor. Although certain countries were linking the provision of social benefits, such as the right to family benefit, to ever stricter conditions relating to resources, or even a change of behaviour, the advantages of paying benefits using the logic of universality and unconditionality should be taken into account in the implementation of the Social Protection Floor. They approved the approach aimed at strengthening social security in breadth as well as in depth. The concept of the Social Protection Floor also contained the risk, in the context of major budgetary challenges facing many countries, of being perceived as an end in itself. On the contrary, the General Survey considered the Social Protection Floor as a launch pad for strengthening social security according to the guidelines of Conventions Nos 102 and 168, in order to move higher up the "social security staircase". The Workers and the ILO had never wanted to reduce social security to a mere instrument for fighting poverty. It constituted an insurance which protected workers against the loss of their purchasing power and against the additional costs arising from sickness and family expenses.
- 124.** The Government member of France indicated that her Government firmly endorsed the Committee of Experts' proposal to supplement the existing body of standards by a new high-impact instrument that could be adapted to the particular structural characteristics of the least developed countries, while being designed in such a way that it could be accepted by

virtually all ILO member States. She trusted that the current session of the Conference would take a decisive step towards the adoption, in 2012, of such an instrument in the form of a Recommendation.

- 125.** The Government member of Austria concurred indicating that the goal of a “global social security floor” should be given full support as it allows for the horizontal extension and vertical deepening of social security.
- 126.** The Government member of the United Kingdom expressed agreement with the assessment that, while the existing ILO Conventions were relevant and important, a new set of initiatives could accelerate or deepen the expansion of social security. As highlighted by the Committee of Experts, new instruments must be sensitive to the structural realities of developing countries and designed to be acceptable by all ILO member States. If there was widespread support for a new instrument for social security for all, then a stand-alone instrument, such as a Recommendation, providing universal coverage of a basic benefit package and allowing for a country-led approach, would be preferable.
- 127.** The Government member of Canada, pointing to the lack of credible and universal social security instruments, stated that, subject to tripartite consensus, Canada would support the future development of a new overarching and promotional instrument on a social protection floor which would be gender inclusive and allow for flexible implementation by all governments using different methods and according to their own needs and timetables.
- 128.** The Government member of India stated that the ILO should work for an instrument in the form of a new non-binding Recommendation, which would provide for progressive extension of social security protection to make it practically feasible for implementation by member States. A separate instrument providing for basic benefits might be more appealing to constituents and would also facilitate ratification of Convention No. 102 in the long run. Each country should decide the level of its own social security floor and there should be no prescription of a uniform floor for all countries. The level of the floor should not be invoked for restrictive trade practices.
- 129.** The Worker member of the Bolivarian Republic of Venezuela stated that there was a need to adopt new approaches because of the changing realities of the world of work, but the substantial protection of the instruments covered by the General Survey should not be modified. Harsh austerity measures for tackling the economic crisis, which had not been created by the workers, intensified concerns regarding the sustainability of funding for social security schemes. In countries, such as Greece and Spain, the workers had risen in order to defend the right to a decent life and social protection.
- 130.** The Worker member of Brazil stated that the minimum wage and universal public social security were a good solution for developing countries as they allowed the development of the domestic market, stimulated production and consumption and promoted development. Social security did not constitute a problem for any poor country. The real problems lay with multinational companies which left peoples in poverty and refused to comply with international labour standards. The neoliberal model had given rise to the mechanism of cutting social expenditure and reducing the role of the State with a view to being able to exploit peoples, pillage natural resources and evade any control. That model had now entered into crisis, but major corporations that had introduced it wanted to continue doing more of the same. To prevent the reduction of social security rights, the workers movement could not accept anything less than Convention No. 102. The proposal to extend social coverage through the introduction of a social floor, although it was claimed to be in support of poor countries, was in reality a new mechanism for transnational enterprises and the major powers to lower social protection standards. This supposedly generous concept had been proposed at

the G20 by colonial powers, which had exploited those outside their countries and reduced the rights of workers in their own countries.

- 131.** The Worker member of Spain stated that the idea of a “floor” could be dangerous, since it could become the main instrument for extending social security, to the detriment of Convention No. 102, and the minimum standard replacing Convention No. 102. The social protection for the poor would be poor social protection. For 75 to 80 per cent of the world’s population, the problem was not lack of standards but lack of political will to extend protection. A floor, by its very nature, could become not the first step towards building a social security system but, for many countries, the only step, while for others it would be a minimum, on which a system of individual contributions could be built, rather than a public social protection system based on ILO principles. Social protection floor, if not accompanied by the promotion of Convention No. 102, would be the most convenient option for private social protection, because those minimum provisions would serve as the mask that hid the failings of the private system.

Final remarks

- 132.** Following the discussion on the General Survey, the Worker members welcomed the fact that Government members shared their viewpoint on the quality of the General Survey. They did not agree with the criticism that the Committee of Experts had exceeded its mandate or that another approach should have been followed by the General Survey. The General Survey covered the manner in which ILO social security standards were or were not applied, as well as the principles identified by the supervisory bodies. The recommendations put forward by the Committee of Experts deserved attention.
- 133.** The need for a “high impact” instrument, as stressed by the Committee of Experts, through which the right to social security could be extended to all and which would make the Social Protection Floor a reality, did not mean that the new instrument would take the place of Conventions Nos 102 and 168. The new instrument must not be interpreted as reducing the objectives of social security merely to combating poverty, but rather as providing a basis for progress towards comprehensive social security, based on the idea of the social security stairway. In that regard, as Recommendations Nos 67 and 69 had lost their power of motivation for such an approach, as indicated in the General Survey, there was a need to adopt a new and more effective instrument that was sufficiently precise and explicit and set out clear minimum standards. The Worker members were in favour of the adoption of a new instrument setting out a social security floor as well as of the approach of the social security staircase to encouraging as many countries as possible to ratify Convention No. 102 and implement it effectively.
- 134.** The Worker members considered it necessary to promote the more widespread ratification of the surveyed instruments and particularly to promote complete, rather than partial ratifications. The General Survey indicated that several countries were in a position to ratify the Conventions on the basis of the legislation in force. Every effort needed to be made to ensure that the ratification campaign was accompanied by effective implementation. The General Survey rightly emphasized that it was not only important to ensure the implementation of the social security Conventions, but also those on freedom of association, collective bargaining and the promotion of tripartism. The Conference Committee would also have to be more attentive in future to issues of compliance with the social security instruments. Although certain provisions and concepts in Convention No. 102 would need to be updated, a revision of the Convention should not be considered, but rather the adoption of a Protocol, which was one of the options proposed in the General Survey. In the meantime, use should be made of the resolution concerning gender equality and the use of language in legal texts of the ILO. The Worker members indicated that they were open to the idea of

allowing the ratification of Convention No. 168 on the basis of acceptance of certain of its obligations, but not all of them. However, that option would need to be discussed in greater depth.

- 135.** The Worker members supported the proposal for the guidelines on good governance for social security systems, as it was the responsibility of the public authorities, in collaboration with the social partners, to ensure the proper utilization of funds and access to entitlements. That approach should include issues relating to the evasion of contributions and fraud, and should place as much emphasis on the violations noted as on the good practices observed. The Worker members were also in favour of the extension of social security to categories of workers engaged under atypical forms of contract who did not fit into the traditional model of the male worker with a relatively stable full-time contract. That reflection should be pursued, possibly with a view to the development of new instruments. Thought also needed to be given to the social protection of self-employed workers, subject to the principle of equality of treatment between employed persons and the self-employed, in order to avoid any abusive transfer from one system to another. Finally, the issue of the coverage of migrant workers should not be overlooked with a view to combating the trend for them to be excluded from certain policies, and even from basic protection, as well as to cover the question of the portability of rights from one country to another.
- 136.** The Employer members indicated that discussion on the policy issue of social security extension had detracted from the main work of this Committee, which was to review the implementation of voluntarily ratified standards. The Committee of Experts had a role to play, through the Conference Committee, in relation to the recurrent review; that role was to conduct a “classical” General Survey which would pinpoint practices leading to effective implementation as well as obstacles to implementation and ratification of standards. Fact finding by the Committee of Experts was essential to help this Committee understand the scope and terms of international labour standards and obstacles to full implementation of ratified Conventions. The workload of the Committee of Experts was already very heavy and there should be no further dilution of its effectiveness or the effectiveness of the Conference Committee. The Employer members concluded that in their view, the General Survey did not answer the basic question of non-ratifying countries, i.e., whether they were able to ratify the Conventions under examination and comply with them. Thus, something very fundamental had been lost.

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- 137.** In his reply to the discussion on the General Survey, the Chairperson of the Committee of Experts on the Application of Conventions and Recommendations thanked the ILO constituents for their valuable contributions, advocating various approaches, which would certainly help the Committee of Experts’ future work. Reacting to the criticism that the Committee of Experts might have exceeded its mandate by delivering a broad policy guidance document, but without enough legal analysis, he indicated that the work of the Committee of Experts was based on the questionnaire devised by the Governing Body. Taking into account the broad scope of the Committee of Experts’ mission, a traditional paragraph-by-paragraph analysis of the four surveyed instruments would not have been possible, the surveyed instruments encompassing over 700 paragraphs of legal provisions. These instruments covered a wide range of social security issues, some of them dealing with very specific branches and expanding on the pivotal Convention No. 102. With this General Survey, the CEACR had tried to help countries better understand the ideas underpinning the key principles and notions that were at the core of the ILO up-to-date social security standards and explaining in clear terms their sometimes very technical provisions. The survey aimed at identifying these principles and analyses the manner in which they were implemented worldwide, particularly with respect to the majority of countries which had not ratified the two Conventions. The General Survey contained numerous jurisprudential

findings but it also, based on the information available to the experts, examined the gaps and deficits in social security regulation based on the instruments, namely to better enforce social security legislation including through complaint and appeal procedures; to strengthen the protection of social security funds; to ensure coordination between employment policy and social security; to advance social security through social dialogue; and the need to extend coverage. In drawing the conclusions from the information available, the Committee of Experts did not intend to suggest policy guidance, but rather to present different options emerging from such information. It was reassuring that practically all Governments, as well as the Worker members concurred with the approach of the Committee of Experts.

- 138.** Referring to the protection of migrant workers, the speaker stressed that the General Survey did not deal with this issue in detail, because the rights of migrant workers were the subject of a specific set of standards, namely Conventions Nos 118 and 157, which were not selected for the General Survey. Recognizing the importance of guaranteeing the social security rights of migrant workers, the General Survey stressed that “a key principle on which the right to social security is premised is non-discrimination. It pertains to all persons, irrespective of status and origin. With regard to the non-citizens, even where they are in an irregular status on the territory of another State, such as undocumented workers, they should have access to basic benefits and particularly to emergency medical care”.
- 139.** As to the concern raised by a Worker member that the General Survey did not address in sufficient detail the challenges faced by the developing world, he indicated that, in fact, one of the main conclusions of the Survey was that, especially because of the specific needs of developing countries from the point of view of social security, the ILO should complement existing standards by a “new high-impact instrument sensitive to the distinctive structural realities of less-developed economies, but designed so as to be accepted by virtually all ILO member States, without regard to their level of economic development”. The informal economy present in many developing countries had challenged governments to extend social security protection on the basis of the core principles contained in ILO social security instruments, e.g. responsibility of the State, good governance and sustainability of social security institutions, which also applied to social security schemes in developing countries.
- 140.** Turning to the need to ensure effective coordination between social security and employment policy raised by an Employer member who indicated that he would have liked to see this developed in further detail in the Survey, the Chairperson of the Committee of Experts pointed out that this concern had, indeed, been addressed in an entire chapter of the Survey which stressed that “no durable progress could be achieved at the present time without meeting the challenge of integrating employment and social policies”. At the same time, the Survey also stated “that effective realization of the Social Justice Declaration and the Global Jobs Pact would very much depend on the extent to which the deficit of integrated policies could be made up through practical guidelines and policy recommendations”. Referring to the many other points raised by the members of the Committee, he regretted not to be able to touch on all of them due to time constraints.

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- 141.** A brief summary and the outcome of the discussion on the General Survey concerning social security instruments was presented by the Officers of the Committee on the Application of Standards to the Committee for the Recurrent Discussion on Social Protection (Social Security) on the afternoon of 4 June 2011. The text of the outcome is set out below.

Outcome of the discussion on the General Survey on social security

142. Upon consideration of the General Survey concerning social security instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization⁸ prepared by the Committee of Experts on the Application of Conventions and Recommendations, the Committee on the Application of Standards has agreed on the following outcome of its discussion, which it would like to bring to the attention of the Committee for the Recurrent Discussion on Social Protection (social security):

The Committee on the Application of Standards considers that up-to-date ILO standards on social security could provide a comprehensive legal framework that needs ramped up ILO technical assistance and advice. Taking into account the complexity of the social security standards, the ILO should provide information on the implementation of the instruments and devote special efforts to capacity building and the training of the social partners, and to strengthening social dialogue.

Recognizing however that certain provisions of Convention No. 102 are gender biased and reflect an obsolete model of the male breadwinner, the Committee on the Application of Standards considers that it is for the International Labour Standards Segment of the LILS Section of the Governing Body to identify the provisions in question with a view to determining the most appropriate means of interpreting gender-sensitive language in the light of the draft resolution concerning gender equality and the use of language in legal texts of the ILO, submitted to the current session of the International Labour Conference.

In light of the discussion of the General Survey, the Committee considers that the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), should be referred to the International Labour Standards Segment of the LILS Section of the Governing Body.

The global economic crisis has highlighted the urgent need for sound governance of social security systems, based on principles of prudent finance, creation of reserve funds, best actuarial practices and tripartite involvement. The lack of sufficient protection of social security funds has had the effect that the social security systems in many countries are not sufficiently crisis-resistant. Social security systems should be well administered and well equipped to combat undeclared work, social security evasion, fraud, corruption and misuse. They should concretize the general responsibility of the State for the sustainability of social security systems and their financial and administrative management. Social security and employment policies should be coordinated and aligned with economic and developmental policies.

The Committee on the Application of Standards further recognizes the consistent tripartite support for the ILO Global Campaign on Social Security and Coverage for All, which was launched in 2003 to implement the principles of social inclusion and universal coverage. Considering that there is no single model, the Committee supports a social protection floor, provided that a time-bound progressive approach is adopted, combining the adequacy and sustainability of social security systems. Social protection should be designed to achieve the transition to formal employment.

Finally, taking into account that the volume of the detailed information supplied by the governments in their article 19 reports concerning the application of the technical provisions of the surveyed instruments in each of the nine branches of social security has largely surpassed even the extended limits set for this General Survey, the Committee on the Application of Standards recommends that the Committee of Experts compile this information in due course so as to make it available to the constituents in a form that highlights the variety of ways of ensuring compliance with the provisions of these instruments and the limits to their flexibility.

⁸ ILC, *General survey concerning social security instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization*, Report III (Part 1B), 100th Session, Geneva, 2011.

D. Compliance with specific obligations

- 143.** The Employer members emphasized that failure to comply with the obligation to send reports hindered the functioning of the supervisory system, which was based precisely on the information contained in those reports. They recalled that the Committee had referred in 2010 to the need to intensify technical assistance activities in order to lighten the workload of governments with regard to the sending of reports. They drew attention to the fact that governments could use the technical assistance provided by the Office to ensure that all their reports arrived within the deadline so as to facilitate the important work of the Committee of Experts. The reports had to contain high-quality information, respond effectively to the Committee's comments, and be sent regularly. Despite the 39 specific communications sent to governments which had not met their obligations relating to the sending of reports, only five governments had responded by sending reports. The Committee of Experts also noted with concern the increase in the number of comments to which no reply had been received. This year, 66.95 per cent of reports requested had been received (2,002 received out of 2,990 requested). Moreover, it was concerned that 12 countries had not sent such reports for two years or more. As of 1 September 2010, the deadline for submitting reports, only 31.4 per cent of reports had been received, which disrupted the functioning of the Committee of Experts. It was also a matter of concern that this year, no reply had been received to 669 comments relating to 51 countries. The Conventions had been grouped together on the basis of the four strategic objectives of the ILO, with a view to easing the governments' administrative burden. That should facilitate the selection of instruments to be examined in General Surveys and the recurrent discussion. Finally, they reiterated their position as to why reports were presented late, one reason being that countries needed to consider carefully the advisability of ratifying a Convention prior to doing so, from the standpoint not just of the ability to implement it, but also from that of their responsibility to report on its application. It was also necessary to streamline and simplify international labour standards so as to arrive at a basic set of regulations.
- 144.** The Worker members noted with regret that the proportion of reports received had decreased again this year, down to 66.95 per cent compared with 68 per cent in 2010 and 70 per cent in 2009. The efforts made in that area needed to be continued. In addition, too many reports were received late (although a slight improvement should be noted) or did not include a reply to the comments of the Committee of Experts. Those delays affected the work of the Committee of Experts and paralysed the supervisory system. Emphasizing that the obligation to send reports constituted the key element on which the ILO supervisory system was based, the Worker members encouraged governments to meet their obligations fully and diligently in this field. The information contained in the reports had to be of high quality and as detailed as possible for each of the cases of serious failure which had just been examined. Governments which failed to meet their obligations had an unfair advantage in so far as, in the absence of any report, the Committee of Experts could not examine their national law in practice. The Conference Committee therefore had to insist that member States take the necessary steps in the future to meet their obligations.
- 145.** 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.
- 146.** In applying those methods, the Committee decided to invite all governments concerned by the comments in paragraphs 36 (failure to supply reports for the past two years or more on the application of ratified Conventions), 42 (failure to supply first reports on the application of ratified Conventions), 45 (failure to supply information in reply to comments made by the Committee of Experts), 94 (failure to submit instruments to the competent authorities), and 103 (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 sitting devoted to those cases.

Submission of Conventions, Protocols and Recommendations to the competent authorities

147. In accordance with its terms of reference, the Committee considered the manner in which effect was given to article 19, paragraphs 5–7, of the ILO Constitution. These provisions required member States within 12, or exceptionally 18 months of the closing of each session of the Conference to submit the instruments adopted at that session to the authority or authorities within whose competence the matter lay, for the enactment of legislation or other action, and to inform the Director-General of the ILO of the measures taken to that end, with particulars of the authority or authorities regarded as competent.
148. The Committee noted from the report of the Committee of Experts (paragraph 92) that considerable efforts to fulfil the obligation to submit had been made in certain States, namely: Bosnia and Herzegovina, Gambia, Kenya, Lao People's Democratic Republic, Nepal, Paraguay, Bolivarian Republic of Venezuela and Zambia. In addition, the Conference Committee received information about the submission to parliaments from many governments and in particular from the Central African Republic, as well as the ratification of Convention No. 187 by Chile.

Failure to submit

149. The Committee noted that in order to facilitate its discussions, 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 time frame was deemed long enough to warrant inviting Government delegations to the special sitting of the Conference Committee so that they may explain the delays in submission.
150. The Committee noted the regret expressed by seven delegations at the delay in providing full information on the submission of the instruments adopted by the Conference to parliaments. Some governments had requested the assistance of the ILO to clarify how to proceed and to complete the process of submission to national parliaments in consultation with the social partners.
151. 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 facilitate compliance with this constitutional obligation.
152. The Committee noted that 34 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, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Georgia, Guinea, Haiti, Ireland, Kiribati, Libyan Arab Jamahiriya, Mozambique, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Seychelles, Sierra Leone, Solomon Islands, Somalia, Sudan, Tajikistan, The former Yugoslav Republic of Macedonia, Turkmenistan, Uganda and Uzbekistan.** 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

- 153.** 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 2010 meeting of the Committee of Experts, the percentage of reports received was 67.9 per cent, compared with 67.8 per cent for the 2009 meeting. Since then, further reports had been received, bringing the figure to 77.3 per cent (as compared with 77.6 per cent in June 2010, and 78.0 per cent in June 2009).

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

- 154.** 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: **Djibouti, Equatorial Guinea, Guinea, Guinea-Bissau, Guyana, Sierra Leone, Solomon Islands, Somalia, United Kingdom** (British Virgin Islands, Falkland Islands (Malvinas)) and **Vanuatu**.
- 155.** The Committee also noted with regret that no first reports due on ratified Conventions had been supplied by the following countries:

Dominica

- since 2006: Convention No 147;

Equatorial Guinea

- since 1998: Conventions Nos 68, 92;

Kyrgyzstan

- since 1994: Convention No 111;
- since 2006: Conventions Nos 17, 184;
- since 2009: Conventions Nos 131, 144;

Sao Tome and Principe

- since 2007: Convention No 184;

Seychelles

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

Thailand

- since 2009: Convention No 159;

Vanuatu

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

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

- 156.** In this year's report, the Committee of Experts noted **51** 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 **669** cases (compared with 695 cases in December 2009). The Committee was informed that, since the meeting of the Committee of Experts, 16 of the governments concerned had sent replies, which would be examined by the Committee of Experts at its next session.
- 157.** 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 2010 from the following countries: **Bahamas, Burkina Faso, Burundi, Chad, Comoros, Djibouti, Dominica, Equatorial Guinea, Gambia, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, Ireland, Kazakhstan, Kyrgyzstan, Liberia, Luxembourg, Netherlands (Aruba), Nigeria, Rwanda, San Marino, Sao Tome and Principe, Seychelles, Sierra Leone, Singapore, Solomon Islands, Togo, Trinidad and Tobago, Uganda, United Kingdom (British Virgin Islands, Falkland Islands (Malvinas), St Helena), Yemen and Zambia.**
- 158.** The Committee noted the explanations provided by the Governments of the following countries concerning difficulties encountered in discharging their obligations: **Burkina Faso, Cambodia, Cape Verde, Luxembourg, Papua New Guinea, Seychelles, Somalia, Thailand, Trinidad and Tobago, United Kingdom (British Virgin Islands, Falkland Islands (Malvinas), St Helena), Uganda, Yemen and Zambia.**

Supply of reports on unratified Conventions and Recommendations

- 159.** The Committee noted that **424** of the **681** article 19 reports requested on social security instruments, had been received at the time of the Committee of Experts' meeting, and a further 18 since, making 64.9 per cent in all.
- 160.** 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: **Cambodia, Cape Verde, Democratic Republic of the Congo, Equatorial Guinea, Guinea, Guinea-Bissau, Ireland, Libyan Arab Jamahiriya, Luxembourg, Malta, Saint Kitts and Nevis, Samoa, Sao Tome and Principe, Sierra Leone, Somalia, Tajikistan, Togo, Turkmenistan, Uzbekistan and Vanuatu.**

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

- 161.** 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

- 162.** 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 64 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 63 such cases, relating to 40 countries; 2,803 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.
- 163.** This year, the Committee of Experts listed in paragraph 67 of its report, cases in which measures ensuring better application of ratified Conventions had been noted with interest. It noted 341 such instances in 122 countries.
- 164.** 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

- 165.** The Government members of **Bahrain, Burkina Faso, Cambodia, Cape Verde, Congo, Luxembourg, Malta, Pakistan, Papua New Guinea, Seychelles, Somalia, Thailand, Trinidad and Tobago, Uganda, United Kingdom** (British Virgin Islands, Falkland Islands (Malvinas), St Helena), **Uzbekistan, Yemen, 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)

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

Special cases

- 167.** The Committee considered it appropriate to draw the attention of the Conference to its discussion of the cases mentioned in the following paragraphs, a full record of which appears as Part Two of this report.
- 168.** As regards the application by **Guatemala of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**, the Committee noted the statements made by the Government representative and a magistrate of the Supreme Court of Justice, as well as the discussion that followed. It also noted the numerous cases examined by the Committee on Freedom of Association and that a high-level mission had visited Guatemala from 9 to 13 May 2011.
- 169.** The Committee noted that the Committee of Experts continued to express deep concern at the following issues: the numerous serious acts of violence, including the murder of trade

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

- 170.** The Committee noted that the Government representative had indicated that his Government's attitude was not one of tolerance, that it did not encourage people to threaten or endanger the life and physical integrity of any citizen of Guatemala, that it fulfilled its obligation to investigate acts of violence, and that under Agreement No. 49-2011 of 20 May 2011 it had established a Special Investigation Unit for Crimes against Trade Unionists. He had added that the Constitutional Court of Justice had amended Agreement No. 4-89 to ensure that proceedings relating to constitutional appeals for protection did not hinder the course of ordinary legal procedures. He had further stated that the Inter-Institutional Committee on Labour Relations had examined the country's labour problems and that the efforts made were being reflected in a "road map" setting out dates and specific activities, which the Government of Guatemala was following by strengthening the implementation and enforcement of labour laws, and that there was an agreement by the General Secretariat of the Presidential Office which would appoint a Presidential Committee to study how the labour laws needed to be amended to fulfil the obligations deriving from the ILO Conventions ratified by Guatemala. The Government representative had emphasized that the Government's call for the proposal of representatives of employers and workers for the national tripartite commission, which had been set up at the end of 2010, had been published in a widely read daily newspaper so that all organizations wishing to participate could do so. The Government representative had indicated that, in order to guarantee that the general labour inspectorate could carry out its activities without any hindrance in its access to workplaces, Ministerial Agreement No. 42 2011 set out the procedure to be followed in cases of resistance to labour inspection. He had also referred to the increase in the number of trade unions registered. Finally, the magistrate from the Supreme Court of Justice had provided full information on the measures to facilitate criminal and labour procedures and other measures for the restructuring of the judicial system.
- 171.** The Committee noted that it was dealing with an important case that had been under discussion for many years and that the Government had received numerous technical assistance missions on the various pending issues. The Committee noted with deep concern the persistent climate of violence in the country and the growing degree of impunity. It further noted with deep concern that the climate of violence was generalized, that it affected trade unionists, entrepreneurs (28 murders in 2010, according to sources mentioned by the Employer members) and other categories, and that the figure of 53 trade union leaders and members murdered in recent years showed that they were a particularly vulnerable group.
- 172.** The Committee recalled the importance of guaranteeing as a matter of urgency that trade unions and employers' organizations and their representatives were able to carry out their activities in a climate that was free from fear, threats and violence, and of identifying those cases of violence committed for reasons related to their representative functions. The Committee considered that it was important to improve the climate for investment and economic growth which would also have a positive impact in combating impunity.
- 173.** The Committee emphasized the need for all the necessary measures to be taken without delay so that the corresponding investigations could be conducted to determine those responsible for the acts of violence against trade union leaders and members, bring them to justice and punish them in accordance with the law. The Committee welcomed the recent establishment of the Special Investigation Unit for Crimes against Trade Unionists and trusted that it would be provided with the necessary resources to carry out investigations. It

trusted that the International Commission against Impunity in Guatemala (CICIG) would, as the Government had promised the last mission to visit the country, collaborate with the Attorney-General's Office in investigating and resolving the 53 murders of trade union leaders and members. While noting the Government's indications concerning the reform in the judicial system and of the measures to improve its functioning, the Committee stressed that further steps were needed to strengthen the judicial authorities, the police and the labour inspection services and provide them with greater human and financial resources. The Committee drew attention to the need for a reform with a view to reinforcing the rule of law and the institutions responsible for justice, as well as their independence.

174. The Committee recalled the intrinsic link that existed between freedom of association, democracy and respect for civil liberties, and especially the right to personal safety as a precondition for compliance with the Convention.
175. The Committee regretted to observe that, despite having received specific technical assistance from the ILO, there had been no significant progress in the legislative reforms called for by the Committee of Experts for many years. It trusted that the Government would in the very near future be in a position to provide information on concrete progress in that area. The Committee requested the Government to take steps to strengthen social dialogue and, in accordance with the conclusions of the high-level mission, to ensure the integration of the named representative trade union confederations in the national tripartite commission.
176. The Committee expressed its serious concern at the situation and noted the lack of clear and effective political will of the Government. The Committee considered that all measures needed to be taken on an urgent basis and in tripartite consultation to address all issues of violence and impunity. This should be done in full coordination with the state institutions concerned. ILO technical assistance should continue to be provided to enable the Government to address all legislative problems that were still pending with a view to achieving full conformity with the Convention.
177. The Committee emphasized the need to apply effectively and without delay court orders for the reinstatement of dismissed trade unionists.
178. The Committee requested the Government to send the Committee of Experts a detailed report this year containing information on all the points raised so that a full evaluation of the situation could be undertaken and expressed the firm hope that next year the Committee of Experts would be in a position to note substantial progress in the application of the Convention.
179. As regards the application by **Uzbekistan of the Worst Forms of Child Labour Convention, 1999 (No. 182)**, the Committee took note of the oral information provided by the Government representative and the discussion that followed. The Committee noted that the report of the Committee of Experts referred to allegations from the International Organisation of Employers (IOE), the International Trade Union Confederation (ITUC), and a significant number of other international workers' organizations relating to the systematic and persistent use of forced child labour in the cotton fields of Uzbekistan for up to three months every year, as well as the substantial negative impact of this practice on the health and education of school-aged children obliged to participate in the cotton harvest. The Committee further noted the concerns expressed by the UN Human Rights Committee, the UN Committee for the Elimination of Discrimination Against Women, as well as information in two UNICEF publications with regard to this practice.
180. The Committee noted the information provided by the Government outlining the laws and policies put in place to combat the forced labour of, and hazardous work by, children. The Committee also noted the Government's statement that it had established a tripartite Inter-

ministerial Working Group with a view to developing specific programmes and actions aimed at fulfilling Uzbekistan's obligations under ILO Conventions, as well as to update measures taken within the framework of the National Action Plan for the application of Conventions Nos 138 and 182 to ensure the protection of children's rights. Furthermore, the Committee noted the detailed information provided by the Government on economic reforms undertaken in Uzbekistan, which had improved the level of employment, raised incomes for families and strengthened the banking and financial system. Moreover, the Committee noted the Government's statement that concrete measures were being taken by the labour inspectorate officials to prosecute persons for violations of labour legislation, and that a number of administrative and disciplinary proceedings had been undertaken and fines imposed. The Committee further noted the Government's statement denying the coercion of large numbers of children to participate in agricultural work, and that the use of compulsory labour was punishable with penal and administrative sanctions.

- 181.** The Committee noted once again that, although legal provisions prohibited forced labour and the engagement of children in hazardous work, there was broad consensus among the United Nations bodies, the representative organizations of workers and employers and non-governmental organizations, regarding the continued practice of mobilizing schoolchildren for work during the cotton harvest. In this regard, this Committee was obliged to echo the deep concern expressed by these bodies, as well as several speakers in this Committee, about the systemic and persistent recourse to forced child labour in cotton production, involving an estimated 1 million children. The Committee emphasized the seriousness of such violations of the Convention. Moreover, the Committee noted with regret that, despite the Government's indications that concrete measures had been undertaken by the labour inspectorate regarding violations of labour legislation, no information was provided on the number of persons prosecuted for the mobilization of children in the cotton harvest, despite previous requests by this Committee and the Committee of Experts for this information.
- 182.** While noting the establishment of a tripartite Inter-ministerial Working Group on 25 March 2011, the Committee observed that the Committee of Experts had already noted the establishment of an earlier interdepartmental working group on 7 June 2010, for on-the-ground monitoring to prevent the use of forced labour by schoolchildren during the cotton harvest. It noted with regret the absence of information from the Government on the concrete results of this monitoring, particularly information on the number of children, if any, detected by this interdepartmental working group (or any other national monitoring mechanism) engaged to work during the cotton harvest. In this regard, the Committee regretted to note that the significant progress that had been made regarding economic reform and growth had not been accompanied by corresponding progress with regard to combating the use of children for cotton harvesting.
- 183.** The Committee expressed its serious concern at the insufficient political will and the lack of transparency of the Government to address the issue of forced child labour in cotton harvesting. It reminded the Government that the forced labour of, or hazardous work by, children, constituted the worst forms of child labour and urged the Government to take the necessary measures, as a matter of urgency, to ensure the effective implementation of national legislation prohibiting compulsory labour and hazardous work for children below the age of 18.
- 184.** The Committee once again called on the Government to accept an ILO high-level tripartite observer mission that would have full freedom of movement and timely access to all situations and relevant parties, including in the cotton fields, in order to assess the implementation of the Convention. Observing that the Government had yet to respond positively to such a request, the Committee strongly urged the Government to receive such a mission in time to report back to the forthcoming session of the Committee of Experts. The

Committee expressed the firm hope that, following this mission and the additional steps promised by the Government, it would be in a position to note tangible progress in the application of the Convention in the very near future.

185. The Committee also strongly encouraged the Government to avail itself of ILO technical assistance, and to commit to working with the International Programme on the Elimination of Child Labour (IPEC).
186. Finally, the Committee invited the Government to provide comprehensive information in its next report to the Committee of Experts on the manner in which the Convention was applied in practice, including in particular enhanced statistical data on the number of children working in agriculture, their age, gender, and information on the number and nature of contraventions reported and penalties applied.
187. As regards the application by the **Democratic Republic of the Congo of the Forced Labour Convention, 1930 (No. 29)**, the Committee deeply regretted the fact that no Government representative of the Democratic Republic of the Congo had been present in the Committee to take part in the discussion, even though the Democratic Republic of the Congo was duly accredited and registered at the Conference.
188. The Committee recalled that the Committee of Experts in its observation had expressed its deep concern at the atrocities committed by the state security forces and other armed groups which constituted grave violations of the Convention, and particularly the imposition of forced labour on the civilian population and the sexual slavery of women and girls in mining areas. It also noted that the Committee of Experts had referred to the necessity to include in the penal legislation effective sanctions against persons who exacted forced labour, as well as the need to formally repeal certain old texts which were contrary to the Convention.
189. The Committee noted with concern the information provided which bore witness to the gravity of the situation and the climate of violence, insecurity and the violation of human rights which prevailed in the country, especially in North Kivu. This information confirmed that cases of the abduction of women and children with a view to their use as sexual slaves and the exaction of forced labour, particularly in the form of domestic work, were frequent and continued to occur. Moreover, in mines, the workers were the hostages of conflicts for the exploitation of natural resources and were the victims of exploitation and abusive practices, some of which amounted to forced labour. The Committee observed that failure to comply with the rule of law, legal insecurity, the climate of impunity and the difficulties faced by victims in gaining access to justice favoured all of these practices.
190. The Committee recalled that the atrocities committed, among others by the armed forces, constituted grave violations of the Convention. It appealed to the Government to take urgent and concerted measures to bring such violations to an immediate end, to ensure that both civilians and the military authorities complied with the law and to bring to justice and punish persons exacting forced labour, irrespective of their rank or position. The Committee recalled in that regard the need to amend the penal legislation so as to provide for effective and dissuasive sanctions against those perpetrating such practices. It asks the Government to provide without delay statistical data on the number of violations committed, prosecution proceedings instituted and penal sanctions imposed on perpetrators.
191. The Committee requested the Government to provide for the next session of the Committee of Experts detailed information on the measures taken to bring an immediate end to sexual slavery and the exaction of forced labour from the civilian population in the east of the country and in mining areas and to guarantee a climate of stability and legal security in which recourse to such practices could not be legitimized or go unpunished. The Committee called upon the Government to avail itself of the technical assistance of the Office, which

could help it to combat forced labour and to establish a programme of assistance to and the reintegration of victims.

192. 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 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.
193. The Committee took note of the commitment made by the Government representative that the Government would provide the draft labour organizations law to the ILO on a confidential basis and once it was finalized. As regards the practical application of the Convention, the Government had repeated its previous statements that people were free to protest without fear and that the detained persons named in the Committee of Experts' comments were not workers and their sentencing was totally unrelated to trade union rights.
194. The Committee observed that once again it had for discussion grave comments from the Committee of Experts who had been obliged to deplore that no progress had been made with respect to any of the outstanding areas of non-compliance with the Convention, nor were there any meaningful replies to the serious allegations of arrest, detention, long prison sentences, torture and denial of workers' basic civil liberties.
195. The Committee deplored the long-standing absence of a legislative framework for the establishment of free and independent trade union organizations and took note of the article 26 complaint brought against the Government in June 2010 for non-observance of this Convention.
196. The Committee regretted that it had no detailed information on the draft legislation referred to by the Government, despite the assurances given last year that progress would be made in this regard following the elections in November 2010. In light of the information available to it, the Committee could only conclude that the Government remains very far away from drafting and enacting legislation in conformity with the Convention, much less implementing it. In addition, the Committee regretted that there were no mechanisms available in the country permitting complaints of serious violations of trade union rights such as those mentioned above.
197. The Committee once again urged the Government in the strongest terms to adopt immediately the necessary measures and mechanisms to ensure all workers and employers the rights provided for under the Convention. In this regard, it once again urged the Government to repeal Orders Nos 2/88 and 6/88, as well as the Unlawful Association Act and to ensure an effective constitutional and legislative framework for the full and effective exercise of trade union rights.
198. The Committee once again highlighted the intrinsic link between freedom of association and democracy and observed with regret that the Government still had not ensured the necessary environment for freedom of association that would give credibility to the stated transition to democracy. It therefore once again called upon the Government to take concrete steps to ensure the full and genuine participation of all sectors of society, regardless of their political views, in the review of the legislative framework and practice so as to bring them fully into line with the Convention without delay. It further recalled the importance for the effective application of the Convention of access to an independent judiciary for enforcement of the legislation.

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199. The Committee emphasized that it was crucial that the Government take all necessary measures immediately to ensure a climate wherein workers and employers can exercise their freedom of association rights without fear, intimidation, threat or violence. The Committee continued to observe with extreme concern that the numerous detained persons referred to in previous discussions remained in prison, despite the calls for their release and without even benefiting from the recent wide amnesty granted by the Government. The Committee was therefore once again obliged to call upon the Government to ensure the immediate release of: Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win and Myo Min, as well as all other persons detained for exercising their basic civil liberties and freedom of association rights. The Committee once again recalled the recommendations made by the Committee of Experts and the Committee on Freedom of Association for the recognition of trade union organizations, including the Federation of Trade Unions of Burma and the Seafarers' Union of Burma, and urged the Government immediately to put an end to the practice of persecuting workers or other persons for having contact with workers' organizations, including those operating in exile.
200. The Committee further recalled the link between freedom of association and forced labour and reiterated its previous request to the Government to accept an extension of the ILO presence to cover the matters relating to the Convention and to establish a complaints mechanism for violation of trade union rights.
201. The Committee urged the Government to transmit to the ILO the draft law referred to as well as a full reply to all matters raised in the article 26 complaint. It expected that the Government would also provide this information and a detailed report on the concrete measures taken and the adoption of a timeline for the enactment of the necessary legislation for examination by the Committee of Experts at its meeting this year. The Committee considered that it had been discussing this grave matter for far too long without any visible, meaningful and concrete progress. In view of its continuing frustration, the Committee urgently called upon the Government to take the steps that would enable the Governing Body to be in a position to observe significant progress on all the above matters at its November session.
202. 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 written and oral information provided by the Government representative and the discussion which took place thereafter.
203. The Committee took note of the Government representative's statement that, following the high-level tripartite mission which visited the country in October 2010, a number of steps had been taken by the Government. In particular, the Industrial Relations Act was amended in accordance with the requests of the Committee of Experts and came into force on 15 November 2010. The coroner's report into the death of Mr Sipho Jele had been shared with the ILO and the workers' and employers' federations. In addition, the National Social Dialogue structure was now fully functional and has been meeting on a monthly basis. In addition, it was agreed that a prison bill had to be submitted to the Labour Advisory Board for consideration. As regards the outstanding questions in relation to the 2008 Suppression of Terrorism Act and the 1963 Public Order Act, he stated that his Government was awaiting ILO feedback and expert advice on the matters that were affecting the application of the Convention. The 1973 King's Proclamation had been discussed in the Steering Committee on Social Dialogue and the question of the compliance of constitutional provisions with the Convention had been placed on the agenda for the Steering Committee's July meeting. As regards police intervention in protest actions, he stated that while a number of demonstrations over recent months had been peaceful, unfortunately one planned protest coincided with other groups advocating for regime change and the Government was therefore obliged to ensure the safety and security of the nation and its people. The

Committee further noted the detailed written information provided which indicated the status of each of the recommendations of the high-level tripartite mission and the steps taken or envisaged.

204. The Committee recalled that it had discussed the question of the application of the Convention in Swaziland for many years and that it had placed its conclusions in a special paragraph in 2009 and 2010. The Committee welcomed the visit of the high-level tripartite mission to the country in October 2010, as well as the subsequent legislative changes as requested by the Committee of Experts and other plans to address policy concerns and civil liberty issues that had been raised. It deeply regretted, however, that this progress did not appear to be transposed into the practice in the country and that, as long as certain legislative texts restricting freedom of association and basic civil liberties remained in force, compliance with the Convention could not be assured. In particular, the Committee deplored the continuing allegations of arrest and detention following peaceful protest actions and regretted to be obliged once again to recall the importance it attached to the full respect of rights and basic civil liberties such as freedom of expression, of assembly and of the press and the intrinsic link between these freedoms, and freedom of association and democracy. The Committee once again stressed that it was the responsibility of governments to ensure respect for the principle according to which the trade union movement could only develop in a climate free from violence, threats or fear.

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

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

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

Continued failure to implement

207. 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)**.
208. The Government of the country to which reference was made in paragraph 192 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

209. The Committee wished to express its gratitude to the 39 governments which had collaborated by providing information on the situation in their countries and participating in the discussion of their individual cases.
210. 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, Bahamas, Bangladesh, Belize, Burundi, Chad, Comoros, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Gambia, Georgia, Ghana, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, Ireland, Kazakhstan, Kiribati, Kyrgyzstan, Liberia, Libyan Arab Jamahiriya, Malawi, Mozambique, Netherlands (Aruba), Nigeria, Rwanda, Saint Kitts and Nevis, Saint Lucia, Samoa, San Marino, Sao Tome and Principe, Sierra Leone, Singapore, Solomon Islands, Sudan, Tajikistan, The former Yugoslav Republic of Macedonia, Togo, Turkmenistan and Vanuatu**. 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.
211. The Committee noted with regret that the Governments of the States which were not represented at the Conference, namely: **Antigua and Barbuda, Belize, Dominica, Grenada, Guyana, Kyrgyzstan, Libyan Arab Jamahiriya, Saint Kitts and Nevis, Saint Lucia, Samoa, Solomon Islands and Vanuatu** 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.

E. Adoption of the report and closing remarks

212. The Committee's report was adopted as amended.
213. The Government member of Uzbekistan indicated that he wished to comment on paragraph 179 of the draft General Report, concerning elements that had not been taken into account during the discussion of Uzbekistan's application of the Worst Forms of Child Labour Convention, 1999 (No. 182).
214. 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.

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- 215.** The Government member of the Democratic Republic of the Congo presented the Committee with her Government's apologies and sincere regrets for not having been present during the discussion of the application by her country of the Forced Labour Convention, 1930 (No. 29). The absence was due to the late arrival in Geneva of the delegation of the Democratic Republic of the Congo. A written reply had immediately been submitted to the Standards Department. She requested the Committee's indulgence and hoped that the Committee of Experts would examine the reply at its next session.
- 216.** The Government member of Sudan queried why Sudan appeared in paragraph 210 of the report, as Sudan had not been included in the list of individual cases.
- 217.** The Chairperson replied that the paragraph in question related to serious failures to fulfil constitutional obligations to report. It was for that reason that Sudan had been mentioned in paragraph 210, along with other countries in the same situation.
- 218.** The Worker members indicated that they wished to address four subjects in the context of the closure of the Committee's work. Firstly, with regard to its methods of work, they indicated that the discussions had proceeded in an appropriate manner, with the exception of the discussion of the case of Fiji. It was unacceptable for the Government representative to have shown a lack of respect towards a Worker member by challenging her objectivity. They also expressed concern at the possible reprisals against a Worker member who had spoken as an observer representing the International Trade Union Confederation (ITUC) during the same discussion. They added that it was to be hoped that the Committee of Experts would devote a special chapter of its report to the information received from governments following the Conference Committee's discussion of the individual cases. Attention should also be drawn in the report of the Committee of Experts to governments that did not reply to the comments of the Committee of Experts over the years, as they were jeopardizing the proper functioning of the supervisory system. This shortcoming henceforth affected all countries and all continents, including Member States of the European Union.
- 219.** With regard to the discussion of the General Survey, the Worker members noted that changes were being examined with regard to the procedure for the transmission of the conclusions of the present Committee to the Committee for the Recurrent Discussion. Despite divergences between the Employer members and the Worker members, the discussion had been of a high quality and had provided an opportunity for the Worker members and a good number of Government members to welcome a General Survey which provided very sound guidance in relation to national and international social security policies. During the discussion, certain Government members had indicated that social security was an indispensable tool for economic development and not an obstacle to growth, and that social security was increasingly a means of finding acceptable and effective solutions to problems relating to the rising levels of poverty. The Worker members considered that this Committee had fulfilled its duty and they recalled the essential points of the discussion which had been submitted to the Committee for the Recurrent Discussion. It was to be hoped that the conclusions would have the effect of increasing the number of ratifications of the social security Conventions.
- 220.** In relation to the list of individual cases, the Worker members emphasized that those countries which were included on the preliminary list of 44 countries, but which were not retained on the final list, should not rejoice. The Worker members would remain particularly vigilant concerning developments in the situations in those countries, with special reference to the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in Egypt and the application by the Netherlands of the Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980] (No. 121). They also referred to the application in the Islamic Republic of Iran of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and of the Freedom of

Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), in the Bolivarian Republic of Venezuela. Furthermore, they wished to raise the question of the threats hanging over freedom of association and collective bargaining in the United States, and particularly in the State of Wisconsin. It was regrettable that this situation could not be addressed by the Committee as the United States had not ratified the two relevant fundamental ILO Conventions.

- 221.** With regard to future prospects, they expressed satisfaction at the manner in which the discussions had proceeded and the conclusions and special paragraph had been adopted. The adoption of the list of cases was still a more difficult exercise and, although a creative solution had been found in the case of Colombia, no solution appeared to be in view in the case of Japan regarding “comfort women”. In future, new rules would have to be found for the procedure of drawing up and adopting the list of individual cases. The list needed to be prepared by the Worker members and the Employer members, and they needed to find a compromise together. The mission of the Committee was to supervise the application of ratified Conventions in complete serenity, free from the political and ideological pressures of the country concerned. These were the principles that would have to serve as a basis for seeking a solution rapidly to the problems encountered by the Worker members and the Employer members in that respect. In conclusion, they emphasized that once again this year, the Worker, Employer and Government members had carried out good work in defence of workers’ rights.
- 222.** The Employer members first turned to the subject of the General Survey, highlighting that their comments should be taken into consideration for future General Surveys. Neither this Committee nor the Committee of Experts was a policy committee, and General Surveys were meant to help tripartite constituents understand how to achieve compliance with international labour standards. Regretfully, this year’s General Survey had had limited value with regard to the central supervisory purpose of this Committee on the full implementation of voluntarily ratified Conventions. The Committee of Experts should be foremost a committee of neutral fact finding, whose primary client was this Committee. If the approach taken by the Committee of Experts continued, rather than the classic format of General Surveys, such General Surveys would have little purpose to the mandate of this Committee.
- 223.** The Employer members underlined that in selecting the list of individual cases, long-standing criteria had been used. Selections would always be contentious, but this could not be allowed to delay the adoption of the list in the future. The adoption of the list on Tuesday of the second week of this Committee’s discussion could not be repeated, as the work of the Committee was too important, and the time and resources expended due to this delay were too great. In this regard, change was required and a time limit should be applied for the adoption of the final list. Transparent criteria should be agreed upon for this selection, to improve the work of the Committee and the balance of cases selected. Eighty per cent of the cases discussed at this session of the Committee had related to fundamental workers’ rights, to the exclusion of other important technical Conventions, such as those concerning the protection of wages or hours of work. In addition, the Employer members expressed a desire for more cases related to the fundamental Conventions concerning forced labour, discrimination and child labour, as well as more of a balance in the regions represented in the list.
- 224.** In conclusion, the Employer members recalled that the Committee’s discussion had been a constructive dialogue. They were pleased to have found agreement with the Worker members in the formulation of the conclusions on a number of cases. The Employer members thanked the Chairperson for his superb conduct of the Committee, and thanked the Representative of the Secretary General and their Secretariat for their work. They looked

forward to working towards the improvement of the Committee, particularly with regard to the adoption of the final list of individual cases for discussion.

- 225.** The Government member of Austria speaking on behalf of IMEC, expressed support for the adoption of the Committee's report. The speaker underlined IMEC's support for improvements to the Committee's working methods for the enhancement of the Committee's credibility as a critical component of the ILO supervisory system. IMEC was pleased that the first week of the Committee's work had been conducted with increased efficiency, acknowledging the Office's efforts to improve the discussion of the General Survey and to allow for more consultation by all groups on the output to be presented to the Committee for the Recurrent Discussion. Further improvements to this process should be examined. The established good practice of the distribution of a preliminary list of cases, in combination with the system for the automatic scheduling of individual cases, had helped countries to prepare for their cases in a timely manner. However, time management in the second week of the Committee's discussion had been significantly hindered, as the final list of cases had only been adopted on Tuesday afternoon of the second week. Critical to the Committee's work was the adoption of this list of cases no later than Friday of the first week of the Committee's discussions.
- 226.** Composition of the list of individual cases was a complicated process which 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. The Worker members and the Employer members were urged to bridge their differences in this regard prior to the next session of the Conference, and to use advanced preparation to ensure that the final list of cases was prepared during the first week of the Committee's discussions. Lack of movement on this very important issue would have a negative impact on the credibility of the ILO supervisory machinery. In this regard, 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 which would result in a balanced list consistently following the criteria of selection agreed to by the social partners. This list of cases was not reserved only for the most serious violations of ratified Conventions and the perception of this list as a "black list" would have ramifications on the ILO supervisory system. Additionally, the Tripartite Working Group on the working methods of this Committee should continue to meet with a view to evaluating this session of the Committee and to discuss further improvements. Lastly, the speaker thanked the Chairperson and the Vice-Chairpersons for their constructive work, in addition to the Office for its efforts towards the smooth functioning of the Committee's work.
- 227.** The Reporter of the Committee thanked the Chairperson for his good work, recalling that this task was not an easy one. He also thanked the Representative of the Secretary-General and the Secretariat for their significant work to ensure that the Committee's proceedings had run smoothly.
- 228.** The Chairperson observed that the Committee's purpose in meeting was to change the world. Over the past two weeks, social protection had been examined and it had been concluded that the ILO guaranteed the welfare of all workers through a basic minimum level of social protection reflected in the instruments adopted. The work of the Committee, in contrast with that of the Conference, would not be finishing at the end of the week. Following the examination of individual cases, many States would be receiving ILO missions or technical assistance as a result of the dialogue within the Committee. The positive results achieved would assuredly be highlighted in the report of the Committee of Experts, with which closer dialogue should be pursued. He gave thanks to the Committee as a whole for its discipline and cooperation in saying the essential in a brief period of time. The experience had been positive and could be repeated during the discussions in the Governing Body. This year, the Committee had celebrated 85 years of hard work which had given rise to achievements and

progress in relation to the conclusions adopted and their follow-up by member States. Certain improvements were necessary, principally in the methods for the adoption of the final list of cases, which should only take a reasonable amount of time. He thanked all the participants and, in conclusion, emphasized that the recompense for work well done was the opportunity to work well again, for which reason the Committee would continue its work on behalf of workers throughout the world.

- 229.** The Worker member of Senegal informed the Committee that the present sitting was particularly important for the Worker members as it was the last that Mr Luc Cortebecq would be attending as the Workers' spokesperson. The Committee would be losing a Vice-Chairperson who was patient, constant and respectful of differences. For 12 years, he had led the Workers' group effectively and stubbornly, playing an essential role in the adoption of the list of individual cases. Mr Luc Cortebecq would remain in the trade union movement and would continue to relay the voice of workers throughout the world. The speaker proposed that the Committee pay tribute to him.

Geneva, 14 June 2011

(Signed) Mr Sérgio Paixão Pardo
Chairperson

Mr Christiaan Horn
Reporter

Annex 1

INTERNATIONAL LABOUR CONFERENCE

C. App./D.1

100th Session, Geneva, June 2011

Committee on the Application of Standards

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 2005,¹ new consultations were held in March 2006 regarding numerous aspects of the standards system,² 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 ten times since then. The last meeting took place on 12 March 2011. 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, 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.³

¹ See documents GB.294/LILS/4 and GB.294/9.

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

³ See below, Part V, D, footnote 12 and Part V, F.

In June 2010, important arrangements were implemented to improve time management.⁴ In addition, new modalities for the discussion of the General Survey in the light of the parallel discussion of the recurrent report on the same subject under the follow-up to the ILO Declaration on Social Justice for a Fair Globalization were established.

In November 2010 and March 2011, the agenda of the Working Group included the following items: follow-up to the 99th Session (June 2010) of the International Labour Conference (list of individual cases, respect of rules of decorum, assessment of the changes introduced in the working methods of the Conference Committee); possibility for the Committee to discuss a case of a government which is not accredited or registered to the Conference; balance in the individual cases selected by the Conference Committee; automatic registration of cases: modalities for selecting the starting letter for the registration of individual cases; interaction between the discussion on the General Survey on social security by the Committee on the Application of Standards and the discussion on the recurrent report on social security by the Committee for the Recurrent Discussion; and possible implications of the Governing Body elections on time management.

The Working Party adopted the following main conclusions and proposals in relation to these different questions:

- It was considered that there was no need for any amendment of the rules of decorum.
- No country should use inclusion on the preliminary list of individual cases as a reason for failing to ensure that it was accredited to the Conference. If a country on the preliminary list registered after the final list was approved, it should be asked to provide explanations. This issue should be kept under review and an assessment be made on the number of times such cases occurred over the subsequent Conferences.
- The balance in the individual cases – based both on the type of Conventions and on the regional distribution – selected by the Conference Committee was recognized to be an important question, while it was considered difficult to achieve, in particular with regard to the distribution of cases by type of Conventions. It was noted that the Workers’ and Employers’ groups would continue to fully take into consideration this need, to the extent feasible.
- The changes in time management that were introduced last year were considered very successful and the automatic registration of cases was welcomed as an improvement in the working methods of the Conference Committee. It was agreed to propose that in 2011, registration of individual cases would start with the letter “F”, yet on an experimental basis (see Part V, B – Supply of information and automatic registration). This situation would be reviewed after the Conference this year.
- In light of the experience of last year, changes were proposed in the working schedule for the adoption by the Committee on the Application of Standards of the outcome of its discussion on the General Survey and the presentation of this outcome by the Officers of the latter Committee to the Committee for the Recurrent Discussion on Social Protection, particularly in order to allow for a genuine exchange with this Committee, beyond the oral presentation (see Part V, A and document C.App./D.0 – Provisional Working Schedule).

⁴ See Part V, B – Supply of information and automatic registration – and E.

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- As the Conference Committee would not be able to meet during the afternoon of Monday, 6 June 2011 due to Governing Body elections, it was proposed to schedule an evening session on that same day (see 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 1B)), 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 sending of reports, the application of ratified Conventions and the obligation to submit the Conventions and Recommendations to the competent authorities in member States (pages 41–813). 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–xxix).

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

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.⁶ 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

⁵ See paras 27–32 of the General Report of the Committee of Experts.

⁶ See paras 55–57 of the General Report of the Committee of Experts.

Office on the Committee's behalf.⁷ A list of these direct requests can be found at the end of Volume A (see Appendix VII, pages 858–870).

The Committee of Experts refers in its comments to cases in which it expresses its satisfaction or interest at the progress achieved in the application of the respective Conventions. In 2009 and 2010, the Committee has clarified the general approach in this respect, that has been developed over the years.⁸

In accordance with the decision taken in 2007, the Committee of Experts may also 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.⁹ At its session of November–December 2009, 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. No specific cases of good practices have been identified by the Committee of Experts this year.

Furthermore, the Committee of Experts has 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 2005.¹⁰ The Committee of Experts has also placed emphasis on the priorities to be addressed by the Office respecting compliance with reporting obligations.¹¹

Volume B of the report contains the General Survey by the Committee of Experts, which this year concerns social security instruments in light of the 2008 Declaration on Social Justice for a Fair Globalization, including the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), the Income Security Recommendation, 1944 (No. 67), and the Medical Care Recommendation, 1944 (No. 69).

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:

- (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 817–833);

⁷ See para. 48 of the General Report of the Committee of Experts.

⁸ See paras 62 and 66 of the Committee of Experts' General Report. See also Appendix II of the present document.

⁹ See paras 68–70 of the Committee of Experts' General Report.

¹⁰ See paras 71–72 of the Committee of Experts' General Report.

¹¹ See paras 22–25 of the Committee of Experts' General Report.

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- (ii) information concerning reports supplied by governments as concerns General Surveys under article 19 of the Constitution (this year concerning social security 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) (Addendum – Appendix VI);
 - (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 844–857).

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 second 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 Social Justice Declaration. As a result, the General Survey concerns social security instruments and will be discussed by the Committee on the Application of Standards, while the recurrent report on social security will be discussed by the Committee for the Recurrent Discussion on Social Protection (Social Security). In order to ensure the best interaction between the two discussions, and in the light of the experience of last year, new adjustments are proposed to the working schedule for the discussion of the General

Survey – they are reflected in document C.App/D.0. As in June 2010, the Selection Committee is expected to take a decision to allow the official transmission of the possible output of the discussion of the Committee on the Application of Standards to the Committee for the Recurrent Discussion on Social Protection 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 for the Recurrent Discussion on Social Protection.

2. *General questions.* The Committee will also 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 obligations¹²

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);
- 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;

¹² Formerly “automatic” cases (see *Provisional Record* No. 22, International Labour Conference, 93rd Session, June 2005).

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- 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 ¹³ 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 "F", yet on an experimental basis.

Cases will be divided into 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 56 of that Committee's report. The second group of countries will constitute all 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 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 are to be provided at least two days before the discussion of the case. *They serve to complement the oral reply and any other information already provided by the government, without duplicating them.* The total number of pages is not to exceed five pages.

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

¹³ See also section E below on time management.

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 has 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 has been supplied during the past five years.
- 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 ¹⁴ 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.

¹⁴ This year the sessions involved would be the 89th–96th Sessions (2001–07).

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- 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 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.¹⁵

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;
- 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.

¹⁵ 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.

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 10 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.

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.

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.

Appendix II

Criteria for identifying cases of progress

At its 80th Session (November–December 2009) and at its 81st Session (November–December 2010), the Committee made the following clarifications on the general approach developed over the years for the identification of cases of progress:

- (1) **The expression by the Committee of interest or satisfaction does not mean that it considers that the country in question is in general conformity with the Convention, and in the same comment the Committee may express its satisfaction or interest at a specific issue while also expressing regret concerning other important matters which, in its view, have not been addressed in a satisfactory manner.**
- (2) **The Committee wishes to emphasize that an indication of progress is limited to a specific issue related to the application of the Convention and the nature of the measure adopted by the government concerned.**
- (3) The Committee exercises its discretion in noting progress, taking into account the particular nature of the Convention and the specific circumstances of the country.
- (4) The expression of progress can refer to different kinds of measures relating to national legislation, policy or practice.
- (5) If the satisfaction or interest relates to the adoption of legislation or to a draft legislation, the Committee may also consider appropriate follow-up measures for its practical application.
- (6) In identifying cases of progress, the Committee takes into account both the information provided by governments in their reports and the comments of employers' and workers' organizations.

Within cases of progress, the distinction between cases of **satisfaction** and cases of **interest** was formalized in 1979. 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.** In comparison to cases of satisfaction, cases of interest relate to progress, which is less significant. The Committee's practice has developed to such an extent that cases in which it expresses interest may encompass a variety of measures. The paramount consideration is that the measures contribute to the overall achievement of the objectives of a particular Convention. This may include:

- draft legislation that is before parliament, or other proposed legislative changes 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 is a compelling reason to note a particular judicial decision as a case of satisfaction; or
- the Committee may also note as cases of interest the progress made by a State, province or territory in the framework of a federal system.

Annex 2

INTERNATIONAL LABOUR CONFERENCE

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

100th Session, Geneva, June 2011

Committee on the Application of Standards

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 will be found in
document C. App./D.4/Add.2.

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, 100th Session, 2011)

Country	Convention No. (The page numbers in parentheses refer to the English version of the Report of the Committee of Experts)
Azerbaijan*	138 (page 277)
Belarus*	98 (page 56)
Cambodia	87 (page 64)
Canada	162 (page 679)
Democratic Republic of the Congo*	29 (page 225)
Fiji	111 (page 430)
Greece	98 (page 82)
Guatemala*	87 (page 83)
Honduras	122 (page 615)
Malaysia – Peninsular Malaysia*	19 (page 742)
Mexico	155 (page 712)
Myanmar	29 (page 240) – Special sitting 87 (page 118)
Nigeria	87 (page 125)
Pakistan	87 (page 129)
Panama	87 (page 131)
Paraguay	182 (page 376)
Romania	98 (page 148)
Saudi Arabia	81 (page 570)
Serbia	87 (page 156)
Sri Lanka	103 (page 752)
Swaziland	87 (page 165)
Turkey	87 (page 180)
Uruguay	98 (page 193)
Uzbekistan*	182 (page 396)
Zimbabwe	87 (page 213)

* The countries highlighted with an asterix are those in relation to which the Committee of Experts has placed a double footnote.

INTERNATIONAL LABOUR CONFERENCE

100th Session, Geneva, June 2011

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

Individual cases

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

Peninsular Malaysia

(Ratification: 1957)

For many years, the Committee of Experts as well as the Conference Committee on the Application of Standards, have been drawing the Government's attention to the fact that the national legislation and practice need to be brought in compliance with the principle of equality of treatment between nationals and non-nationals with regard to compensation for industrial accidents, in conformity with *Article 1(1) of the Convention*. In 1993, foreign workers were transferred from the Employees' Social Security Scheme (ESS) which provides for periodical payments to victims of industrial accidents and their dependants, to the Workmen's Compensation Scheme (WCS), which only guarantees the payment of a lump sum. In 1997, the Conference Committee concluded that the level of benefits granted under the ESS was significantly higher than that guaranteed by the WCS and insisted that foreign workers benefit from the same protection as Malaysian nationals. An ILO high-level technical advisory mission visited the country in May 1998 to examine ways of giving effect to the conclusions of the Conference Committee. As a result, the Government stated in its 1998 report that it was planning to review the coverage of foreign workers under the ESS and to propose amendments to the Social Security Act of 1969 in this regard. Since then, however, no steps were undertaken to bring the law and practice into conformity with the Convention.

In its previous observation of 2008, the Committee noted that, taking into account the large number of foreign workers concerned and their high accident rate, the situation called for special efforts from the Government of Malaysia to overcome administrative and practical difficulties, that were impeding equal treatment of foreign workers who suffer industrial accidents. The Committee invited the Government to avail itself of the technical assistance of the Office in this respect. In particular, the Government was asked to demonstrate the actuarial equivalence of the lump sum paid under the WCS to foreign workers in cases of temporary or permanent incapacity, invalidity or survivors' rights to the amount of the periodical payments granted under the ESS to Malaysian workers in similar cases. With respect to the difficulties mentioned by the Government concerning the payment of compensation abroad, the Committee pointed out that these difficulties could be overcome by way of special arrangements between the Members concerned in line with *Article 1(2) of the Convention*. Such arrangements should be concluded in the first place with the main countries supplying workforce to Malaysia. Among the 1.9 million foreign workers currently employed in Malaysia, more than 1.5 million come from Indonesia, followed by India, Myanmar, Bangladesh, the Philippines, Thailand, Pakistan and China. All of these countries are parties to the Convention.

In its response to the Committee's observation, the Government limited itself to reiterating its position that the WCS is a suitable and practical approach for managing compensation of industrial accidents for foreign workers in Malaysia, and expressed the opinion that the system is reliable and suitable to the needs of the workforce in Malaysia.

The Committee **regrets** to note that the Government, in its reply received on 30 July 2010, sees no need to modify the national law and practice to bring it into conformity with the Convention or to resort to the technical assistance which the international community is willing to provide for this purpose. In such a situation, it is the obligation of the Committee to advise the Government that it is breaching its obligations under international law by not observing the principle of equality of treatment between nationals of any other member State which has ratified the Convention and its own nationals. Such violation of the Convention by the Government of Malaysia undermines the system of automatic reciprocity in granting equality of treatment to nationals of ratifying States that the Convention establishes between them. ***Given the gravity of the situation, the Committee requests the Government to reconsider its position.***

[The Government is asked to supply full particulars to the Conference at its 100th Session and to report in detail in 2011.]

Forced Labour Convention, 1930 (No. 29)

Democratic Republic of the Congo

(Ratification: 1960)

Articles 1(1) and 2(1) of the Convention. Forced labour and sexual slavery in the context of an armed conflict. The Committee notes the different reports of the Office of the United Nations High Commissioner for Human Rights and of the special rapporteurs on the situation in the Democratic Republic of the Congo. These reports highlight the gravity of the human rights situation in the country – both in the zones where hostilities have resumed and in areas that have not been affected by the conflict – and refer to violations committed by the state security forces and other armed groups, including cases of forced labour and sexual slavery. The Committee notes that in the second joint report of seven United Nations experts on the situation in the Democratic Republic of the Congo, the experts noted that the mines in the Kivus continue to be exploited by armed groups, especially the Armed Forces of the Democratic Republic of the Congo (FARDC) and expressed their concern at “reports that civilians are still subjected to forced labour, extortion and illegal taxation, and that sexual exploitation of women and girls is rife in these mining areas”. The Committee also notes that, according to this report, “women and girls have been abducted and held as sexual slaves both by FARDC members and other armed actors, and have been subject to collective rapes for weeks and months, often accompanied by additional atrocities” (document A/HRC/13/63 of 8 March 2010). **Considering the gravity of the facts, the Committee expresses its deep concern and urges the Government to take all the urgent and necessary measures to bring an immediate end to these practices which constitute a most serious violation of the Convention, and to ensure that adequate sanctions are imposed on perpetrators.**

Article 25. Penal sanctions. In its previous comments, the Committee noted that, under section 323 of the Labour Code, any infringement of section 2.3, which prohibits the use of forced or compulsory labour, shall be punished by a maximum of six months’ imprisonment plus a fine or by only one of these penalties, without prejudice to criminal legislation laying down more severe penalties. Emphasizing that the sanctions envisaged in the Labour Code are not very dissuasive, the Committee asked the Government to specify the penal provisions which prohibit and penalize recourse to forced labour. The Committee notes that the Government has not provided any information in this regard. It also notes that the 1940 Penal Code (as amended up to 2004) does not appear to include such provisions. **The Committee asks the Government to take the necessary measures to include in the penal legislation provisions establishing adequate sanctions for persons who exact forced labour, in accordance with Article 25 of the Convention. It also requests the Government to indicate how, in practice, the authorities institute legal proceedings and punish persons who exact forced labour.**

Abrogation of legislation allowing for the exaction of work for national development purposes, as a means of levying taxes and by persons in preventive detention. For several years, the Committee has been requesting the Government to amend or repeal the following legislative texts and regulations, which are contrary to the Convention:

– Act No. 76-011 of 21 May 1976 concerning national development efforts and its Implementing Order, Departmental Order No. 00748/BCE/AGRI/76 of 11 June 1976 concerning the performance of civic tasks in the context of the national food production programme: these legal texts, which aim to increase productivity in all sectors of national life, require, subject to penal sanctions, every able-bodied adult person who is not already considered to be making his contribution by reason of his employment (political representatives, employed persons and apprentices, public servants, traders, members of the liberal professions, the clergy, students and pupils) to carry out agricultural and other development work as decided by the Government;

– Legislative Ordinance No. 71/087 of 14 September 1971 on the minimum personal contribution, sections 18 to 21 which provide for imprisonment involving compulsory labour, upon decision of the chief of the local community or the area commissioner, of taxpayers who have defaulted on their minimum personal contributions.

The Committee previously noted the Government’s reiterated indications, first referring to draft amendments to these texts and then indicating that they have lapsed and have therefore been repealed in practice. In its report, the Government again indicates that these texts are no longer applied. In reply to the Committee’s request to formally repeal these texts to provide guarantees of legal security, the Government indicates that legal security is ensured by both the 2006 Constitution and the 2002 Labour Code, which prohibit the use of forced labour, and by section 332 of the Labour Code, which provides that all the previous conflicting provisions are repealed and replaced, and that only the institutions, procedures and regulations which do not conflict with the new Labour Code still remain in force. The Committee notes the Government’s view, according to which legal security is not compromised by the absence of the formal repeal of these texts.

With reference to Ordinance No. 15/APAJ of 20 January 1938 concerning the prison system in indigenous districts, which allows work to be exacted from detainees who have not been convicted, the Government indicates that detainees who have not been convicted are only subject to the obligation to clean their cells and sanitary installations. **The Committee expresses the hope that during the next revision on the penal legislation or on the regulations on the prison system, the Government will take the necessary measures to repeal Ordinance No. 15/APAJ of 20 January 1938 which is not in the list of texts that have been repealed by Ordinance No. 344 of 15 September 1965 respecting prison labour.**

[The Government is asked to supply full particulars to the Conference at its 100th Session and to reply in detail to the present comments in 2011.]

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[The Government is asked to supply full particulars to the Conference at its 100th Session and to reply in detail to the present comments in 2011.]

Myanmar

(Ratification: 1955)

Follow-up to the recommendations made by the Commission of Inquiry (complaint made under article 26 of the Constitution of the ILO)

Historical background

In its earlier comments, the Committee has discussed in detail the history of this extremely serious case, which has involved the Government's gross, long-standing and persistent non-observance of the Convention, as well as the failure by 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. The continued failure by the Government to comply with these recommendations and the observations of the Committee of Experts, as well as other matters arising from the discussion in the other bodies of the ILO, led to the unprecedented exercise of article 33 of the Constitution by the Governing Body at its 277th Session in March 2000, followed by the adoption of a resolution by the Conference at its June 2000 session.

The Committee recalls that the Commission of Inquiry, in its conclusions on the case, pointed out that the Convention was violated in national law and in practice in a widespread and systematic manner. In its recommendations (paragraph 539(a) of the report of the Commission of Inquiry of 2 July 1998), the Commission urged the Government to take the necessary steps to ensure:

- (1) that the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Convention;

- (2) that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military; and
- (3) that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced, which required thorough investigation, prosecution and adequate punishment of those found guilty.

The Commission of Inquiry emphasized that, besides amending the legislation, concrete action needed to be taken immediately to bring an end to the exaction of forced labour in practice, to be accomplished through public acts of the Executive promulgated and made known to all levels of the military and to the whole population. In its earlier comments, the Committee of Experts has identified four areas in which "concrete action" should be taken by the Government to fulfil the recommendations of the Commission of Inquiry. In particular, the Committee indicated the following measures:

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

Developments since the Committee's previous observation

There have been a number of discussions and conclusions by ILO bodies, as well as further documentation received by the ILO, which has been considered by the Committee. In particular, the Committee notes the following information:

- The report of the ILO Liaison Officer submitted to the Conference Committee on the Application of Standards during the 99th Session of the International Labour Conference in June 2010, as well as the discussions and conclusions of that Committee (ILC, 99th Session, *Provisional Record* No. 16, Part Three(A) and document D.5(D));
- the documents submitted to the Governing Body at its 307th and 309th Sessions (March and November 2010), as well as the discussions and conclusions of the Governing Body during those sessions;
- the communication made by the International Trade Union Confederation (ITUC) received in August 2010 together with the detailed appendices of more than 1,400 pages;
- the communication made by the Federation of Trade Unions Kawthoolei (FTUK) received in September 2010 with appendices; and
- the reports of the Government of Myanmar received on 16 December 2009, 4 January, 4 February, 12 and 18 March, 6 April, 19 May, 19 August, 8 September and 6 October 2010.

The Supplementary Understanding of 26 February 2007 – Extension of the complaints mechanism

In its earlier comments, the Committee discussed the significance of the Supplementary Understanding (SU) of 26 February 2007 between the Government and the ILO, which supplemented the earlier Understanding of 19 March 2002 concerning the appointment of an ILO Liaison Officer in Myanmar. As the Committee previously noted, the SU sets out a complaints mechanism, which has as its object "to formally offer the possibility to victims of forced labour to channel their complaints through the services of the Liaison Officer to the competent authorities with a view to seeking remedies available under the relevant legislation and in accordance with the Convention". The Committee notes that the trial period of the SU was extended for the third time, on 19 January 2010, for a further 12 months from 26 February 2010 until 25 February 2011 (ILC, 99th Session, *Provisional Record* No. 16, Part Three, document D.5(F)). The Committee further discusses the information on the functioning of the SU below, in the context of its comments on the other documentation, discussions and conclusions regarding this case.

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 99th Session of the Conference in June 2010. The Conference Committee acknowledged some limited steps on the part of the Government, such as: the further extension of the SU 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 SU, including newspaper articles in the national language; and certain improvements in dealing with under-age recruitment by the military. The Conference Committee was, however, of the view that those steps remained totally inadequate. It noted that none of the three specific and clear recommendations of the Commission of Inquiry had been implemented and strongly urged the Government to: fully implement without delay these recommendations and, in particular, to take the necessary steps to bring the relevant legislative texts into line with the Convention; to 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; to strictly ensure that perpetrators of forced labour, whether civil or military, are prosecuted and punished under the Penal Code; to release immediately complainants and other persons associated with the use of the complaints mechanism who are currently detained, etc. The Conference Committee also called for 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.

Discussions in the Governing Body

The Governing Body continued its discussions of this case during its 307th and 309th Sessions in March and November 2010 (GB.307/6, GB.309/6). The Committee notes that, following the discussion in November 2010, the Governing Body reconfirmed all of its previous conclusions and those of the International Labour Conference and called upon the Government and the Office to work proactively towards their realization. In the light of the commitment made by the Permanent Representative of the Government, the Governing Body called on the new Parliament to proceed without delay to bring legislation into line with the Convention. While noting the increased number of the complaints received under the SU complaints mechanism, the Governing Body considered it essential that the movement towards an environment free from harassment or fear of retribution be sustained, and called upon the Government to cooperate with the Liaison Officer on cases raised at the Officer's own initiative. Notwithstanding the reported progress in increased awareness of both government personnel and the community at large of their rights and responsibilities under the law, further committed action is required to end all forms of forced labour, including under-age recruitment into the military and human trafficking, as well as the strict application of the Penal Code to all perpetrators, in order to bring an end to the impunity. The Governing Body also called for the continuation and intensification of awareness-raising activities undertaken jointly and severally by the Government and the ILO Liaison Officer encompassing government personnel, the military and civil society. Finally, the Governing Body welcomed the release of Daw Aung San Suu Kyi and urged that other persons still in detention, including labour activists and persons associated with the submission of complaints under the SU, would be similarly given their liberty as soon as possible.

Communication received from workers' organizations

The Committee notes the comments made by the ITUC in its communication received in August 2010. Appended to this communication were 51 documents, amounting to more than 1,400 pages, containing extensive and detailed documentation referring to the persistence of widespread forced labour practices by civil and military authorities in almost all of the country's states and divisions. In many cases, the documentation refers to specific dates, locations, circumstances, specific civil bodies, military units and individual officials. Specific incidents referred to in the ITUC documentation involve allegations of a wide variety of types of work and services requisitioned by authorities, including work directly related to the military (portering, construction and forced recruitment of children), as well as work of a more general nature, including work in agriculture, construction and maintenance of roads and other infrastructure work. The ITUC documentation includes, inter alia, reports submitted to it by the Federation of Trade Unions of Burma (FTUB) and its affiliate, the FTUK, which contain allegations that victims of forced labour who were encouraged by these organizations to report to the ILO, have been prosecuted for it and subsequently jailed. The ITUC documentation also includes translated copies of numerous written orders ("Order documents" or "Order letters") apparently from military and other authorities to village authorities in Karen State, Chin State and some other states and divisions, containing a range of demands, entailing in most cases a requisition for compulsory (and uncompensated) labour. Thus, the report submitted by the FTUK, which was also directly communicated to the ILO in a communication received in September 2010 referred to above, includes translated copies of 94 Order documents issued by military authorities to village heads in Karen State between January 2009 and June 2010. The tasks and services demanded by these documents involved, inter alia, portering for the military, bridge repair, collection of raw materials, production and delivery of thatch shingles and bamboo poles, attendance at meetings, provision of money, food and other supplies, provision of information on individuals and households, etc. The report states that the above orders illustrate the persistent exaction of forced labour by the military in the rural Karen State, which significantly contributes to poverty, livelihoods vulnerability, food insecurity and displacement of large numbers of villagers. Copies of the above communications by the ITUC and the FTUK with annexes were transmitted to the Government, in September 2010, for such comments as it may wish to make on the matters raised therein.

The Government's reports

The Committee notes the Government's reports, referred to in paragraph 4 above, which include replies to the Committee's previous observation. It notes, in particular, the Government's indications concerning the Government's continued cooperation with the various functions of the ILO Liaison Officer, including monitoring and investigating the forced labour situation and the operation of the SU complaints mechanism, as well as the Government's efforts in the field of the awareness-raising and training activities on forced labour, including the joint ILO–Ministry of Labour (MOL) presentation made at the Deputy Township Judges' training course in Yangon in March 2010 and the distribution of booklets on the SU and informative, simply worded brochures on forced labour. The Committee also notes the Government's indications concerning measures taken to prevent recruitment of under-age children and to release newly recruited underage soldiers from September 2009 up to August 2010. As regards the amendment of the legislation, the Government indicates that the Ministry of Home Affairs has been coordinating with the concerned departments in reviewing the Village Act and Towns Act. However, no action has been taken or contemplated to amend section 359 of the Constitution. The Committee also notes that the Government has not yet supplied its comments on the numerous specific allegations contained in the communications from the ITUC and the FTUK referred to above, as well as in the communication by the ITUC received in September 2009. **The Committee urges the Government to respond in detail in its next report to the numerous specific allegations of continued, widespread imposition of forced or compulsory labour by military and civil authorities throughout the country, which are documented in the above communications from the ITUC and the FTUK, making particular reference to the "Order documents", which constitute conclusive evidence of the systematic imposition of forced labour by the military.**

Assessment of the situation

Assessment of the information available on the situation of forced labour in Myanmar in 2010 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

The Committee previously noted the Government's statement in its report received on 27 August 2009 that the Village Act and the Towns Act "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 Towns Act 1907, and the Village Act 1907) as supplemented by the Order of 27 October 2000. The Committee observed that the latter orders had 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 Government's indication in its report received on 19 August 2010, that the Ministry of Home Affairs has been coordinating with the**

concerned departments in reviewing these Acts, the Committee expresses the firm hope that the long overdue steps to amend or repeal them will soon be taken and that legislation will be brought into conformity with the Convention. The Committee asks the Government to provide, in its next report, information on the progress made in this regard.

In its earlier comments, the Committee referred to section 359 of the Constitution (Chapter VIII – Citizenship, fundamental rights and duties of citizens), which excepts from the prohibition of forced labour “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 Government’s statement in its report received on 19 August 2010, that “it is completely impossible to amend the Constitution ... as it was ratified by the referendum held in May 2008 with 92.48 per cent affirmative votes”. **The Committee urges the Government once again to take the necessary measures with a view to amending section 359 of Chapter VIII of the Constitution, in order to bring it into conformity with the Convention.**

(ii) Measures to stop the exaction of forced or compulsory labour in practice

Information available on current practice. In paragraph 8 of this observation, the Committee referred in detail to the communications received from the ITUC and the FTUK, which contain well-documented allegations that forced and compulsory labour continued to be exacted from local villagers in 2010 by military and civil authorities in almost all of the country’s states and divisions. The information in the numerous appendices refers to specific dates, locations and circumstances of the occurrences, as well as 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, and has taken a wide variety of forms and involved a variety of tasks.

The Committee notes from the report of the ILO Liaison Officer to the Conference Committee in June 2010 (ILC, 99th Session, *Provisional Record*, No. 16, Part Three, document D.5(C)) that, while the SU complaints mechanism continues to function and the awareness-raising activities continue to take place, complaints alleging the use of forced labour by both military and civil authorities continue to be received (paragraphs 5 and 6). The ILO Liaison Officer also refers to numerous requests to the authorities to release identified victims of under-age military recruitment and states that the work related to under-age recruitment under the SU supports the activity of the UN Country Task Force on Monitoring and Reporting on Children Affected by Armed Conflict under Security Council Resolution 1612 (paragraphs 8 and 12). According to the report, a number of complaints of human trafficking for forced labour have been received; three such cases have been referred to the ILO anti-trafficking projects based outside the country and have resulted in the release of 56 persons from a forced labour situation in neighbouring countries. The ILO Liaison Officer further states that “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”, which is most likely due to the extensive awareness-raising activities and the heightened awareness of local authority personnel (paragraphs 7 and 11). However, according to the Governing Body document submitted to its 307th Session in March 2010, “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” (GB.307/6, paragraph 5).

Issuing specific and concrete instructions to the civilian and military authorities. In its earlier comments, the Committee 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 previously noted the Government’s general statement in its report received on 1 June 2009 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”. However, the Committee notes that no new information has been provided by the Government in its subsequent reports on this important issue. Given the continued dearth of information regarding this issue, the Committee remains unable to ascertain that clear instructions have been effectively conveyed to all civil authorities and military units, and that bona fide effect has been given to such instructions. 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 for steps taken to ensure that such instructions are fully publicized and effectively supervised. **Considering that measures to issue instructions to civilian and military authorities on the prohibitions of forced and compulsory labour are vital and need to be intensified, the Committee expresses the firm hope that the Government will provide, in its next report, information on the measures taken in this regard, including translated copies of the instructions which have been issued reconfirming the prohibition of forced labour.**

Ensuring that the prohibition of forced labour is given wide publicity. In relation to ensuring that the prohibition of forced labour is given wide publicity, the Committee notes from the report of the ILO Liaison Officer referred to above, from the documents submitted to the Governing Body and to the Conference Committee, as well as from the Government’s reports, that a number of awareness-raising activities concerning the forced labour situation, the legal prohibitions of forced labour and existing avenues of recourse for victims were carried out in 2010. These included, inter alia, three joint ILO–MOL awareness-raising seminars at state/division level for civil and military personnel held in Rhakine State, Magway Division and Bago Division; two joint ILO–MOL presentations on the law and practice on forced labour to a refresher training course for township judges and deputy judges; and three training seminars/presentations for members of the armed forces, the police and the prison service on the law and practice concerning under-age recruitment into the military. During the meeting of the ILO mission with the Minister of Labour (January 2010), the Government agreed to the publication of a simply worded brochure, in Myanmar language, explaining the law pertaining to forced labour, including under-age recruitment, and the procedures available to victims for lodging a complaint (GB.307/6, paragraph 9). The Governing Body, while calling for the continuation and intensification of awareness-raising activities during its November 2010 session, called on the Government to continue to actively support the wide distribution of the agreed brochure and its translation into all local languages (GB.309/6, paragraph 4). **The Committee reiterates its view that such activities are critical in helping to ensure that the prohibition of forced labour is widely known and applied in practice, and should continue and be expanded.**

The Committee notes from the Governing Body document submitted to its 309th Session in November 2010 (GB.309/6), that the number of complaints received under the SU complaints mechanism continued to increase: over the period 1 June to 21 October 2010, 160 complaints have been received, as compared to 65 complaints received during the corresponding period in 2009 and 25 for the same period in 2008 (paragraph 18). As at 21

October 2010, a total of 503 complaints have been received under the SU mechanism; 288 cases (assessed to be within the ILO mandate) have been submitted to the Government Working Group for investigation, of which 132 have been resolved with varying degrees of satisfaction; 127 forced and/or under-age recruits have been released/discharged from the military in association with complaints under the SU mechanism (paragraphs 14 and 15). The Committee reiterates its view that the complaints mechanism under the SU in itself provided an opportunity to the authorities to demonstrate that continued recourse to the practice is illegal and would be punished as a penal offence, as required by the Convention. **The Committee therefore hopes that the Government will intensify and expand the scale and scope of its efforts to give wide publicity to and raise public awareness about the prohibition of forced labour, including the use of the SU complaints mechanism as an important modality of awareness raising; that it will undertake awareness-raising activities in a more coherent and systematic way; and that it will provide, in its next report, information on measures taken or contemplated in this regard. The Committee further hopes that the Government will provide information on the impact of awareness-raising activities on the enforcement of criminal penalties against perpetrators of forced labour and on the imposition in actual practice of forced or compulsory labour, particularly by the military.**

Making adequate budgetary provisions for the replacement of forced or unpaid labour. In its earlier comments, the Committee observed that budgeting of adequate means for the replacement of forced labour, which tends also to be unpaid, is necessary if recourse to the practice is to end. The Committee recalls in this regard that, in its recommendations, the Commission of Inquiry stated that “action must not be limited to the issue of wage payment; it must ensure that nobody is compelled to work against his or her will. Nonetheless, the budgeting of adequate means to hire free wage labour for the public activities which are today based on forced and unpaid labour is also required”. The Committee has noted the Government’s repeated indication in its reports, including the report received on 19 August 2010, that the budget allotments including the expense of labour costs for all ministries have been allocated to implement their projects. **Noting that no other information has been provided by the Government on this important issue, the Committee requests the Government once again to provide, in its next report, detailed and precise information on the measures taken to budget adequate means for the replacement of forced or unpaid labour.**

(iii) Ensuring the enforcement of the prohibition of forced labour

The Committee previously noted 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. It also noted 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 2000–05 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. The Committee notes from the Governing Body document submitted to its 309th Session in November 2010 (GB.309/6) that, in respect of cases concerning forced labour exacted by the military, the ILO has received no information concerning the prosecution of any perpetrator under the above provision of the Penal Code. The ILO has been advised that, in four instances, disciplinary action has been taken under military procedures in response to complaints submitted under the SU mechanism, and that in some instances the solution to the complaint has resulted in the issuance of orders requiring behavioural change (paragraph 11). As regards cases concerning forced labour exacted by civilian authorities, prosecution of perpetrators under the Penal Code in response to complaints submitted has been reported only in respect of Case No. 1, which has been already noted by the Committee in its earlier comments and resulted in the prosecution of two civilian officials, who were punished with penalties of imprisonment. In other instances, the solution has involved administrative penalties, including dismissal or transfer, with the majority of cases being resolved by addressing the situation of the complainants without punitive action being taken against the perpetrators (paragraph 12). As regards cases of forced and/or under-age recruitment, a punitive and disciplinary process has increasingly been applied and military perpetrators have been referred to summary trial under military regulations, which resulted in imprisonment in three instances; other penalties which appear to be regularly administered included the loss of seniority, pensionable rights or several days’ pay, as well as the issuance of various levels of formal reprimand (paragraph 13).

The Committee notes with **regret** that no new information has been provided by the Government in its 2010 reports about any prosecutions against perpetrators of forced labour being pursued under section 374 of the Penal Code. **The Committee points out once again that the illegal exaction of forced labour must be punished as a penal offence, rather than treated as an administrative issue, and expresses the firm hope that appropriate measures will be taken in the near future in order to ensure that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour are strictly enforced, in conformity with Article 25 of the Convention. It asks the Government to provide, in its next report, information on the progress made in this regard.**

Concluding remarks

The Committee fully endorses the conclusions concerning Myanmar made by the Conference Committee and the Governing Body, as well as the general evaluation of the forced labour situation by the ILO Liaison Officer. The Committee observes that, in spite of the efforts made, particularly in the field of awareness raising, cooperation in the functioning of the SU complaints mechanism and in the release of under-age recruits from the military, the Government has not yet implemented the recommendations of the Commission of Inquiry: it has failed to amend or repeal the Towns Act and the Village Act; it has failed to ensure that, in actual practice, forced labour is no longer imposed by the authorities, in particular by the military; and it has failed to ensure that penalties for the exaction of forced labour under the Penal Code have been strictly enforced against civil and military authorities. The Committee continues to believe that the only way that genuine and lasting progress in the elimination of forced labour can be made is for the Myanmar authorities to demonstrate unambiguously their commitment to achieving that goal. **The Committee urges the Government once again to demonstrate its commitment to rectify the violations of the Convention identified by the Commission of Inquiry, by implementing the concrete practical requests addressed by the Committee to the Government, and that all the long-overdue steps will be taken to achieve compliance with the Convention, both in law and in practice, so that the most serious and long-standing problem of forced labour will be finally resolved.**

Follow-up to the recommendations made by the Commission of Inquiry (complaint made under article 26 of the Constitution of the ILO)

Historical background

In its earlier comments, the Committee has discussed in detail the history of this extremely serious case, which has involved the Government’s gross,

long-standing and persistent non-observance of the Convention, as well as the failure by 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. The continued failure by the Government to comply with these recommendations and the observations of the Committee of Experts, as well as other matters arising from the discussion in the other bodies of the ILO, led to the unprecedented exercise of article 33 of the Constitution by the Governing Body at its 277th Session in March 2000, followed by the adoption of a resolution by the Conference at its June 2000 session.

The Committee recalls that the Commission of Inquiry, in its conclusions on the case, pointed out that the Convention was violated in national law and in practice in a widespread and systematic manner. In its recommendations (paragraph 539(a) of the report of the Commission of Inquiry of 2 July 1998), the Commission urged the Government to take the necessary steps to ensure:

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

The Commission of Inquiry emphasized that, besides amending the legislation, concrete action needed to be taken immediately to bring an end to the exaction of forced labour in practice, to be accomplished through public acts of the Executive promulgated and made known to all levels of the military and to the whole population. In its earlier comments, the Committee of Experts has identified four areas in which "concrete action" should be taken by the Government to fulfil the recommendations of the Commission of Inquiry. In particular, the Committee indicated the following measures:

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

Developments since the Committee's previous observation

There have been a number of discussions and conclusions by ILO bodies, as well as further documentation received by the ILO, which has been considered by the Committee. In particular, the Committee notes the following information:

- The report of the ILO Liaison Officer submitted to the Conference Committee on the Application of Standards during the 99th Session of the International Labour Conference in June 2010, as well as the discussions and conclusions of that Committee (ILC, 99th Session, *Provisional Record* No. 16, Part Three(A) and document D.5(D));
- the documents submitted to the Governing Body at its 307th and 309th Sessions (March and November 2010), as well as the discussions and conclusions of the Governing Body during those sessions;
- the communication made by the International Trade Union Confederation (ITUC) received in August 2010 together with the detailed appendices of more than 1,400 pages;
- the communication made by the Federation of Trade Unions Kawthoolei (FTUK) received in September 2010 with appendices; and
- the reports of the Government of Myanmar received on 16 December 2009, 4 January, 4 February, 12 and 18 March, 6 April, 19 May, 19 August, 8 September and 6 October 2010.

The Supplementary Understanding of 26 February 2007 – Extension of the complaints mechanism

In its earlier comments, the Committee discussed the significance of the Supplementary Understanding (SU) of 26 February 2007 between the Government and the ILO, which supplemented the earlier Understanding of 19 March 2002 concerning the appointment of an ILO Liaison Officer in Myanmar. As the Committee previously noted, the SU sets out a complaints mechanism, which has as its object "to formally offer the possibility to victims of forced labour to channel their complaints through the services of the Liaison Officer to the competent authorities with a view to seeking remedies available under the relevant legislation and in accordance with the Convention". The Committee notes that the trial period of the SU was extended for the third time, on 19 January 2010, for a further 12 months from 26 February 2010 until 25 February 2011 (ILC, 99th Session, *Provisional Record* No. 16, Part Three, document D.5(F)). The Committee further discusses the information on the functioning of the SU below, in the context of its comments on the other documentation, discussions and conclusions regarding this case.

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 99th Session of the Conference in June 2010. The Conference Committee acknowledged some limited steps on the part of the Government, such as: the further extension of the SU 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 SU, including newspaper articles in the national language; and certain improvements in dealing with

under-age recruitment by the military. The Conference Committee was, however, of the view that those steps remained totally inadequate. It noted that none of the three specific and clear recommendations of the Commission of Inquiry had been implemented and strongly urged the Government to: fully implement without delay these recommendations and, in particular, to take the necessary steps to bring the relevant legislative texts into line with the Convention; to 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; to strictly ensure that perpetrators of forced labour, whether civil or military, are prosecuted and punished under the Penal Code; to release immediately complainants and other persons associated with the use of the complaints mechanism who are currently detained, etc. The Conference Committee also called for 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.

Discussions in the Governing Body

The Governing Body continued its discussions of this case during its 307th and 309th Sessions in March and November 2010 (GB.307/6, GB.309/6). The Committee notes that, following the discussion in November 2010, the Governing Body reconfirmed all of its previous conclusions and those of the International Labour Conference and called upon the Government and the Office to work proactively towards their realization. In the light of the commitment made by the Permanent Representative of the Government, the Governing Body called on the new Parliament to proceed without delay to bring legislation into line with the Convention. While noting the increased number of the complaints received under the SU complaints mechanism, the Governing Body considered it essential that the movement towards an environment free from harassment or fear of retribution be sustained, and called upon the Government to cooperate with the Liaison Officer on cases raised at the Officer's own initiative. Notwithstanding the reported progress in increased awareness of both government personnel and the community at large of their rights and responsibilities under the law, further committed action is required to end all forms of forced labour, including under-age recruitment into the military and human trafficking, as well as the strict application of the Penal Code to all perpetrators, in order to bring an end to the impunity. The Governing Body also called for the continuation and intensification of awareness-raising activities undertaken jointly and severally by the Government and the ILO Liaison Officer encompassing government personnel, the military and civil society. Finally, the Governing Body welcomed the release of Daw Aung San Suu Kyi and urged that other persons still in detention, including labour activists and persons associated with the submission of complaints under the SU, would be similarly given their liberty as soon as possible.

Communication received from workers' organizations

The Committee notes the comments made by the ITUC in its communication received in August 2010. Appended to this communication were 51 documents, amounting to more than 1,400 pages, containing extensive and detailed documentation referring to the persistence of widespread forced labour practices by civil and military authorities in almost all of the country's states and divisions. In many cases, the documentation refers to specific dates, locations, circumstances, specific civil bodies, military units and individual officials. Specific incidents referred to in the ITUC documentation involve allegations of a wide variety of types of work and services requisitioned by authorities, including work directly related to the military (portering, construction and forced recruitment of children), as well as work of a more general nature, including work in agriculture, construction and maintenance of roads and other infrastructure work. The ITUC documentation includes, inter alia, reports submitted to it by the Federation of Trade Unions of Burma (FTUB) and its affiliate, the FTUK, which contain allegations that victims of forced labour who were encouraged by these organizations to report to the ILO, have been prosecuted for it and subsequently jailed. The ITUC documentation also includes translated copies of numerous written orders ("Order documents" or "Order letters") apparently from military and other authorities to village authorities in Karen State, Chin State and some other states and divisions, containing a range of demands, entailing in most cases a requisition for compulsory (and uncompensated) labour. Thus, the report submitted by the FTUK, which was also directly communicated to the ILO in a communication received in September 2010 referred to above, includes translated copies of 94 Order documents issued by military authorities to village heads in Karen State between January 2009 and June 2010. The tasks and services demanded by these documents involved, inter alia, portering for the military, bridge repair, collection of raw materials, production and delivery of thatch shingles and bamboo poles, attendance at meetings, provision of money, food and other supplies, provision of information on individuals and households, etc. The report states that the above orders illustrate the persistent exaction of forced labour by the military in the rural Karen State, which significantly contributes to poverty, livelihoods vulnerability, food insecurity and displacement of large numbers of villagers. Copies of the above communications by the ITUC and the FTUK with annexes were transmitted to the Government, in September 2010, for such comments as it may wish to make on the matters raised therein.

The Government's reports

The Committee notes the Government's reports, referred to in paragraph 4 above, which include replies to the Committee's previous observation. It notes, in particular, the Government's indications concerning the Government's continued cooperation with the various functions of the ILO Liaison Officer, including monitoring and investigating the forced labour situation and the operation of the SU complaints mechanism, as well as the Government's efforts in the field of the awareness-raising and training activities on forced labour, including the joint ILO–Ministry of Labour (MOL) presentation made at the Deputy Township Judges' training course in Yangon in March 2010 and the distribution of booklets on the SU and informative, simply worded brochures on forced labour. The Committee also notes the Government's indications concerning measures taken to prevent recruitment of under-age children and to release newly recruited underage soldiers from September 2009 up to August 2010. As regards the amendment of the legislation, the Government indicates that the Ministry of Home Affairs has been coordinating with the concerned departments in reviewing the Village Act and Towns Act. However, no action has been taken or contemplated to amend section 359 of the Constitution. The Committee also notes that the Government has not yet supplied its comments on the numerous specific allegations contained in the communications from the ITUC and the FTUK referred to above, as well as in the communication by the ITUC received in September 2009. ***The Committee urges the Government to respond in detail in its next report to the numerous specific allegations of continued, widespread imposition of forced or compulsory labour by military and civil authorities throughout the country, which are documented in the above communications from the ITUC and the FTUK, making particular reference to the "Order documents", which constitute conclusive evidence of the systematic imposition of forced labour by the military.***

Assessment of the situation

Assessment of the information available on the situation of forced labour in Myanmar in 2010 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

The Committee previously noted the Government's statement in its report received on 27 August 2009 that the Village Act and the Towns Act "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 Towns Act 1907, and the Village Act 1907) as supplemented by the Order of 27 October 2000. The Committee observed that the latter orders had 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 Government's indication in its report received on 19 August 2010, that the Ministry of Home Affairs has been coordinating with the concerned departments in reviewing these Acts, the Committee expresses the firm hope that the long overdue steps to amend or repeal them will soon be taken and that legislation will be brought into conformity with the Convention. The Committee asks the Government to provide, in its next report, information on the progress made in this regard.**

In its earlier comments, the Committee referred to section 359 of the Constitution (Chapter VIII – Citizenship, fundamental rights and duties of citizens), which excepts from the prohibition of forced labour "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 Government's statement in its report received on 19 August 2010, that "it is completely impossible to amend the Constitution ... as it was ratified by the referendum held in May 2008 with 92.48 per cent affirmative votes". **The Committee urges the Government once again to take the necessary measures with a view to amending section 359 of Chapter VIII of the Constitution, in order to bring it into conformity with the Convention.**

(ii) Measures to stop the exaction of forced or compulsory labour in practice

Information available on current practice. In paragraph 8 of this observation, the Committee referred in detail to the communications received from the ITUC and the FTUK, which contain well-documented allegations that forced and compulsory labour continued to be exacted from local villagers in 2010 by military and civil authorities in almost all of the country's states and divisions. The information in the numerous appendices refers to specific dates, locations and circumstances of the occurrences, as well as 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, and has taken a wide variety of forms and involved a variety of tasks.

The Committee notes from the report of the ILO Liaison Officer to the Conference Committee in June 2010 (ILC, 99th Session, *Provisional Record*, No. 16, Part Three, document D.5(C)) that, while the SU complaints mechanism continues to function and the awareness-raising activities continue to take place, complaints alleging the use of forced labour by both military and civil authorities continue to be received (paragraphs 5 and 6). The ILO Liaison Officer also refers to numerous requests to the authorities to release identified victims of under-age military recruitment and states that the work related to under-age recruitment under the SU supports the activity of the UN Country Task Force on Monitoring and Reporting on Children Affected by Armed Conflict under Security Council Resolution 1612 (paragraphs 8 and 12). According to the report, a number of complaints of human trafficking for forced labour have been received; three such cases have been referred to the ILO anti-trafficking projects based outside the country and have resulted in the release of 56 persons from a forced labour situation in neighbouring countries. The ILO Liaison Officer further states that "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", which is most likely due to the extensive awareness-raising activities and the heightened awareness of local authority personnel (paragraphs 7 and 11). However, according to the Governing Body document submitted to its 307th Session in March 2010, "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" (GB.307/6, paragraph 5).

Issuing specific and concrete instructions to the civilian and military authorities. In its earlier comments, the Committee 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 previously noted the Government's general statement in its report received on 1 June 2009 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". However, the Committee notes that no new information has been provided by the Government in its subsequent reports on this important issue. Given the continued dearth of information regarding this issue, the Committee remains unable to ascertain that clear instructions have been effectively conveyed to all civil authorities and military units, and that bona fide effect has been given to such instructions. 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 for steps taken to ensure that such instructions are fully publicized and effectively supervised. **Considering that measures to issue instructions to civilian and military authorities on the prohibitions of forced and compulsory labour are vital and need to be intensified, the Committee expresses the firm hope that the Government will provide, in its next report, information on the measures taken in this regard, including translated copies of the instructions which have been issued reconfirming the prohibition of forced labour.**

Ensuring that the prohibition of forced labour is given wide publicity. In relation to ensuring that the prohibition of forced labour is given wide publicity, the Committee notes from the report of the ILO Liaison Officer referred to above, from the documents submitted to the Governing Body and to the Conference Committee, as well as from the Government's reports, that a number of awareness-raising activities concerning the forced labour situation, the legal prohibitions of forced labour and existing avenues of recourse for victims were carried out in 2010. These included, inter alia, three joint ILO–MOL awareness-raising seminars at state/division level for civil and military personnel held in Rhakine State, Magway Division and Bago Division; two joint ILO–MOL presentations on the law and practice on forced labour to a refresher training course for township judges and deputy judges; and three

training seminars/presentations for members of the armed forces, the police and the prison service on the law and practice concerning under-age recruitment into the military. During the meeting of the ILO mission with the Minister of Labour (January 2010), the Government agreed to the publication of a simply worded brochure, in Myanmar language, explaining the law pertaining to forced labour, including under-age recruitment, and the procedures available to victims for lodging a complaint (GB.307/6, paragraph 9). The Governing Body, while calling for the continuation and intensification of awareness-raising activities during its November 2010 session, called on the Government to continue to actively support the wide distribution of the agreed brochure and its translation into all local languages (GB.309/6, paragraph 4). **The Committee reiterates its view that such activities are critical in helping to ensure that the prohibition of forced labour is widely known and applied in practice, and should continue and be expanded.**

The Committee notes from the Governing Body document submitted to its 309th Session in November 2010 (GB.309/6), that the number of complaints received under the SU complaints mechanism continued to increase: over the period 1 June to 21 October 2010, 160 complaints have been received, as compared to 65 complaints received during the corresponding period in 2009 and 25 for the same period in 2008 (paragraph 18). As at 21 October 2010, a total of 503 complaints have been received under the SU mechanism; 288 cases (assessed to be within the ILO mandate) have been submitted to the Government Working Group for investigation, of which 132 have been resolved with varying degrees of satisfaction; 127 forced and/or under-age recruits have been released/discharged from the military in association with complaints under the SU mechanism (paragraphs 14 and 15). The Committee reiterates its view that the complaints mechanism under the SU in itself provided an opportunity to the authorities to demonstrate that continued recourse to the practice is illegal and would be punished as a penal offence, as required by the Convention. **The Committee therefore hopes that the Government will intensify and expand the scale and scope of its efforts to give wide publicity to and raise public awareness about the prohibition of forced labour, including the use of the SU complaints mechanism as an important modality of awareness raising; that it will undertake awareness-raising activities in a more coherent and systematic way; and that it will provide, in its next report, information on measures taken or contemplated in this regard. The Committee further hopes that the Government will provide information on the impact of awareness-raising activities on the enforcement of criminal penalties against perpetrators of forced labour and on the imposition in actual practice of forced or compulsory labour, particularly by the military.**

Making adequate budgetary provisions for the replacement of forced or unpaid labour. In its earlier comments, the Committee observed that budgeting of adequate means for the replacement of forced labour, which tends also to be unpaid, is necessary if recourse to the practice is to end. The Committee recalls in this regard that, in its recommendations, the Commission of Inquiry stated that “action must not be limited to the issue of wage payment; it must ensure that nobody is compelled to work against his or her will. Nonetheless, the budgeting of adequate means to hire free wage labour for the public activities which are today based on forced and unpaid labour is also required”. The Committee has noted the Government’s repeated indication in its reports, including the report received on 19 August 2010, that the budget allotments including the expense of labour costs for all ministries have been allocated to implement their projects. **Noting that no other information has been provided by the Government on this important issue, the Committee requests the Government once again to provide, in its next report, detailed and precise information on the measures taken to budget adequate means for the replacement of forced or unpaid labour.**

(iii) Ensuring the enforcement of the prohibition of forced labour

The Committee previously noted 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. It also noted 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 2000–05 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. The Committee notes from the Governing Body document submitted to its 309th Session in November 2010 (GB.309/6) that, in respect of cases concerning forced labour exacted by the military, the ILO has received no information concerning the prosecution of any perpetrator under the above provision of the Penal Code. The ILO has been advised that, in four instances, disciplinary action has been taken under military procedures in response to complaints submitted under the SU mechanism, and that in some instances the solution to the complaint has resulted in the issuance of orders requiring behavioural change (paragraph 11). As regards cases concerning forced labour exacted by civilian authorities, prosecution of perpetrators under the Penal Code in response to complaints submitted has been reported only in respect of Case No. 1, which has been already noted by the Committee in its earlier comments and resulted in the prosecution of two civilian officials, who were punished with penalties of imprisonment. In other instances, the solution has involved administrative penalties, including dismissal or transfer, with the majority of cases being resolved by addressing the situation of the complainants without punitive action being taken against the perpetrators (paragraph 12). As regards cases of forced and/or under-age recruitment, a punitive and disciplinary process has increasingly been applied and military perpetrators have been referred to summary trial under military regulations, which resulted in imprisonment in three instances; other penalties which appear to be regularly administered included the loss of seniority, pensionable rights or several days’ pay, as well as the issuance of various levels of formal reprimand (paragraph 13).

The Committee notes with **regret** that no new information has been provided by the Government in its 2010 reports about any prosecutions against perpetrators of forced labour being pursued under section 374 of the Penal Code. **The Committee points out once again that the illegal exaction of forced labour must be punished as a penal offence, rather than treated as an administrative issue, and expresses the firm hope that appropriate measures will be taken in the near future in order to ensure that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour are strictly enforced, in conformity with Article 25 of the Convention. It asks the Government to provide, in its next report, information on the progress made in this regard.**

Concluding remarks

The Committee fully endorses the conclusions concerning Myanmar made by the Conference Committee and the Governing Body, as well as the general evaluation of the forced labour situation by the ILO Liaison Officer. The Committee observes that, in spite of the efforts made, particularly in the field of awareness raising, cooperation in the functioning of the SU complaints mechanism and in the release of under-age recruits from the military, the Government has not yet implemented the recommendations of the Commission of Inquiry: it has failed to amend or repeal the Towns Act and the Village Act; it has failed to ensure that, in actual practice, forced labour is no longer imposed by the authorities, in particular by the military; and it has failed to ensure that penalties for the exaction of forced labour under the Penal Code have been strictly enforced against civil and military authorities.

The Committee continues to believe that the only way that genuine and lasting progress in the elimination of forced labour can be made is for the Myanmar authorities to demonstrate unambiguously their commitment to achieving that goal. ***The Committee urges the Government once again to demonstrate its commitment to rectify the violations of the Convention identified by the Commission of Inquiry, by implementing the concrete practical requests addressed by the Committee to the Government, and that all the long-overdue steps will be taken to achieve compliance with the Convention, both in law and in practice, so that the most serious and long-standing problem of forced labour will be finally resolved.***

Labour Inspection Convention, 1947 (No. 81)

Saudi Arabia

(Ratification: 1978)

The Committee takes note of the Government's report and its annexes, received on 18 September 2009, including the annual report of the work of the labour inspectorate for the period 2008–09.

Article 21 of the Convention. Content of the annual labour inspection report. The Committee notes with **interest** that the provisions of the Labour Law promulgated by Royal Decree No. M/51 dated 23 Sha'ban 1426 (27 September 2005) and published in 2006, relating to work inspection (sections 194–209), are in full compliance, in particular, with the spirit and the letter of the provisions of *Articles 3, 4, 6, 7, 9, 12, 13, 14, 15, 17, 18, 19 and 21* of the Convention. However, the Committee remarks that the annual report on the work of the labour inspectorate still does not contain statistics on specific violations committed and penalties imposed (*Article 21(e)*), despite the relevant provision of section 206(5) of the Labour Law. Such information is essential to allow an assessment of the level of compliance with the Convention, as it is designed to indicate whether the labour inspection activities mainly focus on the enforcement of the legal provisions pertaining to conditions of work and the protection of workers while engaged in their work, as provided for by *Articles 2 and 3* of the Convention. According to a summary of the annual report on the achievement of the labour inspection for 1430H (2009), published via the Government's web site, the majority of the violations reported related to sections 25, 33, 36 and 38 of the Labour Law, especially with regard to employment, use of expatriate workers by their employers in professions different from the ones specified in their work permits, use of expatriate workers by another employer than the one indicated in their work permit, delay of payment of salaries, absence of by-law in the enterprises, non-recruitment of Saudi nationals in the positions foreseen in the law or non-application of the rules on occupational safety and health. It is also indicated that the labour inspectors participate in the inspection activities, along with other government agencies such as the special committees entrusted with verifying the employment of Saudi nationals in certain activities and professions, or other committees entrusted with the improvement of certain aspects of the labour market. This seems to indicate that relevant data are available and could be included in the annual report as provided by section 206(3) of the Labour law, in line with *Article 21(e)* of the Convention. **Accordingly, the Committee asks the Government once again to make every endeavour to ensure that the annual report on the work of the labour inspectorate contains detailed statistics on the violations committed and the penalties imposed, according to the guidance provided in part IV of the Labour Inspection Recommendation, 1947 (No. 81).**

Also referring to its General Observation of 2009, the Committee would be grateful if the Government would take the steps necessary to ensure that statistics of workplaces liable to labour inspection and the number of the workers employed therein (*Article 21(c)*) are included in the annual report, so as to allow for an assessment of the coverage of the labour inspection services throughout the whole country.

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

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

Cambodia

(Ratification: 1999)

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) dated 24 August 2010, concerning acts of violence and harassment against trade union leaders and members as well as other violations of the Convention. The Committee notes, in particular, the information provided by the ITUC regarding the absence of a labour court, the overall deficiency of the judicial system in respect of the murders of trade unionists Chea Vichea and Ros Sovannareth and the persistent climate of repression towards trade union activities.

The Committee further notes the comments made by the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC) dated 31 August 2010, indicating that independent trade unions remain fragile, under-resourced and operating in an extremely difficult context; that the FTUWKC struggles to be recognized by the Government as a valid stakeholder in the policy-making process; and that there has been no let up in anti-union harassment, intimidation and dismissal of union members, who continue to face police violence, attacks, weak law enforcement and employer impunity. The Committee also notes that the FTUWKC indicates that the 2009 Law on Peaceful Demonstrations severely impacts on the organization of strikes, rallies and other union activities and that the 2009 Penal Code, by retaining defamation and disinformation as criminal offences, potentially affects trade union activities. **The Committee urges the Government to send its observations on all the issues raised by the ITUC and the FTUWKC in its next report.**

In addition, the Committee notes the conclusions and recommendations of the Committee on Freedom of Association concerning the murders of trade union leaders Chea Vichea, Ros Sovannareth and Hy Vuthy and the continuing repression of unionists (Case No. 2318) as well as the denial of the right to form trade unions of public employees (Case No. 2222).

As regards the impunity prevailing in the murder of the abovementioned trade unionists, the Committee recalls that two individuals were convicted for the murder of Chea Vichea (Sok Sam Oeun and Born Samnang) and Thach Saveth was convicted of the murder of Ros Sovannareth in trials that were fraught with judicial irregularities and an absence of due process. Despite international calls for full, independent and impartial investigations since the moment of these murders, as well as that of Hy Vuthy, the Government has failed to provide any information on the steps taken in this regard or to provide any independent report. While noting that the convictions of Sok Sam Oeun and Born Samnang were remanded to the Appeal Court by the Supreme Court and that they have now been released on bail, the Government has yet to provide any information on the investigations to be carried out to determine the actual murderers and instigators of the assassination of Chea Vichea. Moreover, Thach Saveth has been awaiting a review of his conviction by the Supreme Court for several years now. No information has been provided on the progress made of investigations into the murder of Hy Vuthy.

Finally, the Committee takes note of the discussions on Cambodia in the Conference Committee on the Application of Standards (June 2010). It notes in particular that the Conference Committee regretted the lack of information relating to the long-awaited independent investigations into these murders. The Conference Committee recalled that freedom of association rights of workers and employers can only be exercised in a climate free from violence, pressure and threats and urged the Government 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 these trade union leaders and to bring, not only the perpetrators, but also the instigators of these heinous crimes to justice. Moreover, noting the serious flaws observed in the judicial process, as already observed by the Supreme Court, the Conference Committee indicated that 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.

Trade union rights and civil liberties. In its previous observation, the Committee urged the Government to take all the necessary measures to ensure that the trade union rights of workers were fully respected and that trade unionists were able to engage in their activities in a climate free of intimidation and risk. The Committee takes note of the comments made by the ITUC as well as of the discussion during the Conference Committee, regarding the persistent climate of violence and intimidation towards union members. The Committee recalls, once again, that freedom of association can only be exercised in a climate that is free from violence, pressure or threats of any kind against leaders and members of workers' organizations and that detention of trade unionists for reasons connected with their activities in defence of the interests of workers, constitutes a serious interference with civil liberties in general and with trade union rights in particular. The Committee further recalls that workers have the right to participate in peaceful demonstrations to defend their occupational interests. **In light of the above, the Committee once again urges the Government to take all the necessary measures, in the very near future, to ensure that trade union rights of workers are fully respected and that trade unionists are able to engage in their activities in a climate free of intimidation and risk to their personal security and their lives, in accordance with the abovementioned principles.**

As regards the murders of trade unionists Chea Vichea, Ros Sovannareth and Hy Vuthy, in its previous observation the Committee requested the Government, to take concrete and tangible steps, as a matter of urgency, to carry out independent inquiries and to facilitate an expedited review of the convictions of Born Samnang and Sok Sam Oeun for the murder of Chea Vichea as well as of 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. The Committee notes that the Government indicated during the discussions in the Conference Committee that Born Samnang and Sok Sam Oeun had been released on bail, pending the re-hearing of their case by the Appeal Court, after the Supreme Court found inadequacies in the criminal procedure. The Government adds in its report that it had not received information on the prospective date of the re-hearing. The Committee notes that the FTUWKC indicates that, while on 17 August 2009, the Appeal Court ordered Chea Vichea's case to be reopened for further investigation, no subsequent inquiries were carried out. The Committee notes with **concern** that the Government does not provide any information in its report on any progress made with regard to the investigations into these three murders. **The Committee therefore once again urges the Government to 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 trade union leaders and to bring, not only the perpetrators, but also the instigators of these heinous crimes to justice. In particular, the Committee urges the Government to provide, with its next report, precise and detailed information on:

(i) the steps taken to exonerate Born Samnang and Sok Sam Oeun of all charges brought against them and to return the bail paid, as well as to reopen a full investigation into the murder of Chea Vichea as requested by the Supreme Court;

(ii) the awaited review by the Supreme Court of the decision of the Appeal Court regarding the conviction of Thach Saveth for the murder of Ros Sovannareth, and the opening of an investigation into that crime; and

(iii) the outcome of the investigation into the murder of Hy Vuthy.

Independence of the judiciary. In its previous observation, the Committee, noting the conclusions of the ILO direct contacts mission of April 2008, referring to serious problems of capacity and lack of independence of the judiciary, requested the Government to take concrete and tangible steps, as a matter of urgency, 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 notes the report of the UN Special Rapporteur on the situation of human rights in Cambodia of 16 September 2010, which recommends various steps to enhance the independence of the judiciary and, in particular, the adoption without delay of the Law on the Status of Judges and Prosecutors and the Law on the Organization and Functioning of the Courts. **The Committee requests the Government to provide, with its next report, information on the measures taken or contemplated to ensure the independence and effectiveness of the judicial system, in particular as regards the adoption of the Law on the Status of Judges and Prosecutors and the Law on the Organization and Functioning of the Courts, together with a copy of the relevant legislations.**

Rule of law and legislative developments. Finally, the Committee notes that the Government recalled during the discussions in the Conference Committee that: (i) it was considering the creation of a labour court in accordance with international standards; and (ii) the draft Trade Union Law on which it is working in cooperation with the ILO will be adopted by Parliament in 2011 and it expects the law to guarantee the right of workers and employers to organize and bargain collectively. The Government adds in its report that the Working Group of the Ministry of Labour and Vocational Training has finished its review of the draft Trade Union Law consisting of 17 chapters (90 articles), that the draft has now been sent to the ILO for review, that it will then be brought to consult with workers' and employers' associations separately and that it will then be put in the open multi-party meeting (gathering representatives of Government's institutions, trade unions, employer associations and international organizations, including the ILO and the International Finance Corporation (World Bank Group)). **The Committee requests the Government to provide, with its next report, information on the creation of the labour court and the adoption of the Trade Union Law, as well as on the consultation processes held in that respect.**

Recalling its request to the Government to make every effort to take the necessary action to bring its legislation into conformity with the Convention, the Committee reminds the Government that, if it so wishes, it may have recourse to the technical assistance of the Office.

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

Guatemala

(Ratification: 1952)

The Committee notes the Government's report, the discussion that took place in the Conference Committee on the Application of Standards in 2010 and the 11 cases before the Committee on Freedom of Association (Cases Nos 2203, 2241, 2341, 2361, 2445, 2609, 2673, 2708, 2709, 2768 and 2811). In its previous observation, the Committee took note of the high-level mission which visited the country in April 2008 and of the tripartite agreement signed during the mission with a view to improving implementation of the Convention. It also noted the high-level mission undertaken from 16 to 20 February 2009 and the technical assistance missions of 3 January 2009 and a final mission to provide assistance to the Tripartite Commission in formulating the road map to address the measures requested by the Committee on the Application of Standards (this mission took place from 16 to 20 November 2009). The Committee noted that in the end there was no consensus between the social partners and that the Government prepared the road map on its own. The Committee notes that the Government states in its report that in April 2010 a training course was held on international labour standards for staff of the Attorney-General's Office, judges, magistrates, and staff of the Human Rights Ombudsman's Office and of the Ministry of Labour, with ILO technical assistance. The Committee notes that the Government has agreed to the mission, requested in June 2010 by the Conference Committee on the Application of Standards, involving the visit of an important and recognized personality with high-level ILO support to examine outstanding issues and make recommendations. The Committee notes the Government's suggestion that the mission be held in early 2011.

Acts of violence against trade unionists

For several years, in its observations the Committee has noted acts of violence against trade unionists that have gone unpunished, and has asked the Government to send information on developments in this regard.

The Committee notes that, at the proposal of a high-level mission in 2008, the Tripartite Commission approved an agreement to eradicate violence, under the terms of which there are to be evaluations 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".

In its previous observation, the Committee noted that both the International Trade Union Confederation (ITUC) and the Indigenous and Rural Workers Trade Union Movement of Guatemala for the Defence of Workers' Rights (MSICG) refer in their comments of 2009 to serious acts of violence against trade union leaders and members during the period 2008–09, and report a climate of fear and intimidation the aim of which is to undermine existing

trade unions and prevent the establishment of new ones. Both organizations also emphasize the deficiencies in the labour inspection system and the crisis in the legal system. The Committee expressed the hope that, in the context of the tripartite agreement concluded during the high-level mission, all the matters raised, as well as the comments of the ITUC, the Trade Union Confederation of Guatemala (UNSI TRAGUA) 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, and the mechanism for rapid intervention in cases. **The Committee notes with regret that there is nothing in the Government's report to suggest that a tripartite review of these matters has been held, and once again strongly requests the Government to take all available measures to ensure that these issues are examined without delay by the abovementioned Tripartite Commission.**

The Committee notes the extensive comments of 30 August 2010 on the application of the Convention, submitted by the MSICG. It notes that according to the MSICG, in 2009 and 2010 there have been numerous acts of violence against trade union leaders and trade unionists, ranging from murders (47 since 2007, seven of them in 2010), death threats and acts of intimidation, to abductions, torture or armed assault (with guns or knives); there has also been unauthorized entry of homes of trade unionists and trade union premises. According to the MSICG, in some cases the State did not authorize the security measures requested by the persons threatened and the Office of the Public Prosecutor is not investigating all the cases since some complaints have not even been entered in its database. The MSICG also cites instances of obstacles or administrative hurdles to the establishment or running of trade unions, and of unions being destroyed while organizing. More than 20,000 public sector workers have no employment relationship but a civil contract for professional services and, hence, no trade union rights. Furthermore, trade union activity has been criminalized, with penal action being brought against trade unionists for holding peaceful demonstrations and attacks on trade unions in anti-union publications or through smear campaigns. According to the MSICG, there have also been numerous instances of trade unionists being transferred, dismissed or removed from office on anti-union grounds; there are also acts of interference by employers. Furthermore, to the detriment of existing unions, the authorities have promoted "parallel" workers' organizations that are under their control and it is the latter that send delegates to the Tripartite Commission though they have little claim to representativeness. As to legal action, the MSICG emphasizes that slow proceedings with long delays continue to be a problem and that the legal reforms requested by the ILO have not been adopted. Lastly, the MSICG points out that this anti-union climate is reflected in the membership rate (2.2 per cent of the economically active population, of which the public sector accounts for 87.5 per cent).

The Committee observes that many of the assertions in the MSICG's communication were submitted to the Committee on Freedom of Association in its meetings of November 2009 and 2010. In its conclusions, the Committee on Freedom of Association noted with grave concern that the allegations presented in this case are extremely serious and include 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 unionist's family member, obstacles to granting legal status to unions, the dissolution of a union, criminal proceedings for carrying out trade union activities, major institutional failures with regard to labour inspection and the functioning of the judicial authorities that have created a situation of impunity in labour matters (for example, excessive delays, a lack of independence, failure to comply with reinstatement orders issued by the courts) and in criminal matters (see 355th report, Case No. 2609, paragraphs 858 et seq.).

The Committee is bound to note that, in terms of violence against trade unionists, the failures in the functioning of the penal justice system and the impunity of offenders, the situation continues to grow worse. The high-level mission of February 2009 noted that in recent years, despite the increase in violence against trade unionists (according to information from government officials), there have been no effective trials or convictions. The high-level mission heard testimony of the general lack of independence of the judiciary and government bodies as regards criminal cases. The Government informed the high-level mission that the situation of violence was generalized and denied any state policy against the trade union movement.

The Committee had noted that the high-level mission of February 2009 reported that a significant increase was needed in the capacity and budget of the Office of the Prosecutor General of the Nation, allowing the number of prosecutors and investigators to be increased substantially; the mission suggested that additional resources be allocated to existing programmes for the protection of trade unionists (44 trade unionists currently benefit from protection measures) and witness protection programmes, and that these programmes be properly coordinated. The high-level mission was of the view that measures should be taken actively to discourage any stigmatization of trade unions and the trade union movement that associates trade union activities with criminal acts. The high-level mission reported a very low membership rate and few collective agreements. According to the MSICG's comments, this situation has not changed.

The Committee requests the Government to reply in detail to the MSICG's comments of 2010. The Committee notes the statements made by the Government to the Committee on the Application of Standards to the effect that 30 new inspectors have been recruited to add to the strength of the labour inspectorate, that 70 unions and 45 collective labour accords were registered in 2009 and that most of the murders reported were unrelated to trade union activities.

The Committee wishes to refer to the conclusions drawn by the Committee on the Application of Standards in June 2010, which read as follows:

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 roadmap. 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 unionists 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 points out that in the road map it prepared at the request of the Committee on the Application of Standards in 2009, the Government referred to the need to pay greater attention to following up, investigating and concluding cases of violence against trade unionists and that affirmative action was accordingly needed in the interests both of effective and periodical reporting to the Committee on Freedom of Association and of inter-institutional coordination allowing relevant information to be exchanged and brought to the attention of the ILO supervisory bodies. The Government stated its intention of strengthening the Ombuds Unit (*unidad de procuraci3n*) of the Directorate of International Affairs by appointing qualified staff to deal exclusively with these issues, endowed with the necessary resources to perform their duties and respond immediately to the particular circumstances of each and every case under investigation. In addition, the Government wished to draw up an annual schedule of meetings between the Ministry of Labour (Ombuds Unit of International Labour Affairs) and the Office of the Attorney-General in order to have a framework for ongoing work between the two institutions. Furthermore, the Directorate of International Labour Affairs will draw up an inventory of cases already concluded so as to bring them to the attention of the Committee on Freedom of Association. Furthermore, on the matter of the inter-institutional coordination, the Government stated that the Multi-Institutional Labour Committee for Industrial Relations in Guatemala is being reactivated and will draw up a list of entities that have not yet been included but that are closely involved with these issues.

The Committee notes that in its report the Government states that it is ready and willing to give effect to the content of the Convention. It indicates in this connection that:

- the Ombuds unit of the Directorate of International Affairs has been reinforced for the purpose of strengthening the ILO supervisory bodies and meeting their requirements thanks to the appointment as from April 2010 of an attorney-adviser and an ombudswoman, which has eased the flow of information on cases reported. Specifically, since then, 127 written requests were sent between April and August 2010, seeking information from various prosecution services of the Office of the Attorney-General, and from magistrates courts, courts of first instance and appeals chambers of labour courts, the Office of the Ombudsman, the General Inspectorate of Labour and the technical and legal advisory departments of the Ministry of Labour and Social Insurance, concerning complaints lodged by workers and trade union organizations. On the basis of this information, the Government sent the Committee on Freedom of Association 37 reports allowing action to be taken on specific objections raised in the cases;

- assistance from magistrates of the Supreme Court of Justice was obtained at the 99th Session of the International Labour Conference, held in Geneva from 2 to 18 June 2010, the aim being to enable a judicial body to become acquainted at first hand with the application of Convention No. 87 and complaints to the Government of Guatemala on violations of that Convention; and

- a request was made to the Attorney-General and the Council of the Attorney-General's Office in November 2009, and reiterated in January 2010, to hold a special meeting with the Tripartite Commission on International Labour Affairs in order to address the topic "Ensuring effective investigation and trial of those responsible for acts of violence and threats against trade unionists" and to secure "progress in the establishment and strengthening of the public prosecution service for crimes against trade unionists", which has not as yet been held because selection of a new Public Prosecutor is still pending.

The Committee 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 intimidation; 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 points out that excessive delays in proceedings and the absence of judgments 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 the foregoing, although it has been informed that the Government has sent replies to the Committee on Freedom of Association regarding the cases that depend on the proper working of the Multi-Institutional Committee and on Parliament's willingness – according to the Government – to increase budgets in the legal system, the Committee concludes with **regret** that the Government has not demonstrated sufficient political will to combat violence against trade union leaders and trade unionists and to combat impunity. The Committee observes that, according to the Government's report, the meeting that the Attorney General was requested to hold with the national Tripartite Commission has not taken place. The Committee expresses

deep concern at the lack of significant progress, particularly in view of the repeated ILO missions and the very clear and specific recommendations made by the ILO's supervisory bodies. It is particularly concerned that the Government has provided no comprehensive information and up-to-date statistics on acts of violence against trade unionists, the stages reached in criminal trials and the identification and conviction of offenders; nor has it provided information on any increase in budgets for the state bodies responsible for combating violence and impunity.

The Committee once again firmly requests the Government: (i) to ensure the protection of trade unionists under threat of death; (ii) convey to the Public Prosecutor and the Supreme Court of Justice its deep concern at the slowness and inefficiency of the justice system and its recommendations concerning the need to elucidate murders and crimes committed against trade unionists so as to punish the perpetrators; (iii) to ensure the allocation of sufficient resources to these objectives with the consequent increase in human and material resources, to ensure coordination between the various state bodies who may be called upon to intervene in the judicial system, and to ensure training for investigators; and (iv) to give priority to these matters in government policy. The Committee invites the Government to have recourse to ILO technical assistance to resolve the serious problem of impunity for crimes against trade unionists.

Lastly, the Committee again expresses its **deep concern** at the acts of violence against trade union leaders and members and reminds the Government that trade union rights can be exercised only in a climate that is free of violence. **The Committee expresses the firm hope that the Government will take all necessary measures to guarantee full respect for the human rights of trade unionists and will continue to apply the protection machinery to all trade unionists who so request. It also requests the Government to take the necessary steps without delay to conduct the necessary investigations to identify 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 report on all developments in this regard. The Committee expresses its concern that the information provided by the Government refers only exceptionally to cases in which those responsible have been identified and punished, and emphasizes the need for considerable reinforcement of the criminal justice system.**

Legislative problems

The Committee has for several years been commenting on the following provisions, which raise problems of consistency with the Convention:

- restrictions on the establishment of organizations in full freedom (the need to have 50 per cent + 1 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 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, and the comments of the MSICG.

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 breach of due process, failure to enforce the law and 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. The Committee observes that the high-level mission undertook to provide appropriate technical assistance in relation to these matters and notes that this assistance has already started.

The Committee observed that the road map set deadlines for the submission of bills pertaining to the legislative amendments requested by the Committee of Experts (the deadline was set for 28 February 2010). It reminds the Government in this connection that a series of proposals to address the legislative problems was drawn up by the national Tripartite Commission in the first quarter of 2009 with the ILO technical assistance missions.

The Committee observes that, according to the road map drawn up by the Government in December 2008:

We have appointed a Lawyers' Commission in the Ministry of Labour with a view to analysing the feasibility of the recommendations for legislative reforms proposed by the CEACR. The opinion of that Commission was already notified to the previous ILO technical assistance mission.

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

In addition to the above, an analysis has also been undertaken of the manner in which the right to strike of workers is penalized by the Labour Code and, taking into account the CEACR's recommendations, a study has already been prepared for submission to the state bodies for a decision.

We have also planned the strategy that we will apply to achieve the objectives set.

The Committee observes that nothing in the Government's report allows it to note progress in legislative matters. The MSICG likewise indicates that there has been no progress.

The Committee notes that, in the Committee on the Application of Standards, the Government merely referred to certain measures relating to the Civil Service Bill. The Committee notes with regret that there has been no significant progress with the legal reforms requested. The Committee is of the view that greater efforts are called for, and hopes to note progress in the near future. It expresses the firm hope that, with technical assistance from the ILO, the Government will be in a position to provide information in its next report on positive developments in the various issues raised.

Other matters

The maquila sector. For years, the Committee has been noting comments submitted by trade union organizations on serious problems in applying the Convention that relate to trade union rights in the export processing sector.

The Committee noted the comments of 2009 by the ITUC asserting that it is impossible to exercise the right to organize in export processing zones owing to 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 breaches of the law or failure to apply it in this sector. According to the MSICG, the fact that it is impossible to establish organizations in export processing zones is a result of anti-union practices.

The Committee noted 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 or even before. With regard to trade union membership, according to the administrative authorities there are six unions and a membership of 562 in the export processing sector, which employs 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 export processing zones and hence a problem in applying Conventions Nos 87 and 98". In its report, the Government states that there are seven active trade unions in *maquila* and textile enterprises and one approved collective accord for the period 2008–10.

According to the Government, in 2008 the General Inspectorate of Labour dealt with 33 complaints relating to freedom of association and protection of the right to organize. Some cases were settled by conciliation, others are still pending. In 2009, the General Inspectorate of Labour dealt with 30 complaints relating to freedom of association, most of which are still being processed. In 2010, the General Inspectorate of Labour has dealt with seven complaints on freedom of association, all of which are still being processed. Lastly, the Government appends a document, dated 15 January 2010, addressed to the Public Prosecutor and the Attorney-General.

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, size of their membership, number of collective agreements and their coverage, complaints of violations of trade union rights and decisions taken by the authorities, and the number of inspections). The Committee expresses the hope 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 requests the Government to provide information on this matter. It requests the Government to refer problems relating to the exercise of trade union rights in the maquila sector to the national Tripartite Commission, and to supply information in this regard.

National Tripartite Commission. The Committee notes that in this Commission there are problems with the recognition by all concerned of the workers' representatives, due to a division in UNSITRAGUA. The Committee notes that the Government has requested ILO technical assistance in this matter. ***The Committee hopes that the Government will receive the requested technical assistance.***

[The Government is asked to supply full particulars to the Conference at its 100th Session and to reply in detail to the present comments in 2011.]

The Committee notes the Government's report, the discussion that took place in the Conference Committee on the Application of Standards in 2010 and the 11 cases before the Committee on Freedom of Association (Cases Nos 2203, 2241, 2341, 2361, 2445, 2609, 2673, 2708, 2709, 2768 and 2811). In its previous observation, the Committee took note of the high-level mission which visited the country in April 2008 and of the tripartite agreement signed during the mission with a view to improving implementation of the Convention. It also noted the high-level mission undertaken from 16 to 20 February 2009 and the technical assistance missions of 3 January 2009 and a final mission to provide assistance to the Tripartite Commission in formulating the road map to address the measures requested by the Committee on the Application of Standards (this mission took place from 16 to 20 November 2009). The Committee noted that in the end there was no consensus between the social partners and that the Government prepared the road map on its own. The Committee notes that the Government states in its report that in April 2010 a training course was held on international labour standards for staff of the Attorney-General's Office, judges, magistrates, and staff of the Human Rights Ombudsman's Office and of the Ministry of Labour, with ILO technical assistance. The Committee notes that the Government has agreed to the mission, requested in June 2010 by the Conference Committee on the Application of Standards, involving the visit of an important and recognized personality with high-level ILO support to examine outstanding issues and make recommendations. The Committee notes the Government's suggestion that the mission be held in early 2011.

Acts of violence against trade unionists

For several years, in its observations the Committee has noted acts of violence against trade unionists that have gone unpunished, and has asked the Government to send information on developments in this regard.

The Committee notes that, at the proposal of a high-level mission in 2008, the Tripartite Commission approved an agreement to eradicate violence, under the terms of which there are to be evaluations 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".

In its previous observation, the Committee noted that both the International Trade Union Confederation (ITUC) and the Indigenous and Rural Workers Trade Union Movement of Guatemala for the Defence of Workers' Rights (MSICG) refer in their comments of 2009 to serious acts of violence against trade union leaders and members during the period 2008–09, and report a climate of fear and intimidation the aim of which is to undermine existing trade unions and prevent the establishment of new ones. Both organizations also emphasize the deficiencies in the labour inspection system and the crisis in the legal system. The Committee expressed the hope that, in the context of the tripartite agreement concluded during the high-level mission, all the matters raised, as well as the comments of the ITUC, the Trade Union Confederation of Guatemala (UNSI TRAGUA) 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, and the mechanism for rapid intervention in cases. ***The Committee notes with regret that there is nothing in the Government's report to suggest that a tripartite review of these matters has been held, and once again strongly requests the Government to take all available measures to ensure that these issues are examined without delay by the abovementioned Tripartite Commission.***

The Committee notes the extensive comments of 30 August 2010 on the application of the Convention, submitted by the MSICG. It notes that according to the MSICG, in 2009 and 2010 there have been numerous acts of violence against trade union leaders and trade unionists, ranging from murders (47 since 2007, seven of them in 2010), death threats and acts of intimidation, to abductions, torture or armed assault (with guns or knives); there has also been unauthorized entry of homes of trade unionists and trade union premises. According to the MSICG, in some cases the State did not authorize the security measures requested by the persons threatened and the Office of the Public Prosecutor is not investigating all the cases since some complaints have not even been entered in its database. The MSICG also cites instances of obstacles or administrative hurdles to the establishment or running of trade unions, and of unions being destroyed while organizing. More than 20,000 public sector workers have no employment relationship but a civil contract for professional services and, hence, no trade union rights. Furthermore, trade union activity has been criminalized, with penal action being brought against trade unionists for holding peaceful demonstrations and attacks on trade unions in anti-union publications or through smear campaigns. According to the MSICG, there have also been numerous instances of trade unionists being transferred, dismissed or removed from office on anti-union grounds; there are also acts of interference by employers. Furthermore, to the detriment of existing unions, the authorities have promoted "parallel" workers' organizations that are under their control and it is the latter that send delegates to the Tripartite Commission though they have little claim to representativeness. As to legal action, the MSICG emphasizes that slow proceedings with long delays continue to be a problem and that the legal reforms requested by the ILO have not been adopted. Lastly, the MSICG points out that this anti-union climate is reflected in the membership rate (2.2 per cent of the economically active population, of which the public sector accounts for 87.5 per cent).

The Committee observes that many of the assertions in the MSICG's communication were submitted to the Committee on Freedom of Association in its meetings of November 2009 and 2010. In its conclusions, the Committee on Freedom of Association noted with grave concern that the allegations presented in this case are extremely serious and include 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 unionist's family member, obstacles to granting legal status to unions, the dissolution of a union, criminal proceedings for carrying out trade union activities, major institutional failures with regard to labour inspection and the functioning of the judicial authorities that have created a situation of impunity in labour matters (for example, excessive delays, a lack of independence, failure to comply with reinstatement orders issued by the courts) and in criminal matters (see 355th report, Case No. 2609, paragraphs 858 et seq.).

The Committee is bound to note that, in terms of violence against trade unionists, the failures in the functioning of the penal justice system and the impunity of offenders, the situation continues to grow worse. The high-level mission of February 2009 noted that in recent years, despite the increase in violence against trade unionists (according to information from government officials), there have been no effective trials or convictions. The high-level mission heard testimony of the general lack of independence of the judiciary and government bodies as regards criminal cases. The Government informed the high-level mission that the situation of violence was generalized and denied any state policy against the trade union movement.

The Committee had noted that the high-level mission of February 2009 reported that a significant increase was needed in the capacity and budget of the Office of the Prosecutor General of the Nation, allowing the number of prosecutors and investigators to be increased substantially; the mission suggested that additional resources be allocated to existing programmes for the protection of trade unionists (44 trade unionists currently benefit from protection measures) and witness protection programmes, and that these programmes be properly coordinated. The high-level mission was of the view that measures should be taken actively to discourage any stigmatization of trade unions and the trade union movement that associates trade union activities with criminal acts. The high-level mission reported a very low membership rate and few collective agreements. According to the MSICG's comments, this situation has not changed.

The Committee requests the Government to reply in detail to the MSICG's comments of 2010. The Committee notes the statements made by the Government to the Committee on the Application of Standards to the effect that 30 new inspectors have been recruited to add to the strength of the labour inspectorate, that 70 unions and 45 collective labour accords were registered in 2009 and that most of the murders reported were unrelated to trade union activities.

The Committee wishes to refer to the conclusions drawn by the Committee on the Application of Standards in June 2010, which read as follows:

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 roadmap. 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 unionists 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 points out that in the road map it prepared at the request of the Committee on the Application of Standards in 2009, the Government referred to the need to pay greater attention to following up, investigating and concluding cases of violence against trade unionists and that affirmative action was accordingly needed in the interests both of effective and periodical reporting to the Committee on Freedom of Association and of inter-institutional coordination allowing relevant information to be exchanged and brought to the attention of the ILO supervisory bodies. The Government stated its intention of strengthening the Ombuds Unit (*unidad de procuraci*) of the Directorate of International Affairs by appointing qualified staff to deal exclusively with these issues, endowed with the necessary resources to perform their duties and respond immediately to the particular circumstances of each and every case under investigation. In addition, the Government wished to draw up an annual schedule of meetings between the Ministry of Labour (Ombuds Unit of International Labour Affairs) and the Office of the Attorney-General in order to have a framework for ongoing work between the two institutions. Furthermore, the Directorate of International Labour Affairs will draw up an inventory of cases already concluded so as to bring them to the attention of the Committee on Freedom of Association. Furthermore, on the matter of the inter-institutional coordination, the Government stated that the Multi-Institutional Labour Committee for Industrial Relations in Guatemala is being reactivated and will draw up a list of entities that have not yet been included but that are closely involved with these issues.

The Committee notes that in its report the Government states that it is ready and willing to give effect to the content of the Convention. It indicates in this connection that:

- the Ombuds unit of the Directorate of International Affairs has been reinforced for the purpose of strengthening the ILO supervisory bodies and meeting their requirements thanks to the appointment as from April 2010 of an attorney-adviser and an ombudswoman, which has eased the flow of information on cases reported. Specifically, since then, 127 written requests were sent between April and August 2010, seeking information from various prosecution services of the Office of the Attorney-General, and from magistrates courts, courts of first instance and appeals chambers of labour courts, the Office of the Ombudsman, the General Inspectorate of Labour and the technical and legal advisory departments of the Ministry of Labour and Social Insurance, concerning complaints lodged by workers and trade union organizations. On the basis of this information, the Government sent the Committee on Freedom of Association 37 reports allowing action to be taken on specific objections raised in the cases;
- assistance from magistrates of the Supreme Court of Justice was obtained at the 99th Session of the International Labour Conference, held in Geneva from 2 to 18 June 2010, the aim being to enable a judicial body to become acquainted at first hand with the application of Convention No. 87 and complaints to the Government of Guatemala on violations of that Convention; and
- a request was made to the Attorney-General and the Council of the Attorney-General's Office in November 2009, and reiterated in January 2010, to hold a special meeting with the Tripartite Commission on International Labour Affairs in order to address the topic "Ensuring effective investigation and trial of those responsible for acts of violence and threats against trade unionists" and to secure "progress in the establishment and strengthening of the public prosecution service for crimes against trade unionists", which has not as yet been held because selection of a new Public Prosecutor is still pending.

The Committee 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 intimidation; 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 points out that excessive delays in proceedings and the absence of judgments 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 the foregoing, although it has been informed that the Government has sent replies to the Committee on Freedom of Association regarding the cases that depend on the proper working of the Multi-Institutional Committee and on Parliament's willingness – according to the Government – to increase budgets in the legal system, the Committee concludes with **regret** that the Government has not demonstrated sufficient political will to combat violence against trade union leaders and trade unionists and to combat impunity. The Committee observes that, according to the Government's report, the meeting that the Attorney General was requested to hold with the national Tripartite Commission has not taken place. The Committee expresses **deep concern** at the lack of significant progress, particularly in view of the repeated ILO missions and the very clear and specific recommendations made by the ILO's supervisory bodies. It is particularly concerned that the Government has provided no comprehensive information and up-to-date statistics on acts of violence against trade unionists, the stages reached in criminal trials and the identification and conviction of offenders; nor has it provided information on any increase in budgets for the state bodies responsible for combating violence and impunity.

The Committee once again firmly requests the Government: (i) to ensure the protection of trade unionists under threat of death; (ii) convey to the Public Prosecutor and the Supreme Court of Justice its deep concern at the slowness and inefficiency of the justice system and its recommendations concerning the need to elucidate murders and crimes committed against trade unionists so as to punish the perpetrators; (iii) to ensure the allocation of sufficient resources to these objectives with the consequent increase in human and material resources, to ensure coordination between the various state bodies who may be called upon to intervene in the judicial system, and to ensure training for investigators; and (iv) to give priority to these matters in government policy. The Committee invites the Government to have recourse to ILO technical assistance to resolve the serious problem of impunity for crimes against trade unionists.

Lastly, the Committee again expresses its **deep concern** at the acts of violence against trade union leaders and members and reminds the Government that trade union rights can be exercised only in a climate that is free of violence. **The Committee expresses the firm hope that the Government will take all necessary measures to guarantee full respect for the human rights of trade unionists and will continue to apply the protection machinery to all trade unionists who so request. It also requests the Government to take the necessary steps without delay to conduct the necessary investigations to identify 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 report on all developments in this regard. The Committee expresses its concern that the information provided by the Government refers only exceptionally to cases in which those responsible have been identified and punished, and emphasizes the need for considerable reinforcement of the criminal justice system.**

Legislative problems

The Committee has for several years been commenting on the following provisions, which raise problems of consistency with the Convention:

- restrictions on the establishment of organizations in full freedom (the need to have 50 per cent + 1 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 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, and the comments of the MSICG.

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 breach of due process, failure to enforce the law and 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. The Committee observes that the high-level mission undertook to provide appropriate technical assistance in relation to these matters and notes that this assistance has already started.

The Committee observed that the road map set deadlines for the submission of bills pertaining to the legislative amendments requested by the Committee of Experts (the deadline was set for 28 February 2010). It reminds the Government in this connection that a series of proposals to address the legislative problems was drawn up by the national Tripartite Commission in the first quarter of 2009 with the ILO technical assistance missions.

The Committee observes that, according to the road map drawn up by the Government in December 2008:

We have appointed a Lawyers' Commission in the Ministry of Labour with a view to analysing the feasibility of the recommendations for legislative reforms proposed by the CEACR. The opinion of that Commission was already notified to the previous ILO technical assistance mission.

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

In addition to the above, an analysis has also been undertaken of the manner in which the right to strike of workers is penalized by the Labour Code and, taking into account the CEACR's recommendations, a study has already been prepared for submission to the state bodies for a decision.

We have also planned the strategy that we will apply to achieve the objectives set.

The Committee observes that nothing in the Government's report allows it to note progress in legislative matters. The MSICG likewise indicates that there has been no progress.

The Committee notes that, in the Committee on the Application of Standards, the Government merely referred to certain measures relating to the Civil Service Bill. The Committee notes with regret that there has been no significant progress with the legal reforms requested. The Committee is of the view that greater efforts are called for, and hopes to note progress in the near future. It expresses the firm hope that, with technical assistance from the ILO, the Government will be in a position to provide information in its next report on positive developments in the various issues raised.

Other matters

The maquila sector. For years, the Committee has been noting comments submitted by trade union organizations on serious problems in applying the Convention that relate to trade union rights in the export processing sector.

The Committee noted the comments of 2009 by the ITUC asserting that it is impossible to exercise the right to organize in export processing zones owing to 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 breaches of the law or failure to apply it in this sector. According to the MSICG, the fact that it is impossible to establish organizations in export processing zones is a result of anti-union practices.

The Committee noted 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 or even before. With regard to trade union membership, according to the administrative authorities there are six unions and a membership of 562 in the export processing sector, which employs 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 export processing zones and hence a problem in applying Conventions Nos 87 and 98". In its report, the Government states that there are seven active trade unions in *maquila* and textile enterprises and one approved collective accord for the period 2008–10.

According to the Government, in 2008 the General Inspectorate of Labour dealt with 33 complaints relating to freedom of association and protection of the right to organize. Some cases were settled by conciliation, others are still pending. In 2009, the General Inspectorate of Labour dealt with 30 complaints relating to freedom of association, most of which are still being processed. In 2010, the General Inspectorate of Labour has dealt with seven complaints on freedom of association, all of which are still being processed. Lastly, the Government appends a document, dated 15 January 2010, addressed to the Public Prosecutor and the Attorney-General.

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, size of their membership, number of collective agreements and their coverage, complaints of violations of trade union rights and decisions taken by the authorities, and the number of inspections). The Committee expresses the hope 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 requests the Government to provide information on this matter. It requests the Government to refer problems relating to the exercise of trade union rights in the maquila sector to the national Tripartite Commission, and to supply information in this regard.

National Tripartite Commission. The Committee notes that in this Commission there are problems with the recognition by all concerned of the workers' representatives, due to a division in UNSITRAGUA. The Committee notes that the Government has requested ILO technical assistance in this matter. ***The Committee hopes that the Government will receive the requested technical assistance.***

[The Government is asked to supply full particulars to the Conference at its 100th Session and to reply in detail to the present comments in 2011.]

Myanmar

(Ratification: 1955)

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 24 August 2010, referring to grave matters already noted by the Committee.

The Committee notes the conclusions of the Conference Committee on the Application of Standards of June 2010. The Committee notes, in particular, that the Conference Committee noted with great concern the continued failure by the Government, over several years, to eliminate serious discrepancies in the application of the Convention.

Civil liberties. In its previous observation, the Committee recalled the ITUC's reference to the arrest, heavy-handed interrogation and 20 years' imprisonment sentence for sedition imposed on six workers as well as the additional prison sentences imposed on Thurein Aung, Wai Lin, Kyaw Win and Myo Min (five years sentence for association with the Federation of Trade Unions of Burma (FTUB) and three years sentence for illegally crossing a border). It further noted the arrest of Burma Railway Union leader U Tin Hla and of Su Su Nway, who was sentenced to 12-and-a-half years in prison. Moreover, the ITUC indicated 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.

Furthermore, in its previous observation, the Committee recalled 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. 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 was reported to have 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, and subsequent sentencing, 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-State Peace and Development Council (SPDC) demonstrations (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);
- 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.

The Committee notes that the Government reiterates in its report that the six persons arrested for allegedly participating in the May Day event, including Thurein Aung, were not workers. The Government's report adds that no workers were sanctioned for the exercise of trade union activities, that workers have the right to request the respect of their rights, individually or collectively, that thousands of workers do so annually and that no worker has taken any action as regards May Day activities. Furthermore, the Committee notes that during the meeting of the Conference Committee, the Government representative reiterated that the Ministry of Home Affairs had declared the FTUB to be a terrorist organization and that it could therefore not be recognized as a legitimate workers organization.

The Committee notes that the Conference Committee observed with extreme concern that many people remained in prison for exercising their rights to freedom of expression and association, despite calls for their release, and that it 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, and called 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 can only **deplore** the fact that the Government has not provided any information, in its report, on the situation of the numerous persons referred to above and fails to provide any evidence of the measures taken to implement the Committee's previous requests, in particular as regards the need to establish independent investigations into these matters. Once again, the Committee **deeply regrets** the paucity of the information provided, which is in stark contrast to the extreme gravity of the issues raised by the ITUC.

The Committee recalls 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, the Committee 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 **deeply deplores** the serious allegations of murder, arrest, detention, torture and sentencing to many years of imprisonment of trade unionists for the exercise of ordinary trade union activities. ***The Committee once again strongly urges the Government to provide information on the measures adopted and instructions issued 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 and to ensure that no worker is sanctioned for the exercise of such activities, in particular for having contacts with workers' organizations of his/her 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.

Legislative framework. In its previous comments, the Committee recalled 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 FTUB forced to work underground and accused of terrorism; "workers' committees" organized by the authorities; the repression of seafarers even overseas and the denial of their right to be represented by the Seafarers' Union of Burma, 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 serious 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: (i) 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); (ii) 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; (iii) 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); (iv) the 1926 Trade Union Act requires that 50 per cent of workers must belong to a trade union for it to be legally recognized; (v) 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 (vi) 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. Finally, the Committee recalled that there was no legal basis for the respect for, and realization of, freedom of association 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".

The Committee notes that during the June 2010 meeting of the Conference Committee, the Government representative stressed that, in accordance with its roadmap, Myanmar was committed to pursuing its transformation to a democratic society, that freedom of association rights, as well as other basic civil liberties provided for in the new Constitution would set out the framework within which new trade union legislation would be developed, and that no one has been, or is, apprehended for implicit or explicit exercise of the rights derived from the Convention. The Committee notes that the Conference Committee, 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 could be no legal trade unions in the country as yet, once again urged the Government in the strongest terms to immediately adopt the necessary measures and mechanisms to ensure all workers and

employers the rights provided for under the Convention and to repeal Orders Nos 2/88 and 6/88, as well as the Unlawful Association Act. The Conference Committee further 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 notes that the Government indicates in its report that the drafting process of legislation on workers' organizations will be based on three pillars: the new Constitution, continued assistance and advice from the ILO and the Convention. The Committee also notes that the Government indicates that the Pyidaungsu Hluttaw (i.e. Union Assembly/Parliament) will take the necessary measures, after the 2010 elections, to repeal Orders Nos 2/88 and 6/88, the Unlawful Association Act as well as Declaration No. 1/2006. The Government's reports adds that the first draft of the legislation on workers' organizations was completed in May 2010 and that it consists of 15 chapters addressing, inter alia, issues linked to the organization, duties, rights, fundraising and disbursement. Furthermore, the Government indicates that this first draft has been submitted to the Attorney-General for legal opinion; that the Government is considering requesting the technical assistance from the Office in this respect and that the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI) as well as the workers' representatives will be consulted and their views will be taken into consideration to further improve the instrument. **The Committee requests the Government to provide a copy of the draft legislation referred to and invites the Government to avail itself of the technical assistance of the Office.**

In these circumstances, noting that the planned general elections took place on 7 November 2010, the Committee urges the Government to take, without delay, the necessary measures so that the Pyidaungsu Hluttaw will immediately, upon its constitution, repeal Orders Nos 2/88 and 6/88 as well as the Unlawful Association Act and Declaration No. 1/2006, so that they will no longer be applied in a manner that would infringe upon the rights of workers' and employers' organizations. The Committee also requests the Government to ensure that the necessary measures are taken without delay for the elaboration of a Trade Union Law that will fully guarantee the right of workers to establish and join organizations of their own choosing, without previous authorization and to provide a copy of the legislation once adopted.

The Committee once again urges the Government to furnish a detailed report on the concrete measures taken, with the full and genuine participation of workers and employers from 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 requests the Government to communicate any relevant draft laws, orders or instructions in this regard so that it may examine their conformity with the provisions of the Convention.

Finally, the Committee encourages the Government to avail itself of the technical assistance of the Office in this regard.

Extension of ILO mandate. The Committee notes that the Conference Committee, recalling its previous conclusion that the persistence of forced labour could not be dissociated from the prevailing situation of a complete absence of freedom of association and the systematic persecution of those who tried to organize, reiterated its previous request to the Government to accept an extension of ILO presence to cover the matters relating to the Convention. **Recalling that the Government had indicated in its previous report that an extension of ILO presence to cover the matters related to the Convention was under consideration, the Committee once again expresses the firm hope that the Government will be in a position to accept such an extension in the very near future and requests the Government to provide information in this respect.**

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in a communication dated 24 August 2010, referring to grave matters already noted by the Committee.

The Committee notes the conclusions of the Conference Committee on the Application of Standards of June 2010. The Committee notes, in particular, that the Conference Committee noted with great concern the continued failure by the Government, over several years, to eliminate serious discrepancies in the application of the Convention.

Civil liberties. In its previous observation, the Committee recalled the ITUC's reference to the arrest, heavy-handed interrogation and 20 years' imprisonment sentence for sedition imposed on six workers as well as the additional prison sentences imposed on Thurein Aung, Wai Lin, Kyaw Win and Myo Min (five years sentence for association with the Federation of Trade Unions of Burma (FTUB) and three years sentence for illegally crossing a border). It further noted the arrest of Burma Railway Union leader U Tin Hla and of Su Su Nway, who was sentenced to 12-and-a-half years in prison. Moreover, the ITUC indicated 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.

Furthermore, in its previous observation, the Committee recalled 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. 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 was reported to have 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, and subsequent sentencing, 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-State Peace and Development Council (SPDC) demonstrations (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);
- 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.

The Committee notes that the Government reiterates in its report that the six persons arrested for allegedly participating in the May Day event, including Thurein Aung, were not workers. The Government's report adds that no workers were sanctioned for the exercise of trade union activities, that workers have the right to request the respect of their rights, individually or collectively, that thousands of workers do so annually and that no worker has taken any action as regards May Day activities. Furthermore, the Committee notes that during the meeting of the Conference Committee, the Government representative reiterated that the Ministry of Home Affairs had declared the FTUB to be a terrorist organization and that it could therefore not be recognized as a legitimate workers organization.

The Committee notes that the Conference Committee observed with extreme concern that many people remained in prison for exercising their rights to freedom of expression and association, despite calls for their release, and that it 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, and called 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.

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The Committee therefore once again most **deeply deplores** the serious allegations of murder, arrest, detention, torture and sentencing to many years of imprisonment of trade unionists for the exercise of ordinary trade union activities. ***The Committee once again strongly urges the Government to provide information on the measures adopted and instructions issued 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 and to ensure that no worker is sanctioned for the exercise of such activities, in particular for having contacts with workers' organizations of his/her 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.

Legislative framework. In its previous comments, the Committee recalled 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 FTUB forced to work underground and accused of terrorism; 'workers' committees' organized by the authorities; the repression of seafarers even overseas and the denial of their right to be represented by the Seafarers' Union of Burma, 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 serious 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: (i) 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); (ii) 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; (iii) 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); (iv) the 1926 Trade Union Act requires that 50 per cent of workers must belong to a trade union for it to be legally recognized; (v) 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 (vi) 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. Finally, the Committee recalled that there was no legal basis for the respect for, and realization of, freedom of association 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 tranquility or public order and morality".

The Committee notes that during the June 2010 meeting of the Conference Committee, the Government representative stressed that, in accordance with its roadmap, Myanmar was committed to pursuing its transformation to a democratic society, that freedom of association rights, as well as other basic civil liberties provided for in the new Constitution would set out the framework within which new trade union legislation would be developed, and that no one has been, or is, apprehended for implicit or explicit exercise of the rights derived from the Convention. The Committee notes that the Conference Committee, 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 could be no legal trade unions in the country as yet, once again urged the Government in the strongest terms to immediately adopt the necessary measures and mechanisms to ensure all workers and employers the rights provided for under the Convention and to repeal Orders Nos 2/88 and 6/88, as well as the Unlawful Association Act. The

Conference Committee further 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 notes that the Government indicates in its report that the drafting process of legislation on workers' organizations will be based on three pillars: the new Constitution, continued assistance and advice from the ILO and the Convention. The Committee also notes that the Government indicates that the Pyidaungsu Hluttaw (i.e. Union Assembly/Parliament) will take the necessary measures, after the 2010 elections, to repeal Orders Nos 2/88 and 6/88, the Unlawful Association Act as well as Declaration No. 1/2006. The Government's reports adds that the first draft of the legislation on workers' organizations was completed in May 2010 and that it consists of 15 chapters addressing, inter alia, issues linked to the organization, duties, rights, fundraising and disbursement. Furthermore, the Government indicates that this first draft has been submitted to the Attorney-General for legal opinion; that the Government is considering requesting the technical assistance from the Office in this respect and that the Union of Myanmar Federation of Chambers of Commerce and Industry (UMFCCI) as well as the workers' representatives will be consulted and their views will be taken into consideration to further improve the instrument. **The Committee requests the Government to provide a copy of the draft legislation referred to and invites the Government to avail itself of the technical assistance of the Office.**

In these circumstances, noting that the planned general elections took place on 7 November 2010, the Committee urges the Government to take, without delay, the necessary measures so that the Pyidaungsu Hluttaw will immediately, upon its constitution, repeal Orders Nos 2/88 and 6/88 as well as the Unlawful Association Act and Declaration No. 1/2006, so that they will no longer be applied in a manner that would infringe upon the rights of workers' and employers' organizations. The Committee also requests the Government to ensure that the necessary measures are taken without delay for the elaboration of a Trade Union Law that will fully guarantee the right of workers to establish and join organizations of their own choosing, without previous authorization and to provide a copy of the legislation once adopted.

The Committee once again urges the Government to furnish a detailed report on the concrete measures taken, with the full and genuine participation of workers and employers from 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 requests the Government to communicate any relevant draft laws, orders or instructions in this regard so that it may examine their conformity with the provisions of the Convention.

Finally, the Committee encourages the Government to avail itself of the technical assistance of the Office in this regard.

Extension of ILO mandate. 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, reiterated its previous request to the Government to accept an extension of ILO presence to cover the matters relating to the Convention. ***Recalling that the Government had indicated in its previous report that an extension of ILO presence to cover the matters related to the Convention was under consideration, the Committee once again expresses the firm hope that the Government will be in a position to accept such an extension in the very near future and requests the Government to provide information in this respect.***

Nigeria

(Ratification: 1960)

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:

The Committee recalls that in its previous observation, it had noted the Trade Union (Amendment) Act (2005) and draws the attention of the Government to the following points.

Article 2 of the Convention. Legislatively imposed trade union monopoly. In its previous comments, the Committee had raised its concern over the legislatively imposed trade union monopoly and in this respect, it requested the Government to amend section 3(2) of the Trade Union Act, which restricts the possibility of other trade unions from being registered where a trade union already exists. The Committee noted that there is no such amendment in the language of the Trade Union (Amendment) Act. The Committee reiterates that under *Article 2* of the Convention, workers have the right to establish and to join organizations of their own choosing without distinction whatsoever (see General Survey of 1994 on freedom of association and collective bargaining, paragraph 45). ***It therefore urges the Government to amend section 3(2) of the principal Trade Union Act so as to ensure that workers have the right to form and join organizations of their own choosing even if another organization already exists.***

Organizing in export processing zones (EPZs). The Committee had noted the Government's statement that the Federal Ministry of Labour and Productivity is still in discussion with the EPZ authority on the issues of unionization and entry for inspection in the export processing zones. The Committee notes the ITUC's comments, according to which section 13(1) of the Nigeria Export Processing Zones Authority Decree (1992) makes it difficult for workers to form or join trade unions as it is almost impossible for worker representatives to gain free access to the EPZs. ***The Committee therefore once again requests the Government to take the necessary measures in the near future to ensure that EPZ workers are guaranteed the right to form and join organizations of their own choosing, as provided by the Convention, and to transmit a copy of any new laws adopted in this respect. It further requests the Government to indicate the measures taken or envisaged to ensure that representatives of workers' organizations have reasonable access to EPZs in order to appraise the workers in the zones of the potential advantages of unionization.***

Organizing in various government departments and services. In its previous comments, the Committee requested the Government to amend section 11 of the Trade Union Act, which denied the right to organize to employees in the Customs and Excise Department, the Immigration Department, the Prison Services, the Nigerian Security Printing and Minting Company Limited, the Central Bank of Nigeria, and Nigeria Telecommunications. The

Committee notes that this section was not amended by the Trade Union (Amendment) Act. The Committee had noted that according to the Government's statement, the Collective Labour Relations Bill, pending before the lower chamber of Parliament will address this issue. The Committee recalls that workers, without distinction whatsoever, shall have the right to establish and to join organizations of their choosing and that the only exceptions authorized by the Convention are members of the police and armed forces, who should be defined in a restrictive manner and should not include, for example, civilian workers in the manufacturing establishments of the armed forces. Furthermore, the functions exercised by employees of customs and excise, immigration, prisons and preventive services should not justify their exclusion from the right to organize on the basis of *Article 9* of the Convention (see General Survey, op. cit., paragraphs 55 and 56). **The Committee therefore requests the Government to take the necessary measures to amend section 11 of the Trade Union Act, which is still in force, and indicate the progress made towards the adoption of the Collective Labour Relations Bill and send a copy of the legislation, once it is adopted.**

Minimum membership requirement. The Committee had previously expressed its concern over section 3(1) of the Trade Union Act requiring 50 workers to form a trade union. The Committee considers that even though this minimum membership would be permissible for industry trade unions, it could have the effect of hindering the establishment of enterprise organizations, particularly in small enterprises. **In these circumstances, the Committee is therefore bound to reiterate that this number is too high and requests the Government to take the necessary measures to reduce the minimum membership requirement, particularly in respect of enterprise trade unions, and thus ensure the right of workers to form organizations of their own choosing.**

Article 3. The right of organizations to organize their administration and activities and to formulate programmes without interference from the public authorities. Export processing zones (EPZs). The Committee recalls that it had previously requested the Government to indicate the measures taken or envisaged to ensure that workers in EPZs have the right to freely organize their administration and activities and to formulate their programmes without interference by the public authorities, including through the exercise of industrial action. **While noting the Government's indication that the EPZ authority is not opposed to trade union activities and that the Federal Ministry of Labour and Productivity is still in discussion on this issue, the Committee reiterates its previous request and expects that the necessary measures will be taken without delay so as to ensure that workers in EPZs enjoy the rights under the Convention.**

Administration of organizations. The Committee recalls that, in its previous comments, it had requested the Government to amend sections 39 and 40 of the Trade Union Act in order to limit the broad powers of the registrar to supervise the union accounts at any time and to ensure that such a power was limited to the obligation of submitting periodic financial reports, or in order to investigate a complaint. The Committee notes that these sections were not amended under the new legislation and that the Government refers to the Collective Labour Relations Bill. **The Committee trusts that the new legislation to which the Government refers will address this matter.**

Right to strike. Compulsory arbitration. The Committee had noted that section 30, as amended by subsection (6)(d) of the Trade Union (Amendment) Act, continues to rely on the Trade Disputes Act to restrict strike action through the imposition of a compulsory arbitration procedure leading to a final award. The Committee has already pointed out on several occasions that such a restriction, which is binding on the parties concerned, constitutes a prohibition which seriously limits the means available to trade unions to further and defend the interest of their members, as well as their right to organize their activities and to formulate their programmes. Furthermore, the Committee notes the ITUC's comments, according to which section 4(e) of the Nigeria Export Processing Zones Authority Decree (1992) impedes trade unions from handling the resolution of disputes between employers and employees by granting this responsibility to the authorities managing these zones. The Committee recalls that arbitration imposed by the authorities at the request of one party is generally contrary to the principle of the voluntary negotiation of collective agreements, and thus the autonomy of bargaining partners (see General Survey, op. cit., paragraph 257). **The Committee therefore once again requests the Government to take the necessary measures to amend section 7 of Decree No. 7 of 1976, amending the Trade Disputes Act in order to limit the possibility of imposing compulsory arbitration to only essential services in the strict sense of the term, public servants exercising authority in the name of the State or in the case of acute national crisis. Also, the Committee requests the Government to amend section 4(e) of the Nigeria Export Processing Zones Authority Decree (1992) in order to guarantee the autonomy of the bargaining partners without giving the right to the authorities to impose compulsory arbitration.**

Majority required to declare a strike. The Committee had noted that section 6 of the Trade Union (Amendment) Act amends section 30 of the principal Act by inserting subsection (6)(e), which requires the observance of a simple majority of all registered trade union members for the calling of a strike. The Committee considers that if a member State deems it appropriate to establish in its legislation provisions which require a vote by workers before a strike can be held, it should ensure that account is taken only of the votes cast (see General Survey, op. cit., paragraph 170). **It therefore requests the Government to take the necessary measures to amend the new section 30(6)(e) accordingly, so as to bring it into conformity with the Convention.**

Restrictions relating to essential services. The Committee had noted with concern that section 6 of the new Act relies on the definition of "essential services" provided for in the Trade Disputes Act (1990) to restrict participation in a strike. Specifically, the Trade Disputes Act defines "essential services" in an overly broad manner so as to include, among others, services for or in connection with: the Central Bank of Nigeria, the Nigerian Security Printing and Minting Company Limited, any corporate body licensed to carry out banking business under the Banking Act, the postal service, sound broadcasting, maintaining ports, harbours, docks or aerodromes, transportation of persons, goods or livestock by road, rail, sea or river, road cleaning, and refuse collection. The Committee recalls that essential services are only those the interruption of which would endanger the life, personal safety or health of the whole or part of the population (see General Survey, op. cit., paragraph 159). **It once again requests the Government to take the necessary measures to amend the Trade Disputes Act's definition of "essential services".**

The Committee reminds the Government that in order to avoid damages which are irreversible or out of all proportion to the occupational interests of the parties to the dispute, as well as damages to the third parties, namely the users or consumers who suffer the economic effects of collective disputes, the authorities could establish a system of minimum service in services which are of public utility rather than impose an outright ban on strikes, which should be limited to essential services in the strict sense of the term (see General Survey, op. cit., paragraph 160).

Restrictions relating to the objectives of a strike. The Committee had noted with concern section 30 of the Trade Union Act as amended by section 6(d) of the new Act, limiting legal strikes to disputes constituting a dispute of rights, defined as "a labour dispute arising from the negotiation,

application, interpretation or implementation of a contract of employment or collective agreement under the Act or any other enactment of law governing matters relating to terms and conditions of employment”, as well as to a dispute arising from a collective and fundamental breach of employment or collective agreement on the part of the employee, trade union or employer. The Committee considers that the legislation appears to exclude any possibility of a legitimate strike action to protest against the Government’s social and economic policy affecting workers’ interests. The Committee recalls that organizations responsible for defending workers’ socio-economic and occupational interests should, in principle, be able to use strike action to support their position in the search for solutions to problems posed by major social and economic policy trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection, and the standard of living (see General Survey, op. cit., paragraph 165). **Therefore, it requests the Government to take the necessary measures to amend section 6 of the new Act so as to ensure that workers enjoy the full right to strike and, in particular, to ensure that workers’ organizations may have recourse to protest strikes aimed at criticizing the Government’s economic and social policies without sanctions.**

Other restrictions. The Committee had noted that section 42(1)(B) of the Trade Union Act, as amended, requires that “no trade union or registered federation of trade unions or any member thereof shall in the course of any action compel any person who is not a member of its union to join and strike or in any manner whatsoever, prevent aircraft from flying or obstruct public highways, institutions or premises of any kind for the purpose of giving effect to the strike”. The Committee observes that this section appears to provide for two prohibitions: firstly, with regard to compelling non-union members to participate in a strike action and, secondly, the prohibition to obstruct public highways, institutions or premises of any kind for the purpose of giving effect to the strike. The Committee recalls that taking part in picketing and firmly but peacefully inciting other workers to keep away from their workplace should not be considered unlawful. The case is different, however, when picketing is accompanied by violence or coercion of non-strikers. As to the second prohibition, the broad wording of this section could potentially outlaw any gathering or strike picket. The Committee recalls that the conditions that have to be fulfilled under the law in order to render a strike lawful should be reasonable and, in any event, not such as to place substantial limitation on the means of action open to trade union organizations. In addition, given that aircraft-related services, with the exception of air traffic controllers, are not in themselves considered to be essential services in the strict sense of the term, a strike of workers in that sector or related services should not be the subject of an overall ban, as could be implied from the wording of this section. **The Committee therefore requests the Government to take the necessary measures to amend section 42(1)(B) so as to bring it into conformity with the Convention and the above principles, so as to ensure that any restrictions placed on strike actions aimed at guaranteeing the maintenance of public order are not such as to render any such action relatively impossible or ban it for certain workers beyond those in essential services in the strict sense of the term.**

Sanctions against strikes. The Committee had noted that section 30 of the Trade Union Act, as amended by section 6(d) of the new Act, makes strikers liable to the possibility of both paying a fine and being imprisoned up to six months, which might lead to a penalty which is disproportionate to the seriousness of the violation. The Committee recalls that no penal sanction should be imposed against a worker for having carried out a peaceful strike and therefore measures of imprisonment should not be imposed on any account. Such sanctions could be envisaged only where during a strike, violence against persons or property or other serious infringements of rights have been committed, and can be imposed pursuant to legislation punishing such acts. Nevertheless, even in the absence of violence, if the strike modalities had the effect of making the strike illegitimate, proportionate disciplinary sanctions may be imposed against strikers. **The Committee therefore requests the Government to take the necessary measures in order to amend its legislation so as to bring it into conformity with the principle above.**

Article 4. Dissolution by administrative authority. In its previous comments, the Committee had requested the Government to amend section 7(9) of the Trade Union Act by repealing the broad authority of the Minister to cancel the registration of workers’ and employers’ organizations, as the possibility of administrative dissolution under this provision involved a serious risk of interference by the public authority in the very existence of organizations. The Committee had noted the Government’s statement that this matter will be addressed in the Collective Labour Relations Bill. **Noting that section 7(9) of the principal Act is still in force, the Committee requests the Government to take the necessary measures to amend it and to provide a copy of the new legislative Act once it is adopted.**

Articles 5 and 6. The right of organizations to establish federations and confederations and to affiliate with international organizations and the application of the provisions of Articles 2, 3 and 4 of the Convention to federations and confederations of employers’ and workers’ organizations. The Committee had noted that section 8(a)(1)(b) and (g) of the new Act requires federations to consist of 12 or more trade unions in order to be registered. **In this respect, the Committee requests the Government to provide information on the practical application of this requirement and, in particular, the level at which federations are established.**

The Committee expresses the firm hope that appropriate measures will be taken in the very near future to make necessary amendments to the laws referred to above in order to bring them into full conformity with the Convention. It requests the Government to indicate the measures taken or envisaged in this respect.

The Committee notes the comments submitted by the International Trade Union Confederation (ITUC) in 2009. The Committee recalls that the 2008 ITUC comments concerned violations of the right to strike, arrest and detention of strikers, police repression during demonstrations and the refusal to recognize a trade union. **The Committee requests the Government to submit its observations on all comments submitted by the ITUC.**

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

The Committee notes with **deep concern** the comments presented by the ITUC in 2010 concerning violence against trade union leaders and members, including the murder of a trade union leader and serious physical assaults against trade union members. The Committee recalls that 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, and that the killing or serious injury of trade union leaders and trade unionists requires the institution of independent judicial inquiries in order to shed full light, at the earliest date, on the facts and the circumstances in which such actions occurred and in this way, to the extent possible, determine where responsibilities lie, punish the guilty parties and prevent the repetition of similar events. **The Committee requests the Government to provide its observations in this respect.**

Pakistan

(Ratification: 1951)

The Committee notes the comments submitted by the All Pakistan Federation of United Trade Unions (APFUTU) dated 8 March 2010 regarding the difficulties in registering trade unions for the industries established in the City of Sialkot, as well as the comments submitted by the International Trade Union Confederation (ITUC) dated 24 August 2010 concerning acts of violence against protesters, nighttime raids, arrests and harassment against trade union leaders and members, as well as other violations of the Convention. The Committee notes in particular the comments of the ITUC concerning the requirement that any gathering of more than four people be subject to police authorization and its impact on trade union activities, as well as the denial of the right to strike to workers in export processing zones (EPZs) and the possibility to impose penalties of imprisonment against illegal strikes, go-slows and picketing activities. The Committee recalls that freedom of association can only be exercised in a climate that is free from violence, pressure or threats of any kind against leaders and members of workers' organizations, and that workers have the right to participate in peaceful demonstrations to defend their occupational interests. **The Committee requests the Government to provide its observations on all these matters in its next report.**

The Committee also notes the comments made by the Pakistan Workers' Federation (PWF) dated 30 July 2010 concerning the legal vacuum with regard to the regulation of industrial relations as the Industrial Relations Act (IRA) of 2008 expired on 30 April 2010, in particular as concerns national industry-wide trade unions. In this respect, the Committee notes that the Government indicates in its report that it has enacted the 18th Amendment to the Constitution whereby the matters relating to industrial relations and trade unions are devolved to the provinces. The Government adds that it will ensure that provincial legislations will be in accordance with the Convention. The Committee further notes that on 18 June 2010, the High Court of Sindh (Karachi), referring to the 18th Constitutional Amendment, confirmed that the IRA 2008 stood repealed and concluded that the Industrial Relations Ordinance (IRO) of 1969 was now once again in force. The Committee recalls in this respect that it had previously commented on a number of significant restrictions on the right to organize under the IRO 1969 and in particular: (i) the exclusion from the IRO of public servants of grade 16 and above, of forestry, railway and hospital workers, of agricultural workers like self-employed farmers, sharecroppers and smallholders, as well as of persons employed in an administrative or managerial capacity whose wages exceeded 800 rupees per month (far below the national minimum wage); and (ii) restrictions on the rights to strike. The Committee notes that while some provincial governments have moved to pass their own legislation based on the expired IRA 2008, it expresses its concern over the exercise of their rights by national industry-wide trade unions, the activities of which may be jeopardized in the absence of a national legislation dealing with industrial relations and trade union rights.

The Committee expresses the firm hope that new legislation will be adopted in the country in the very near future with the full consultation of the social partners concerned. The Committee further hopes that any adopted legislation will be in full conformity with the Convention. It requests the Government to provide, in its next report, information on the developments with regard to the adoption of national and/or provincial legislations on trade unions and industrial relations and to provide a copy of these instruments once adopted. It reminds the Government that it may avail itself of the technical assistance of the Office if it so wishes.

Export processing zones (EPZs). With regard to the right to organize in EPZs, the Committee recalls that it had previously noted the Government's statement that the Export Processing Zones (Employment and Service Conditions) Rules, 2009 had been finalized in consultation with the stakeholders and will be submitted to the Cabinet for approval. **Noting the Government's statement that the draft Rules are in conformity with the Convention, the Committee requests the Government to provide information on their adoption, as well as a copy thereof as soon as they are adopted.**

Banking sector. In its previous comments, the Committee requested the Government to amend section 27-B of the Banking Companies Ordinance of 1962, which restricted the possibility of becoming an officer of a bank union only to employees of the bank in question, under penalty of up to three years' imprisonment, either by exempting from the occupational requirement a reasonable proportion of the officers of an organization, or by admitting, as candidates, persons who have been previously employed in the banking company. The Committee noted the Government's statement that a bill to repeal section 27-B of the Banking Companies Ordinance of 1962 was submitted to the Senate. The Committee notes that the Government provides, with its report, a copy of the amendment submitted to the Senate and indicates that, as underlined in its Labour Policy 2010, it is committed to repeal this section. The Committee notes in this respect the conclusions of Case No. 2096 of the Committee on Freedom of Association in which it has been requesting amendment of this Ordinance for many years. **The Committee expresses the firm hope that the Amendment of section 27-B of the Banking Companies Ordinance of 1962 will be adopted in the near future and requests the Government to provide information in this respect in its next report.**

Furthermore, recalling that Presidential Ordinance No. IV of 1999, which amends the Anti-Terrorism Act by penalizing illegal strikes or slowdowns with up to seven years' imprisonment, would be contrary to the Convention, the Committee once again requests the Government to indicate whether this Ordinance is still in force.

Panama

(Ratification: 1958)

The Committee notes the Government's reply to the previous comments of the International Trade Union Confederation (ITUC) concerning murders and acts of violence against trade unionists. The Committee also notes the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2706. The Committee further notes the comments of the ITUC dated 24 August 2010, which refer to the refusal of the Government to grant trade union status to the National Union of Workers of the University of Panama (SINTUP), and in general report that workers are victims of persecution and murders. **The Committee requests the Government to provide its observations in this respect.** The Committee recalls that freedom of association can only be exercised in a climate that is free of violence and in which fundamental human rights are respected and fully guaranteed. **The Committee also requests the Government to provide its observations in relation to the comments made by the National Council of Private Enterprise (CONEP) in 2009.**

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

Article 2 of the Convention. Right of workers and employers without distinction whatsoever to establish and join organizations.

- sections 174 and 178 of Act No. 9 on administrative careers establishing, respectively, that there may not be more than one association in an institution, and that associations may have provincial or regional chapters, but not more than one chapter per province. The Committee notes the Government's indication in its report that Act No. 9 of 1994 was amended by Act No. 43 of 30 July 2009, but that sections 174 and 178 have not been amended. The Committee recalls that, in accordance with *Article 2* of the Convention, the legislation should envisage the possibility of workers being allowed to establish more than one organization if they so wish. ***The Committee once again requests the Government to take the necessary measures to amend sections 174 and 178 of the Act on administrative careers as indicated above;***

- the requirement of too large a membership (ten) for the establishment of an employers' organization and an even larger membership (40) for the establishment of a workers' organization at the enterprise level, by virtue of section 41 of Act No. 44 of 1995 (amending section 344 of the Labour Code), and the requirement of a large number (40) of public servants to establish an organization of public servants under section 177 of Act No. 9 on administrative careers (now section 182 of the Single Text of Act No. 9). The Committee notes the Government's indication that Act No. 43 of 30 July 2009 amends section 182 referred to above, raising the required number of members for the establishment of an organization of public servants from 40 to 50. ***The Committee requests the Government to take the necessary measures to reduce the minimum number of members required so that workers, employers and public servants are able to establish their organizations. The Committee requests the Government to provide information in its next report on any developments in this respect;***

- the denial to public servants (non-career public servants, as well as those holding appointments governed by the Constitution and those who are elected and serving) of the right to establish unions. The Committee notes the Government's indication that to bring the legislation into conformity with the Convention it would be necessary to amend article 64 of the Political Constitution, which is a matter for the highest authorities of the country. The Committee recalls that it has always considered that the exclusion of public servants from the right to organize is contrary to the Convention (see the General Survey of 1994 on freedom of association and collective bargaining, paragraph 48). The Committee observes that the legislation grants public servants the right to establish associations for the defence of their interests. ***The Committee once again requests the Government to take the necessary measures to ensure that all public servants, including non-career public servants, as well as those holding appointments governed by the Constitution and those who are elected and serving, are able to establish and join the organizations or associations of their own choosing in full freedom (and not only one organization for each institution), thereby guaranteeing such organizations the rights set out in the Convention.***

Article 3. Right of organizations to elect their representatives in full freedom.

- the requirement to be of Panamanian nationality in order to serve on the executive board of a trade union (article 64 of the Constitution). The Committee notes the Government's indication that to bring the legislation into conformity with the Convention, it would be necessary to amend article 64 of the Political Constitution, which is a matter for the highest authorities of the country. The Committee recalls once again that provisions on nationality that are too stringent could deprive some workers of the right to elect their representatives in full freedom; for example, migrant workers could be adversely affected in sectors in which they account for a significant share of the membership. In the Committee's view, the national legislation should allow foreign workers to take up trade union office at least after a reasonable period of residence in the host country (see the General Survey, op. cit., paragraph 118). ***In this respect, the Committee once again requests the Government to take the necessary measures to make the required amendments taking into account the principle referred to above;***

- the right of organizations to organize their administration. In its previous comments, the Committee requested the Government to take the necessary measures to amend section 180-A of Act No. 24 of 2 July 2007, amending Act No. 9 on administrative careers, so as to abolish the requirement for public servants who are not affiliated to associations to pay ordinary trade union dues, with the possibility of providing instead for the payment of a lesser amount than the ordinary trade union contribution for the benefits derived from collective bargaining. In this respect, the Committee notes the Government's indication that, on the occasion of the most recent amendment of Act No. 9 of 1994, section 180-A was not amended. The Committee recalls once again that the requirement by law that non-affiliated public servants shall pay ordinary dues to the association which obtained improvements in labour conditions raises problems of consistency with the Convention as such a requirement may influence the right of public servants to choose freely the association that they wish to join. ***Under these conditions, the Committee once again requests the Government to take the necessary measures for the amendment of section 180-A of Act No. 24 of 2 July 2007 as indicated above.***

Right of organizations to organize their activities and to formulate their programmes in full freedom. The Committee recalls that in its previous comments it commented on various aspects related to the exercise of the right to strike. In this respect, the Committee notes the Government's general comments relating to the exercise of the right to strike to the effect that: (1) strikes in Panama, as a constitutionally recognized right, take place within legally established limits set out in the Labour Code; (2) the right to strike per se does not give entitlement to the payment of wages for the days of stoppage, even where it is declared legal; (3) conciliation as a procedure for the resolution of collective labour disputes occurs in accordance with specific rules initiated by the presentation of a list of claims; (4) the abandonment of conciliation does not give rise to "disproportionate penalties", although it brings an end to the procedures; if this step is taken by the employer, it not only precludes the conciliation stage, but sets in motion the period of twenty days for the workers to call a strike; if it is taken by the workers, the latter have to recommence their action; (5) procedures have been established for the settlement of disputes of right involving the interpretation of the law, and primarily through mediation; (6) there are no formalities governing requests for mediation, although where the dispute is such as to admit the exercise of the right to strike, the parties may also request it through the submission of a list of claims; (7) the provision referred to above gives rise to another settlement mechanism, as in the case of the list of claims and the National Labour Act, under the terms of Act No. 53 of 1975, which provides for a jurisdictional body; and (8) although machinery is established in labour law for the settlement of collective disputes, it is not adequate.

The Committee recalls that the following matters raise problems of conformity with the Convention:

– denial of the right to strike in export processing zones (section 49B of Act No. 25 of 1992) and the denial of the right to strike in enterprises of less than two years' standing (section 12 of Act No. 8 of 1981). The Committee notes the Government's indication that the Ministry of Labour and Employment Development (MITRADEL), together with the Ministry of Trade and Industry (MICI), have been working to formulate amendments on this subject, resulting in the formulation of a preliminary draft Bill to amend, among other provisions, section 49 of Act No. 25 of 1992 and to repeal section 12 of Act No. 8 of 1981. **The Committee requests the Government to keep it informed of any developments in this respect and to provide a copy of the final text when it has been adopted;**

– the denial of the right to strike for public servants. The Committee recalls that the banning of strikes in the public service should be restricted to public servants exercising authority in the name of the State (see General Survey, op. cit., paragraph 158) or to essential services in the strict sense of the term (those the interruption of which would endanger the life, personal safety or health of the whole or part of the population). **The Committee once again requests the Government to take the necessary measures to ensure the right to strike of public servants who do not exercise authority in the name of the State;**

– the ban on federations and confederations from calling strikes and on strikes against the Government's economic and social policy, and the unlawfulness of strikes that are unrelated to an enterprise collective agreement. The Committee recalls once again that federations and confederations should have the right to strike and that organizations responsible for defending workers' socio-economic and occupational interests should, as a rule, be able to use strike action to support their position in the search for solutions to problems posed by major social and economic trends which have a direct impact on their members and on workers in general, in particular as regards employment, social protection and the standard of living (see the General Survey, op. cit., paragraph 165). **The Committee once again requests the Government to take steps for the amendment of the legislation so as to align it with the principles described above and so that the right to strike is not restricted to strikes related to a collective agreement;**

– the authority of the Regional or General Labour Directorate to refer labour disputes to compulsory arbitration in order to stop a strike in private transport enterprises (sections 452 and 486 of the Labour Code) which do not provide a service that is essential in the strict sense of the term. The Committee notes the indication that the right to strike as a constitutionally recognized right, is exercised within the legally established limits set out in the Labour Code, and its comment that mediation and conciliation procedures are available. The Committee recalls that compulsory arbitration to end a collective labour dispute is acceptable if it is in all cases at the request of both of the parties involved in the dispute. **The Committee therefore once again requests the Government to take the necessary steps to amend the legislation so as to provide that compulsory arbitration is possible in the transport sector only at the request of both parties;**

– the obligation to provide minimum services with 50 per cent of the staff in the transport sector, and the penalty of summary dismissal of public servants for failure to comply with minimum services in the event of a strike (sections 152.14 and 185 of Act No. 9 of 1994 on administrative careers). In this respect, the Committee notes the adoption of Executive Decree No. 25 of June 2009, which provides in section 2 that the provisions of the Labour Code respecting strikes in public services shall be applicable to the public air and maritime passenger transport services (sections 485–488 respecting strikes in public services) and of Executive Decree No. 26 of June 2009, which provides that in cases in which striking workers in a public service have designated an insufficient number of workers to provide or cover emergency services through shifts, the Ministry, in taking action to increase the percentage of workers up to the 30 per cent allowed by the law (section 487(2) of the Labour Code), shall justify the decision using criteria such as: (a) it is a situation in which the life, safety and health of the population are placed at risk; (b) if the original conditions for the provision of services determined by the workers were maintained, the normal living conditions of citizens could be seriously affected and/or an economic, social or political crisis created with serious consequences; and (c) the existence of the source of employment for workers and the enterprise would be imperilled. The decision adopted by the authority is immediately enforceable. The Committee finally notes that the legislation does not refer to the possible participation of the organizations of workers concerned in the determination of the minimum services envisaged in those public services, which go beyond essential services in the strict sense of the term. The Committee emphasizes that minimum services should be limited to activities that are strictly necessary to cover the basic needs of the population or to satisfy the minimum requirements of the service, while maintaining the effectiveness of the pressure brought to bear, and that since this system restricts one of the essential means of pressure available to workers to defend their economic and social interests, their organizations should be able, if they so wish, to participate in defining such a service. Moreover, in the case of any disagreement as to the number and duties in relation to the minimum service, such disagreement should be settled by an independent body enjoying the confidence of the parties. **The Committee once again requests the Government, taking into account the principles described above, to take the necessary steps to ensure the respective legislative amendments;**

– legislation interfering with the activities of employers' and workers' organizations (sections 452.2, 493.1 and 494 of the Labour Code) (closure of the enterprise in the event of a strike and compulsory arbitration at the request of one of the parties). The Committee previously requested the Government to take the necessary steps to ensure that: (1) in the event of a strike, management staff and non-striking workers are guaranteed the right to enter the facilities; and (2) compulsory arbitration is possible only at the request of both parties to the dispute, in essential services in the strict sense of the term or in the case of public servants exercising authority in the name of the State. The Committee notes the adoption of Act No. 68 of 26 October 2010 amending, among other provisions, sections 493–494 of the Labour Code. The Committee notes with **satisfaction** new section 493(3) which, in accordance with the comments made by the Committee for several years, provides that "the owners, directors, managing director, the staff closely involved in these functions and workers in positions of trust shall be able to enter the enterprise during the strike, provided that their purpose is not to recommence productive activities". The Committee nevertheless notes that the free access of non-striking workers is not provided for in the event of a strike. **The Committee once again requests the Government to take steps to ensure that in the event of a strike the right of entry of non-striking workers to the facilities is guaranteed;**

– the obligation for non-members to pay a solidarity contribution in recognition of the benefits derived from collective bargaining. The Committee notes that section 2 of Act No. 68, amending section 405 of the Labour Code, provides that "the collective agreement shall apply to all persons who work in the categories covered by the agreement, in the enterprise, commerce or establishment, even though they are not members of the union. Non-unionized workers who benefit from the collective agreement shall be obliged, during the period covered by the collective agreement, to pay the ordinary and extraordinary dues agreed by the union, and the employer shall be obliged to check such dues off from wages and forward them to the union". In this respect, the Committee considers that "solidarity" dues in view of the benefits derived from collective bargaining by workers who are not

members of the unions concluding a collective agreement are not contrary to the provisions of the Convention; nevertheless, such dues should be set at an amount which does not prejudice the right of workers to join the trade union organization of their choosing. **The Committee requests the Government to take the necessary steps for the amendment of the legislation as indicated above, and to provide information in its next report on any measure adopted or envisaged in this respect;**

– the automatic intervention of the police in the event of a strike. The Committee notes section 3 of Act No. 68, amending section 493(1) of the Labour Code, which provides, as amended, that “once the strike has commenced, the Regional or General Labour Inspectorate or Directorate shall immediately give orders for the police authorities to duly guarantee or protect persons and property.” The Committee considers, in cases of strike movements, that the authorities should resort to the use of the public forces only in grave situations or those in which public order is seriously threatened. **The Committee therefore requests the Government to take steps for the amendment of the legislation as indicated above.**

The Committee notes the Government’s indication in its report, with regard to the requested legislative amendments, that on various occasions it has shown its will to adapt the national legislation to the provisions of the Convention. However, as this involves the amendment of the Labour Code, as well as of other legal provisions, it is very difficult to engage in a process of the amendment of this legal instrument, as it necessarily involves the will, dialogue and consensus between workers and employers, in accordance with the practice in Panama. The Government adds that regrettably up to now no consensus has been achieved in this respect, for which reason the National Government, with a view to complying with this international commitment and reflecting the conclusions of the Committee on the Application of Standards at the 98th Session of the International Labour Conference (June 2009) and the comments of the Office, has requested the technical assistance of the ILO with a view to addressing the issues relating to freedom of association, in order to seek ways forward to allow the harmonization of national law and practice with the provisions of the Convention. **Observing that the discrepancies between the law and practice and the Convention have existed for many years, and taking into account the gravity of some of the restrictions referred to above, the Committee hopes that the Government will take the necessary measures to bring the legislation into conformity with the provisions of the Convention and that the requested technical assistance will be provided in the very near future. The Committee requests the Government to provide information in its next report on any progress achieved in this respect.**

Legislative initiatives. The Committee notes the adoption of Legislative Decree No. 27 of 5 June 2009 adopting measures intended to preserve the independence and autonomy of workers’ trade union organizations.

Serbia

(Ratification: 2000)

The Committee notes the comments submitted by the Confederation of Autonomous Trade Unions of Serbia (CATUS) received on 15 November 2010 and by the International Trade Union Confederation (ITUC) dated 24 August 2010. **The Committee requests the Government to provide its observations thereon in its next report.**

In its previous comments, the Committee had requested the Government to provide its observations on the comments made by the ITUC and the CATUS concerning alleged physical assaults against union officials and members, especially in the educational and health-care sectors. The Committee takes note that the Government indicates, in its report, that it has no knowledge of physical attacks on trade union officials or members in these sectors.

Article 2 of the Convention. Right of employers to establish and join organizations of their own choosing. The Committee recalls that for a number of years, it has been commenting upon the need to amend section 216 of the Labour Act which provides that employers’ associations may be established by employers that employ no less than 5 per cent of the total number of employees in a certain branch, group, subgroup, line of business or territory of a certain territorial unit, in order to establish a reasonable minimum membership requirement. In its previous observation, the Committee had noted the Government’s indication that the Committee’s comments on section 216 will be taken into consideration in the course of amendment of the Labour Act. The Committee notes that the Government indicates in its report that the work on amendments and addendums to the Labour Act is under way and that the completion of the work is planned for the end of 2010. **The Committee hopes that in the process of revising the legislation, due account will be taken of its comments concerning the amendment of section 216 of the Labour Code and requests the Government to provide a copy of the amendments and addendums to the Labour Act as soon as adopted.**

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

Swaziland

(Ratification: 1978)

The Committee notes the information provided in the Government’s reports and the comments, dated 27 August 2010, of the International Trade Union Confederation (ITUC) concerning the issues under examination, as well as allegations of government interference in union affairs and further elaboration around the 2010 May Day incident. The Committee takes note of the comments made by the Government to the ITUC allegations and in particular its assurances that the public service enjoys the freedom of association and right to organize in terms of the Industrial Relations Act, 2000 (as amended) and that as a result, four unions are active and recognized: the Swaziland National Association of Teachers (SNAT), the Swaziland National Association of Government Accounting Personnel (SNAGAP), the Swaziland National Association of Civil Servants (SNACS) and the Swaziland Nurses Association (SNA). According to the Government, these unions bargain with the Government collectively and freely without intimidation. **In light of the allegations made by the ITUC that the Public Service Bill currently before Parliament infringed the organizational rights of public sector workers, the Committee requests the Government to indicate the impact that this Bill might have on the rights of public service workers under the Convention and to transmit a copy of the Bill.**

The Committee notes the discussion which took place in the Conference Committee in June 2010. The Committee observes that the Conference

Committee continued to raise its concern over the lack of progress made on matters that had been raised for many years now and had thus decided to place its conclusions once again in a special paragraph. Further, observing that the Conference Committee had urged the Government to accept a high-level tripartite mission, in order to assist the Government in bringing the legislation into full conformity with the Convention, to inquire into the 2010 May Day incident and to facilitate the promotion of meaningful and effective social dialogue in the country, the Committee welcomes the Government's acceptance of this mission, which visited the country from 25–28 October 2010. The Committee notes the report of this tripartite mission, its conclusions and recommendations.

The Committee notes with **interest** from the mission report that certain provisions of the Industrial Relations Act (IRA), upon which it has been commenting for many years, have been amended by the House of Assembly and Senate, were awaiting royal assent and should be shortly promulgated into law. In particular, the Committee observes that Industrial Relations (Amendment) Bill No. 6 of 2010 would appear to:

- provide for the right to organize for domestic workers, by including domestic service in a household or a private house within the definition of “undertaking” (section 2(b) and (c) of the Bill);
- remove the restrictions on the nomination and eligibility of candidates for trade union office in section 29(1)(i) of the IRA;
- ensure that the supervision of strike ballots by the Conciliation, Mediation and Arbitration Commission (CMAC) provided for in section 86 of the IRA may only occur upon request by an organization in terms of its statute or constitution; and
- shorten the compulsory dispute settlement procedures provided in section 85(4) of the IRA by limiting the period for arbitration to 21 days.

The Committee observes from the latest information provided by the Government that the Bill has received royal assent and is now published as the Industrial Relations (Amendment) Act No. 6 of 2010. **The Committee trusts that the Amendment Act fully addresses the abovementioned issues and requests the Government to transmit a copy of the IR (Amendment) Act No. 6 of 2010.**

As regards its previous request that the Government amend the IRA 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, the Committee observes that the Bill provides for a clear definition of “sanitary services” in section 2. It further understands from the mission report that the Government intends to have discussions with the social partners within the framework of the Essential Services Committee for the determination of the minimum service that should be provided with respect to sanitary services. The Committee notes from the latest information provided by the Government that the Essential Services Committee has discussed this issue with the trade union and the Staff Association. **The Committee requests the Government to provide information on the discussions held in this regard and the final outcome with respect to the determination of the minimum service to be afforded for sanitary services.**

Finally, noting from the Government's report that a proposal to amend section 40 (civil liability of trade union leaders) and section 97(1) (criminal liability of trade union leaders) of the IRA would be brought before the Labour Advisory Board before June 2011, the Committee requests the Government to provide information on all progress made in this regard.

As regards the need to take measures to amend the legislation so as to guarantee for prison staff the right to organize in defence of their economic and social interests, the Committee recalls that in its previous comments it had noted the Government's indication that consultations had already been initiated to review the Prisons' Act. The Committee further notes from the mission report that the Supreme Court judgment in relation to the organizational rights of the Correctional Services Union refers to the possibility of adopting appropriate legislation for these workers to enjoy their rights under the Convention, with the exception of the right to strike. **Noting from the Government's latest report that a zero draft of the Correctional Services Bill was being developed, the Committee urges the Government to consult rapidly the social partners on the measures required in this regard and to propose the necessary legislative amendments without further delay.**

Furthermore, the Committee recalls that its previous comments referred to the following legal acts and proclamations which gave rise to practices contrary to the provisions of the Convention:

- *The 1973 Proclamation and its implementing regulations.* The Committee takes note of the information provided by the Government in relation to the status of this Proclamation and in particular the “Attorney-General's Opinion”, which states that “on the coming into force of the Constitution, the Proclamation died a natural death”. The Committee observes, however, from the mission report that, despite assurances of the Government to the contrary, the social partners considered that there remained a certain ambiguity and uncertainty in respect of the residual existence of the Proclamation. **In line with the mission's recommendations, the Committee would request the Government to take all necessary steps to clarify that all provisions of the 1973 Proclamation were now null and void.**

- *The 1963 Public Order Act.* The Committee recalls that in its previous comments it had requested the Government to take the necessary measures to amend the Act so as to ensure that it could not be used to repress lawful and peaceful strike action. The Committee observes from the conclusions of the mission that, despite the provisions exempting trade union meetings from the scope of the Act, it appeared that the Act was resorted to in respect of trade union activities if it was considered that these activities included matters relating to broader calls for democratic reforms of interest to trade union members. In this respect, the Committee observes that the ban on displaying any flag, banner or other emblem signifying association with a political organization or with the promotion of a political object, which was added to the Act in 1968, apparently has affected the right of trade unions carry out peaceful protest actions. The Committee observes from the latest information provided by the Government that the Ministry of Labour and Social Security was invited to a meeting between the police and the trade unions on 16 November 2010 in preparation for a protest action the following day. The Government indicates that it views the Ministry's participation at these consultation meetings as a positive development. **The Committee requests the Government to provide information on the steps taken to ensure that the 1963 Public Order Act is not used in practice to repress lawful and peaceful strike action, including any police guidelines or other instructions that may be elaborated to this end, as well as to indicate the measures taken to amend the Act where its provisions may have given rise to undue interference in trade union meetings or protest actions.**

The Committee notes with **grave concern** from the Conference Committee discussion and the mission report the serious disruption of the 2010 May Day demonstrations, the series of arrests and finally the death in custody of a participant in the demonstrations who had been arrested for wearing a t-shirt with the name of a political organization proscribed under the 2008 Suppression of Terrorism Act. **The Committee observes that the Government immediately appointed a coroner to carry out an official investigation into the circumstances surrounding this death and requests the Government to provide a copy of the coroner's report as soon as it is concluded.**

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

Turkey

(Ratification: 1993)

The Committee notes the comments made by the International Trade Union Confederation (ITUC) in a communication dated 24 August 2010, by the Confederation of Public Employees’ Trade Unions (KESK) in a communication dated 28 August 2010 and by Education International (EI) in a communication dated 30 August 2010 and the Independent Confederation of Public Servant’s Trade Unions (BASK) in a communication dated 11 October 2010. ***The Committee requests the Government to provide its observations thereon in its next report.***

The Committee notes the discussion that took place in the 2010 Conference Committee on the Application of Standards. It further notes that an ILO highlevel bipartite mission visited the country in March 2010 pursuant to a request by the Conference Committee in 2009.

Civil liberties

The Committee notes the Government’s reply to the comments previously made by the ITUC on the excessive force used by the police during public demonstrations. The Government indicates, in particular, that measures were put into effect in 2009 to prevent the use of excessive force by the police. Police officers responsible for the security of public marches and demonstrations began to receive training on the proportional use of force. About 17,000 police officers will be trained annually. The Government further indicates that, after the promulgation of May Day as Labour and Solidarity Day in 2008 and official holiday in 2009, May Day was celebrated in 2010 in Taksim square in Istanbul for the first time since its closure for meetings and demonstrations three decades ago. According to the Government, the demonstration was peaceful due to the constructive collaboration between trade unions and the security forces.

With regard to the 2007 ITUC allegation that trade unions must allow the police to attend their meetings and record the proceedings, the Government points out that, according to the Associations Act, the security forces are not authorized to enter trade union premises unless a court order is obtained on the grounds of the need to maintain public order and prevent the occurrence of criminal incidences. It further points out that a distinction between public meetings and meetings at trade union premises should be made and that any attendance at trade union public meetings by the police is entirely related to the need to maintain public order.

Regarding the setting on fire of the premises of Egitim-Sen’s branch office, the Government indicates that the security forces and the fire brigades intervened on time, three suspects were arrested and one of them was sentenced to three years of imprisonment. No trade union member was harmed.

While taking due note of the information provided by the Government on the steps taken to avoid police violence and undue interference, the Committee observes with **concern** the allegations of important restrictions placed on freedom of speech and assembly of trade unionists, contained in the above-noted communications from the ITUC, KESK and EI. ***The Committee, like the Conference Committee on the Application of Standards, urges the Government to continue to take all the 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 also urges 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. It requests the Government to indicate in its next report all measures taken in this respect. 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 provide information on the outcome with its next report.

Legislative issues

The Committee recalls that for a number of years it has been commenting on 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 Government's indication that Law No. 5982 amending the Constitution of the Republic of Turkey, enacted by the Grand National Assembly on 7 May 2010, entered into force after being approved by the electorate in the referendum held on 12 September 2010. The Committee notes with **interest** that, pursuant to this Law, the following provisions of the Constitution were repealed:

- article 51(4) prohibiting membership in more than one trade union;
- article 54(3) providing for trade union liability for any material damage caused during a strike; and
- article 54(7) prohibiting "politically motivated strikes and lockouts, solidarity strikes and lockouts, occupation of work premises, labour go-slows, and other forms of obstruction".

Regarding Act No. 4688 on public servants' trade unions, the Committee further notes the Government's explanation provided to the Conference Committee that the constitutional amendment would be followed by the relevant legislative amendments.

With regard to Acts Nos 2821 and 2822, the Committee notes the Government's indication that a draft Law on trade unions, amending both Acts, has been prepared by a "scientific committee" appointed by the Ministry in 2009. It further notes that this draft was communicated to the ILO High-level bipartite mission, as well as to the social partners in March 2010, in the framework of the Tripartite Consultation Board. The Committee notes that the provisions of the draft Law appear to address a number of the Committee's previous concerns. The Committee notes, in general, that the draft provisions concerning internal functioning of unions and their activities appear to be less detailed than corresponding provisions of Acts Nos 2821 and 2822, which previously gave rise to repeated interference by the authorities. Among other improvements, the Committee notes, in particular, that:

- the procedure for establishment of a trade union appears to be simplified (section 7);
- the notary requirement for becoming a trade union member is lifted (section 16);
- the establishment of workplace and occupation unions is allowed (section 3);
- a check-off facility is made available to all trade unions and the amount of trade union dues is to be determined by the organizations themselves (section 17);
- the citizenship requirement, as well as the requirement of being actively employed in the relevant branch of activity previously imposed on trade union founders, is abolished (section 6);
- the possibility for the Governor to appoint an observer at the general congress of a trade union is removed;
- the draft no longer provides for sanctions of imprisonment for violation of the legislation (section 35); and
- responsibility for suspending a strike lies with the court and not with the Council of Ministers (section 42).

The Committee notes, however, that the draft does not deal with all issues previously raised by the Committee and that no amendments to Act No. 4688 have been proposed further to those already considered by the Committee at its last session. ***It therefore once again draws the Government's attention to the need to amend its legislation so as to ensure compliance with the following Articles of the Convention.***

Article 2 of the Convention

- The need to ensure that self-employed workers, homeworkers and apprentices enjoy the right to organize. In this respect, the Committee notes that section 2 of the draft Law refers to the definition of "worker" provided for in the Labour Law (No. 4857), according to which, an "employee is a real person working under an employment contract" and recalls that section 18 of Act No. 3308 (Apprenticeship and vocational training) leads to the exclusion either explicitly or in practice of these categories of workers.
- The need to guarantee the right to organize to public employees, such as senior public employees, magistrates, civilian personnel in military institutions and prison guards (section 15 of Act No. 4688).
- The need to ensure that persons who have been unemployed for over one year or those retired can retain their trade union membership, subject only to the by-laws of the relevant trade union (section 18 of the draft Law on trade unions).

Article 3. Election of representatives

- The need to ensure that the decision regarding the suspension of a trade union officer's mandate in cases where he/she becomes a candidate in local or general elections and its termination in case of election belongs to the relevant trade union (sections 22(3) and 27(3) of the draft Law on trade unions).

- The need to repeal section 10(8) of Act No. 4688, which provides for the removal of union executive bodies in case of non-respect of requirements concerning meetings and decisions of general assemblies set out in the law.
- The need to repeal section 16 of Act No. 4688 providing for a mandatory termination of trade union membership and duties by reason of resignation and exclusion from the public services or transfer to another branch of activity, so as to ensure the right of organizations to elect their representatives in full freedom.
- The need to ensure that procedures and principles related to the acquisition and termination of membership are regulated by trade unions' internal regulations or by-laws and not by the authorities (section 18(10) of the draft Law on trade unions).

Limitations on the right to strike

- The need to ensure that cases in which strikes may be restricted or even prohibited are limited to those involving: (i) public servants exercising authority in the name of the State; and (ii) essential services in the strict sense of the term, namely those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. With regard to the public service, the Committee recalls that section 35 of Act No. 4688, which 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. With regard to other services, the Committee notes that, on the one hand, the draft Law on trade unions proposes to repeal sections 29–34 of Act No. 2822, which impose important limitations on the right to strike, including banning strikes in specified categories of services and, on the other, it proposes to add section 29, pursuant to which strikes may be fully or partially, permanently or temporarily prohibited by a ruling of the competent court if the strike is deemed contrary to public order or public health (section 42 of the draft Law on trade unions). The Committee considers that the term "public order" is too broad to fall within a strict definition of what may constitute an essential service.
- The need to amend section 52 of Act No. 2822, which provides for compulsory arbitration by the High Court of Arbitration at the request of one party in disputes concerning activities and establishments where strike is prohibited and where parties have failed to come to an agreement. The Committee recalls that compulsory arbitration to end a collective labour dispute and a strike is only acceptable if it is at the request of both parties involved in a dispute, or if the strike in question may be restricted, even banned, that is in the case of disputes in essential services in the strict sense of the term.
- The need to reduce the excessively long waiting period before a strike can be called (section 27 – referring to section 23 – and section 35 of Act No. 2822).
- The need to ensure that workers' and employers' associations are involved in the determination of minimum services and, in cases of disagreement, the question should be settled by an independent body (section 40 of Act No. 2822).
- The need to repeal severe limitations on picketing (section 48 of Act No. 2822).
- The need to ensure that no penal sanction could be imposed against a worker for having carried out a peaceful strike and that on no account measures of imprisonment could be imposed, except in cases where during a strike, violence against persons or property or other serious infringements of rights have been committed (sections 70, 71, 72, 73 (except for paragraph 3 repealed by the Constitutional Court), 77 and 79 of Act No. 2822, imposing heavy sanctions, including imprisonment for participating in unlawful strikes).

Supervision of organizations' accounts (Associations Act No. 5253)

The Committee had previously observed that section 35 of the Associations Act 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 of 1994 on freedom of association and collective bargaining, paragraph 125). ***The Committee once again requests the Government 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.***

While noting the Government's indication that consultations with the social partners on the amendments to trade union legislation will continue until consensus is reached, the Committee ***regrets*** to observe 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 urges the Government to engage in ongoing assistance with the ILO in order to ensure the rapid adoption of the necessary amendments to Acts Nos 2821, 2822, 4688 and 5253 and expresses the hope that the final texts will take fully into account its comments above.***

Zimbabwe

(Ratification: 2003)

Follow-up to the recommendations of the Commission of Inquiry
(complaint made under article 26 of the Constitution of the ILO)

The Committee recalls that a Commission of Inquiry was established at the 303rd Session of the Governing Body (November 2008) to examine a complaint presented under article 26 of the ILO Constitution alleging the failure of the Government to observe Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The Committee observes that the Commission of Inquiry completed its work in December 2009 and that its report was submitted to the Governing Body at its 307th Session (March 2010).

The Committee takes note of the reply of the Government to the report of the Commission of Inquiry by virtue of article 29 of the ILO Constitution, which was noted by the Governing Body at its 308th Session (GB.308/6/2). The Government has indicated that the recommendations of the Commission of Inquiry will be implemented in the context of its current legislative and institutional reform programme and welcomed the guidance and support of the ILO in their implementation.

The Committee recalls that in commenting on the observance of the Convention by the Government, it has been raising many of the same points examined by the Commission of Inquiry. It notes that the Commission has confirmed and expanded upon the concerns that this Committee, as well as the Conference Committee on the Application of Standards, have been raising as to the application of this fundamental Convention.

The Committee notes, in particular, that the Commission recommended that: the relevant legislative texts be brought in line with Conventions Nos 87 and 98; all anti-union practices – arrests, detentions, violence, torture, intimidation and harassment, interference and anti-union discrimination – cease with immediate effect; national institutions continue the process the Commission had started whereby people can be heard, in particular referring to the Human Rights Commission and the Organ for National Healing and Reconciliation; training on freedom of association and collective bargaining, civil liberties and human rights be given to key personnel in the country; the rule of law and the role of the courts reinforced; social dialogue strengthened in recognition of its importance in the maintenance of democracy; and ILO technical assistance to the country continued.

The Committee notes the comments made by the International Confederation of Free Trade Unions (ITUC) and the Zimbabwe Congress of Trade Unions (ZCTU) on the application of the Convention in their communications dated 24 August 2010 and 27 September 2010, respectively. The Committee notes that the allegations submitted by the ZCTU relate to the forced exile of the General Secretary of the General Agriculture and Plantation Workers Union of Zimbabwe (GAPWUZ) and instances of banning of trade union activities (workshop, commemoration events, processions and May Day celebration). **The Committee requests the Government to provide its observations on those serious allegations.**

The Committee notes with *interest* the launch, on 27 August 2010, of the ILO technical assistance package, which aims to support the Government and the social partners in implementing the recommendations so as to ensure full freedom of association in the country. The Committee further notes with *interest* the strong commitment expressed on that occasion by all stakeholders to implement the recommendations. The Committee further notes that in order to give practical effect to this commitment, the tripartite constituents identified seven priority activities to be carried out in the period from September to December 2010 aimed, among others, at: finalizing a set of principles for the harmonization of labour laws and the amendment of the Labour Act; identifying and attempting to resolve outstanding cases of trade unionists arrested under the Public Order and Security Act (POSA); capacity building for provincial police, security forces, prosecutors and magistrates in relation to trade union rights; capacity building for judiciary, labour officers, conciliators and arbitrators in relation to trade union rights; and strengthening interface between social partners and national human rights institutions. Further activities to be carried out in 2011 are in the process of being developed in consultation with the social partners.

The Committee notes that the following activities have taken place already: (i) a seminar for government officials on international labour standards, human rights and social dialogue in the world of work; (ii) the launch of the Kadoma Declaration "Towards a shared economic and social vision" concluded by the Government and the social partners under the auspices of the Tripartite Negotiating Forum (TNF) in 2009; and (iii) an activity on the finalization of the principles of harmonization of labour laws and the amendment of the Labour Act.

The Committee notes the Government's report on the outcome of the latter activity. The Government explains that the objective of this activity was to facilitate the amendment of the relevant legislation, and thereby give effect to the legislative recommendations of the Commission of Inquiry. The set of principles was to be finalized and adopted at a workshop involving the key actors: members of the Tripartite Advisory Council, the principals of labour and business, the Public Service Commission, the Health Service Board, and with the participation of the ministers of labour and public service. The Government regrets that due to the absence at the meeting of ZCTU representatives, the desired outcome was not achieved. Nevertheless, the meeting allowed discussion of some urgent issues and consolidation of the principles which will now be reconsidered by the Tripartite Advisory Council.

The Committee understands that outstanding cases of trade unionists arrested under POSA have been identified. **The Committee requests the Government to indicate in its next report the steps taken to ensure that these cases are withdrawn.**

The Committee further requests the Government to provide in its next report detailed information on the outcome of the activities carried out under the technical assistance package and on all other measures taken to implement the recommendations of the Commission of Inquiry.

Taking due note of the initiated labour law reform and harmonization process, the Committee expresses the firm hope that the relevant legislative texts will be brought in line with the Convention and recalls that the ILO supervisory bodies stressed the need to amend, in particular, the Labour Act and the Public Service Act, so as to ensure compliance with the following Articles of the Convention.

Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations without previous authorization

- the need to ensure the right to establish and join trade unions of members of the public service and prison staff; and
- the need to ensure the right to organize of managers (currently, under section 2 of the Labour Act, managers are considered to be employers).

Article 3. Right of workers' organizations to elect their representatives in full freedom, organize their administration, and to formulate their programmes

– the need to amend section 51 of the Labour Act, which concerns the supervision of election of officers of a trade union or employers' organization so as to guarantee the right of employers' and workers' organizations to elect their representatives in full freedom and without interference from the authorities;

– the need to amend sections 28(2), 54(2) and (3) and 55 of the Labour Act which confers on the minister extensive powers to regulate trade union dues as well as to regulate such matters as staff that may be employed by trade unions, their salaries and allowances, as well as the equipment and property that may be purchased by trade unions, so as to ensure that freedom of employers' and workers' organizations to organize their administration and dispose of all their fixed and movable assets unhindered;

– the need to amend section 120(2) of the Labour Act, which confers on the minister the right to appoint an investigator who shall at all reasonable times and without prior notice, enter any premises (paragraph (a)); question any person employed on the premises (paragraph (b)); and inspect and make copies of and take extracts from any books, records or other documents on the premises (paragraph (c)), so as to ensure the right of the inviolability of trade union premises and to avoid any danger of excessive intervention in the internal administration of trade unions; and

– the need to effectively guarantee the right to strike through, among other measures: (i) simplifying the procedure for declaring a strike; (ii) amending section 102 of the Labour Act providing for the right of the minister to declare any service essential; (iii) ensuring that a strike can be restricted or banned only in essential services in the strict sense of the term, that is those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population, so as to effectively ensure workers' right to strike; and (iv) amending sections 107, 109 and 112 of the Labour Act providing for excessive sanctions in cases of unlawful collective action being organized.

Furthermore, referring to the conclusions of the Commission of Inquiry (paragraphs 558–562 of the report) and noting with concern the abovementioned recent ZCTU allegations, the Committee urges the Government to take the necessary measures in order to ensure, in law and in practice, the right of trade unions to organize and carry out meetings, assemblies, demonstrations and pickets without interference by the police and security forces. In particular, it urges the Government to take the necessary measures to ensure that the POSA is not used to infringe upon legitimate trade union rights, including the right of workers' organizations to express their views on the Government's economic and social policy.

Noting the commitment of the Government to identify and attempt to resolve outstanding cases of trade unionists arrested under the POSA, the Committee urges the Government to intensify its efforts in this respect and to provide information in this regard in its next report. The Committee expresses the firm hope that it will be in the position to note that no charges are pending against trade unionists under the POSA when it examines next the application of the Convention in Zimbabwe.

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

Belarus

(Ratification: 1956)

Follow-up to the recommendations of the Commission of Inquiry
(complaint made under article 26 of the Constitution of the ILO)

The Committee notes the information provided by the Government and the discussion that took place in the Conference Committee on the Application of Standards in June 2010. The Committee further notes the comments made by the Congress of Democratic Trade Unions (CDTU) on the application of the Convention, in law and in practice, in a communication dated 30 August 2010 and the Government's reply thereon.

Articles 1, 2 and 3 of the Convention. The Committee recalls that it had previously noted with concern the 2009 comments made by the CDTU on the continuing discriminatory use of fixed-term contracts. The CDTU alleged, in particular, that members of free and independent unions are forced to leave their unions under the threat of non-renewal of their contracts and provided the following statistics on the impact of threats of non-renewal of fixed-term contracts on its affiliates: primary trade union at "Grodno-Azot" enterprise had lost 930 members since 2006; primary trade union at "Belshina" enterprise in Bobruisk – 50 members since 2006; primary trade union at "Polimir" chemical company in Novopolotsk – nearly 400 members since 2006; and primary trade union at Mozyr oil refinery company – at least 50 members since the beginning of 2009. The CDTU further alleged that trade union membership of primary trade unions at "Zenit" company in Vileika (Minsk region), Brest Pedagogical University, hydraulic power station in Novolukoml, and other small union organizations also suffered. According to the CDTU, the scenario of pressure on workers in all these cases was almost the same: the floor managers or managers on ideology would invite trade union members to sign statements indicating that they were leaving independent unions and discontinuing payment of trade union membership dues. Those who refused were threatened with dismissal and non renewal of their fixed-term contracts. The Committee had expressed the firm hope that the Council for the Improvement of Legislation in the Social and Labour Sphere ("the Council") would examine the allegations of anti-union discrimination and interference suffered by the CDTU-affiliated trade unions and their members at the abovementioned enterprises, as well as at "Mogilev ZIV", "Avtopark No. 1", with regard to the members affiliated to the Radio and Electronic Workers' Union (REWU) and requested the Government to inform it of the outcome of the discussion and of measures taken to redress the damages suffered. The Committee **regrets** that no information has been provided by the Government in this respect.

The Committee further notes with **concern** that in its recent communication, the CDTU alleges that this pressure on independent trade unions, through the short-term contract system, has continued and that Presidential Decree No. 164 of 31 March 2010 (to improve contract-based scheme of employment) has not solved the problem. The Committee understands that this Decree entitles an employer to conclude an employment contract for an indefinite term with an employee who has not violated labour discipline and who has worked for the employer for no less than five years, but does not deal with unfair use of the system.

The Committee further notes with **concern** the CDTU's allegation that the number of violations of trade union rights has been increasing and that its members are still suffering from anti-union discrimination, including dismissal, non-renewal of labour contracts, pressure and harassment. In particular, the Committee notes with **regret** a case where a trade union activist of the Belarus Independent Trade Union (BITU) was dismissed from the Lukoml Power Station. The Committee observes that while at its June 2010 session, the Conference Committee noted the Government's statement that this person was reinstated in December 2009 following the court decision, it appears now that the dismissal was confirmed on 21 May 2010 following an appeal by the employer and the prosecutor's office.

The Committee further notes the allegations of threats and interference in internal trade union affairs and a new wave of pressure put on workers to leave their union at the Bobruisk plant of tractor parts and units (Belarusian Free Trade Union primary trade union), "Grodno-Azot" company, "Delta Style" company in Soligorsk, "Lavanstroï" construction company, Minsk automated line company (all BITU primary trade unions).

The Committee notes with **regret** that according to the CDTU, the Government refuses to use the tripartite council to discuss in substance the issue of trade union rights' violation. The Committee notes with **regret** that in this regard, the Government has not referred to any discussions taking place at the Council sitting on 14 May 2010 or at the meeting of 15 October 2010 of a tripartite working group created by the Council, with reference to anti-union dismissals, threats, interference and pressure.

The Committee therefore urges the Government to take the necessary measures to ensure that all of the abovementioned allegations of anti-union discrimination and interference relating to the CDTU and REWU-affiliated trade unions and their members at all of the abovementioned enterprises, are brought to the attention of the Council without further delay. It requests the Government to inform it of the outcome of the discussion and of any remedial measures taken should it be found that anti-union discrimination and interference have occurred.

Furthermore, the Committee once again urges the Government to take measures to ensure that enterprise managers do not interfere in the internal affairs of trade unions and, on the other, instructions to the Prosecutor-General, Minister of Justice and court administrators that all complaints of interference and anti-union discrimination are thoroughly investigated. Should such complaints prove true, the necessary measures should be taken to put an end to such acts and punish those responsible.

Article 4. The Committee recalls that it had previously noted that at its meeting of 26 November 2009, the tripartite council discussed the issue of collective bargaining at enterprises with several trade union organizations, as well as development of social partnership including the conclusion of collective agreements at "Grodno-Azot" and "Naftan" enterprises. It requested the Government to keep it informed of the outcome of this discussion. The Committee notes the Government's indication that the situation with the collective agreement at "Naftan" has been positively resolved and that the CDTU-affiliated trade union had joined the agreement concluded by the Federation of Trade Unions of Belarus (FPB). The Committee notes with **concern**, however, the CDTU's indication that its proposals with regard to social partnership at "Naftan" and "Grodno-Azot" have been ignored or not

considered at all. **The Committee requests the Government to provide its observations thereon.**

The Committee welcomes the Government's indication that a tripartite working group, where trade unions are represented by both the FPB and the CDTU, has been created to prepare a new General Agreement for 2011–13. **The Committee requests the Government to provide all relevant information in this respect.**

The Committee strongly encourages the Government to intensify its efforts to ensure full implementation of the recommendations of the Commission of Inquiry without delay, in close cooperation with all the social partners and with the assistance of the ILO. The Committee further expresses the firm hope that the Government and the social partners will continue the cooperation within the framework of the tripartite Council and that the latter will have a real impact on ensuring that the right to organize is effectively guaranteed in law and in practice.

[The Government is asked to supply full particulars to the Conference at its 100th Session and to reply in detail to the present comments in 2011.]

Greece

(Ratification: 1962)

The Committee notes that in a communication dated 29 July 2010 the Greek General Confederation of Labour (GSEE) submitted urgent comments with regard to the legislative measures implemented or to be implemented by the end of 2010 by the Greek Government in the framework of the mechanism to support the Greek economy (the GSEE refers to this mechanism as the "loan mechanism"). The International Trade Union Confederation (ITUC) and the European Trade Union Confederation (ETUC) expressed their support for these comments in communications dated 9 August and 22 September 2010, respectively. In a communication dated 25 November 2010, the Government indicates that its reply is being finalized and will be communicated to the Committee as soon as possible, the delay being due to the complexity of the issues and the consequent need for involvement and coordination of many co-competent agencies.

The Committee notes that on 5 May 2010, the Greek Parliament adopted Act No. 3845/2010 (FEK A'65/6-5-2010) on "Measures to implement a mechanism to support the Greek economy by the Member States of the Euro area and the International Monetary Fund". The Act contains as Appendices III and IV, a "Memorandum of Economic and Financial Policies" and a "Memorandum of Understanding on Specific Economic Policy Conditionality" which contain time-bound commitments set up by the Ministry of Finance, with the participation of the European Commission, the European Central Bank and the International Monetary Fund and communicated in letters by the Ministry of Finance and the Governor of the Bank of Greece to the President of the Eurogroup, the European Commission and the European Central Bank and to the International Monetary Fund.

The Committee also notes the adoption on 8 July 2010, of Act No. 3863/2010 on the "New Social Security System and relevant provisions" (FEK A'115) in order to implement certain of the time-bound commitments made in the two Memoranda attached to Act No. 3845/2010 in the area of structural policies on strengthening labour markets. In addition, on 5 March 2010, prior to the creation of the mechanism to support the Greek economy, the Parliament had adopted Act No. 3833/2010 (FEK A'40/15-3-2010) on the "Protection of the national economy – Emergency measures to tackle the fiscal crisis".

The GSEE criticizes section 2(7) of Act No. 3845/2010, as a result of which the national general collective agreement will no longer function as a minimum wage setting mechanism since branch and enterprise level agreements will be able to deviate from the terms of the sectoral agreements and the national general collective agreement. The GSEE notes that this provision dismantled a solid machinery of collective bargaining which had been functioning smoothly and effectively for 20 years as a result of a "Social Pact" endorsed unanimously in 1990 by all political parties and empowered by the consensus of the most representative employers' and workers' organizations following intense social dialogue. According to the previous system introduced by Act No. 1876/1990, the national general collective agreement took precedence over all other collective agreements, applied to all private sector workers in the Greek territory regardless of affiliation to a trade union, and bound all employers throughout the country.

The GSEE also objects to the exceptions introduced in the application of the national general collective agreement to young workers (of 18–24 years) and children (of 15–18 years) and the authorization granted to the Minister of Labour (in section 2(9)(e) and (f) of Act No. 3845/2010) to regulate through Presidential Decrees their working conditions, thus excluding this vulnerable group of workers from the scope of the minimum standards of wages and working conditions, which had so far been set through the national general collective agreement. It notes in particular, that newly hired young workers up to 24 years of age and children of 15–18 years will be remunerated at, respectively, 80 and 70 per cent of the minimum basic wage, as this is established in the national general collective agreement, for a period of 12 months (sections 2(6) of Act No. 3845/2010 and 74(9) of Act No. 3863/2010).

Furthermore, the GSEE objects to the permanent (and not temporarily restricted) drastic reductions in wages introduced twice in 2010 in the wider public sector including for employees under private law contracts (employed in local self-government and public enterprises) despite the provisions of the relevant collective agreements in force (sections 1(2) and 1(5) of Act No. 3833 and sections 3(1), (4), (6) and (8) of Act No. 3845/2010). The GSEE claims that collective agreements have been prohibited in the wider public sector by sections 1(2), (5) and 3(5) of Act No. 3833 and 3(8) of Act No. 3845/2010, which provide that all provisions in collective agreements which are contrary to the Acts in question are cancelled and superseded.

The GSEE also draws attention to various time-bound commitments introduced in the two Memoranda without any consultations with the social partners which in its view, constitute in and of themselves a violation of the autonomy of the bargaining parties and designate a pretextual process of dialogue on foregone conclusions and binding commitments that are already part of national legislation.

Finally, the GSEE criticizes the absence of consultations on the adoption of the abovementioned legislative measures which, according to the GSEE, does not signal a political will and commitment to engage in social dialogue in good faith nor does it manifest a sincere intention to take into account the views of the GSEE on these significant matters.

The GSEE concludes that Acts Nos 3833/2010, 3845/2010 and 3863/2010 lead to workers' disempowerment in the face of the combined spill-over effect of lay-offs, wage freezes and the abolition of the minimum standards of wages, negate the State's fundamental obligation to provide and protect decent work, violate the very essence of individual and social rights and endanger social peace and cohesion. The GSEE emphasizes that the measures in question are permanent and irreversible, notwithstanding the specific time frame and limited duration of the loan mechanism; are disproportionate, socially unjust and discriminatory vis-à-vis workers, especially the most vulnerable; have been adopted without examining sufficiently other well-weighed and more appropriate alternatives; are not quantifiable and their scope has no perceivable causal relationship with the pursued aim of implementing the stability programme; are not accompanied by adequate and concrete safeguards to protect the living standard of workers and support vulnerable groups in addressing the combined effect of economic austerity measures and the economic crisis; have had a serious and direct impact in weakening the position of GSEE during the collective negotiations that began in January 2010 for the conclusion of the new national general collective agreement.

The Committee must emphasize the importance of holding full and frank consultations with the employers' and workers' organizations on the revision of collective bargaining machinery, in accordance with the principle of the autonomy of the parties to the collective bargaining process and in light of the long-ranging implications of such revision for the standard of living of workers. Furthermore, it must recall that as a general matter, if, as part of its stabilization policy, a government considers that wage rates cannot be settled freely through collective bargaining, such a restriction should be imposed as an exceptional measure and only to the extent that it is necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers' living standards. ***The Committee will examine the comments by the GSEE, along with the Government's reply and the Government's regular report which is due in 2011 it at its next session; the latter should also address the comments previously made by the Committee (see observation 2009/80th Session).***

The Committee finally notes that as indicated by the GSEE, the revision of the collective bargaining machinery may have a wider impact on the observance of a range of ILO Conventions ratified by Greece, including the Labour Inspection Convention, 1947 (No. 81), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Protection of Wages Convention, 1949 (No. 95), the Equal Remuneration Convention, 1951 (No. 100), the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Employment Policy Convention, 1964 (No. 122), the Minimum Age Convention, 1973 (No. 138), the Labour Administration Convention, 1978 (No. 150), the Collective Bargaining Convention, 1981 (No. 154), and the Workers with Family Responsibilities Convention, 1981 (No. 156).

In light of the complexity and pervasiveness of the measures adopted in the framework of the support mechanism, which touch upon a number of ILO Conventions ratified by Greece, the Committee invites the Government to avail itself of the technical assistance of the Office and to accept a high-level mission to facilitate a comprehensive understanding of the issues, before the examination by the Committee of the impact of the measures in question on the application of this Convention, as well as other Conventions ratified by Greece.

Romania

(Ratification: 1958)

Article 1 of the Convention. Protection against acts of anti-union discrimination. The Committee notes from the International Trade Union Confederation's (ITUC) comments of 24 August 2010, that in recent years, certain employers have made employment conditional upon the worker agreeing not to create or join a union. In this regard, the Committee notes that the Government indicates in its reply dated 19 October 2010 that it does not have any information concerning this issue. ***The Committee requests the Government to discuss this situation with the most representative organizations of workers and employers and to keep it informed of any developments in this regard.***

The Committee also notes that according to ITUC although anti-union activities are prohibited, the sanctions for restricting trade union activities are rarely applied in practice, the procedure for lodging a complaint appears to be too complicated and the authorities do not prioritize the trade unions' complaints. ITUC states that the labour inspectorates do not always respect the confidentiality of the complaints and that certain employers prefer facing penalties rather than complying with the labour laws in place. The Committee finally notes that according to the ITUC, while the law provides for sanctions for obstructing union activities, those sanctions cannot be applied in practice due to loopholes in the Penal Code. The Committee also notes the comments made by the Block of National Trade Unions (BNS) in a communication dated 1 September 2010. ***The Committee requests the Government to provide its observations thereon.***

Moreover, in its previous observation, the Committee had requested the Government to provide statistical information regarding the protection against acts of anti-union discrimination. The Committee takes note from the Government's report that the Ministry of Labour, Family and Social Protection does not have statistical data concerning discrimination against trade unions. ***The Committee once again requests the Government to indicate in its next report, statistical information, or at least the maximum information available, on the number of cases of anti-union discrimination brought to the competent authorities, the average duration of proceedings and their outcome, as well as information concerning the nature and the outcome of the registered labour disputes that are currently being conciliated before the services of mediation and council of the Ministry of Labour, Family and Social Protection.***

Articles 2 and 3. Protection against acts of interference. In its previous comments, the Committee requested information on the penalties against acts of interference which are prohibited under sections 221(2) and 235(3) of Act No. 53/2003 and Act No. 54/2003. The Committee had noted from the Government's report that under Act No. 54/2003, the restriction of the exercise of the activities of trade union officials or the obstruction of the exercise of the right of freedom of association are punished with imprisonment from six months to two years or a fine between 2,000 Romanian new lei (RON) and RON5,000 (approximately US\$600–1,600). The Committee considers that these fines might, in some cases, not be sufficiently dissuasive. ***The Committee requests the Government to take the necessary measures to increase the amount of the existing sanctions so that they constitute a sufficient deterrent against all acts of anti-union discrimination.***

Articles 4 and 6. Collective bargaining with public servants not engaged in the administration of the State. In its previous comments, the Committee had noted from the conclusions and recommendations reached by the Committee on Freedom of Association in Cases Nos 2611 and 2632 that in the

public budget sector which covers all public employees, including those who are not engaged in the administration of the State (e.g. teachers), the following subjects are excluded from the scope of collective bargaining: base salaries, pay increases, allowances, bonuses and other staff entitlements which are fixed by law. The Committee notes from the Government's report that the salary rights in the budget sector were settled by Law No. 330/2009 on Unitary Salaries of the Staff Paid from Public Funds which stipulates that the fixation of salaries is exclusively by law and that it cannot be negotiated.

The Committee recalls that all public servants who are not engaged in the administration of the State should enjoy guarantees provided for in *Article 4* of the Convention with regard to the promotion of collective bargaining. The Committee further recalls that if, as part of its stabilization policy, a government considers that wage rates cannot be settled freely through collective bargaining, such a restriction should be imposed as an exceptional measure and only to the extent that is necessary, without exceeding a reasonable period, and it should be accompanied by adequate safeguards to protect workers' living standards. **Therefore, the Committee requests the Government to indicate in its next report if Law No. 330/2009 on Unitary Salaries of the Staff Paid from Public Funds is considered as an exceptional measure within the context of an economic stabilization policy, if adequate safeguards were established in order to protect workers' living standards and if it provides for a limited length of application.**

Draft labour legislations. In its previous comments, the Committee had noted that pursuant to the ILO mission, the social partners that are representative at the national level, as well as representatives of the Government, signed a memorandum in which they agreed to improve the legal framework on labour and social dialogue and in this regard, the Committee notes that the Government indicates that: (i) the elaboration of Act No. 168/1999 on the settlement of labour conflicts is part of the 2010 legislative schedule; (ii) Act No. 130/1996 on collective agreements and Act 54/2003 on trade unions will be debated within the Social Dialogue Commissions from the Ministry of Labour, Family and Social Protection at the latest in December 2010; and (iii) the modification of Act No. 188/1999 on the status of civil servants (with its amendments in Law No. 864/2006) was modified by Act No. 140/2010 adopted by the Parliament on 8 July 2010, but is currently under review.

The Committee has not yet received any update concerning the possible amendments of these legislative texts. **It trusts that the Government will be in a position to report progress soon on the issues raised above in the framework of the law reform currently underway and transmit a copy of the relevant legislation once adopted. The Committee encourages the Government to continue to avail itself of the technical assistance of the Office if it so wishes.**

Uruguay

(Ratification: 1954)

The Committee takes note of the Government's detailed reply to the comments of 2008 by the International Trade Union Confederation (ITUC). It also notes the comments of 30 August 2010 by the International Organization of Employers (IOE), the Uruguayan Chamber of Industries (CIU) and the National Chamber of Commerce and Services of Uruguay (CNCS), objecting in particular to certain provisions of Act No. 18566 on collective bargaining.

The Committee notes the conclusions and recommendations of the Committee on Freedom of Association in Case No. 2699, in which the complainants alleged that the abovementioned Act was inconsistent with the Convention.

Article 4 of the Convention. In its previous comments the Committee noted that, according to the Government, the national legislation lacks a single comprehensive text regulating collective bargaining and, consequently, part of the doctrine holds that there are two models of collective bargaining in the country: the typical model and the model that has grown out of the convening of wages councils. The Committee pointed out in this connection that decisions fixing minimum wages may be taken by tripartite bodies, but emphasized that according to the principles of free and voluntary collective bargaining between parties, laid down in *Article 4* of the Convention, other conditions of work should be set by workers' and employers' organizations without interference from public authorities.

The Committee notes that in its report the Government states that with the adoption of Act No. 18566 of September 2009, the limitation mentioned in its last report has been resolved and the promotion requirement set in the Convention has now been met.

The Committee notes in this connection that the Committee on Freedom of Association drew up the following conclusions regarding Act No. 18566 [see 356th Report, Case No. 2699, para. 1389]:

I. with respect to the exchange of information necessary to allow the normal conduct of the process of collective bargaining and that in the case of confidential information, its communication carries the implicit obligation of secrecy, and breach thereof would give rise to civil liability of those who are in breach (article 4), the Committee considers that all the parties to the negotiation, whether or not they have legal personality, must be liable for any breaches of the right to secrecy of the information which they receive in the framework of collective bargaining. The Committee requests the Government to ensure that this principle is respected;

II. as regards the composition of the Higher Tripartite Council (article 8), the Committee considers that an equal number of members could be taken into account for each of the three sectors, and also the appointment of an independent chairperson, preferably nominated by the workers' and employers' organizations jointly, who could break the deadlock in the event of a vote. The Committee requests the Government to hold discussions with the social partners on the modification of the law so as to arrive at a negotiated solution to the number of members of the Council;

III. with respect to the powers of the Higher Tripartite Council and in particular considering and pronouncing on questions related to the tripartite and bipartite bargaining levels (article 10, paragraph (d)), the Committee has emphasized on many occasions that "the determination of the bargaining level is essentially a matter to be left to the discretion of the parties". [See *Digest of the decisions and principles of the Freedom of Association Committee*, fifth edition, 2006, para. 989.] The Committee requests the Government to take the necessary measures including the amendment of existing legislation to ensure that the bargaining level is established by the parties and is not subject to voting in a tripartite body;

IV. as regards the possibility of wages councils establishing conditions of work for each case to be agreed by the employers' and workers' delegates in the respective wage group (article 12), the Committee recalls, firstly, that under ILO standards, the fixing of minimum wages may be subject to decisions by tripartite bodies. On the other hand, recalling that it is up to the legislative authority to determine the legal minimum standards for conditions of work and that Article 4 of Convention No. 98 seeks to promote bipartite bargaining to fix conditions of work, the Committee hopes that in application of those principles, any collective agreement on fixing of conditions of employment will be the result of an agreement between the parties, as the article in question appears to envisage;

The Committee notes in this connection the Government's statement in its report that the competence of the wages councils is aligned with the provisions of section 83 of Act No. 16002 of 25 November 1988, covering conditions of work, but extends to the latter only where there is agreement between the social partners, which means that a tripartite body may not vote on matters pertaining to conditions of work, but does have a vote when it comes to determining minimum wages by category.

The conclusions of the committee continue as follows:

V. with respect to the subject of bipartite collective bargaining and, in particular, that in company collective bargaining where there is no workers' organization, bargaining authority should pass to the representative higher level organization (article 14, last sentence), the Committee observes that the complainant organizations consider that the absence of a trade union does not mean the absence of collective relations in the company. The Committee considers, on the one hand, that bargaining with the most representative higher trade union level organization should only take place if it had a number of members in the company in accordance with the national legislation of each country. The Committee recalls, on the other hand, that the Collective Agreements Recommendation, 1951 (No. 91), gives pre-eminence to workers' organizations as one of the parties to collective bargaining, and refers to representatives of non-organized workers only in the case of absence of such organizations. In these circumstances, the Committee requests the Government to take the necessary measures to ensure that future legislation takes these principles fully into account;

VI. as regards the effects of the collective agreement and, in particular, that the collective agreement by sector of activity concluded by the most representative organizations is of mandatory application to all employers and workers at the respective bargaining level once it has been registered and published by the Executive Power (article 16), the Committee, taking into account the concern expressed by the complainant organizations, requests the Government to ensure that the process of registration and publication of the collective agreement only involves checks on compliance with the legal minima and questions of form, such as, for example, the determination of the parties and the beneficiaries of the agreement with sufficient precision and the duration of the agreement;

VII. as regards the duration of collective agreements and, in particular, the maintenance in force of all the clauses of the agreement which has expired until a new agreement replaces it, unless the parties have agreed otherwise (article 17, second paragraph), the Committee recalls that the duration of collective agreements is primarily a matter for the parties involved, but if government action is being considered any legislation should reflect tripartite agreement [see *Digest, op.cit.*, para. 1047]. In these circumstances, taking into account that the complainant organizations have expressed disagreement with the whole idea of automatic continuing effect of collective agreements, the Committee invites the Government to discuss with the social partners on amendments to the legislation in order to find a solution acceptable to both parties.

The Committee notes the Government's statement that contacts and consultations are being sought with workers' and employers' organizations with a view to examining the recommendations made by the Committee on Freedom of Association regarding the law and that a tripartite body is to meet shortly to deal with the recommendations in depth. ***The Committee expresses the firm hope that, in consultation with the social partners, the legislation will be brought fully into conformity with the Convention, and requests the Government to provide any information on this matter in its next report. The Committee underlines in this regard, the information provided by the Government regarding the beginning of the tripartite discussions.***

Public sector. In its previous observation the Committee took note of the information supplied by the Government on the preparation of a bill on collective bargaining in the public sector and asked the Government to report on progress towards its enactment. The Committee notes with **satisfaction** that, according to the Government, Act No. 18508 on collective bargaining in the context of industrial relations in the public sector has been adopted and is in keeping with the Framework Agreement on collective bargaining in the public sector concluded on 22 July 2005 by the Executive and the Inter-Union Assembly of Workers – National Convention of Workers (PIT–CNT).

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

Sri Lanka

(Ratification: 1993)

The Committee shares the conclusions of the Lanka Jathika Estate Workers' Union (LJEWU) that the application of the Convention is not satisfactory and **regrets** that no measures have been adopted by the Government in response to the Committee's previous comments to comply with the provisions of the Convention.

Article 3(3) of the Convention. Maternity leave. Compulsory post-natal leave of at least six weeks. The Government states that a woman worker who is entitled to four weeks' post-natal leave can nonetheless take six weeks following her confinement if she has not taken two weeks before. The Government also states that it has taken note of the Committee's concern of the need to establish compulsory post-natal leave of at least six weeks as requested by the Committee. **The Committee therefore trusts that the Government's next report will indicate measures taken to ensure full compliance with these provisions of the Convention.**

Article 3(2) and (3). Distinction in the length of maternity leave based on the number of children. In Sri Lanka, maternity leave cannot exceed six weeks after the birth of the third child, whereas the Convention provides for maternity leave of at least 12 weeks which must include a minimum period of six weeks post-natal leave irrespective of the number of births given. The Committee regrets that, notwithstanding the promises made by the Government in its previous report to ensure the same benefits for all female workers, no measures have been taken. The Committee notes that the LJEWU requests the Government to amend the national legislation in this respect. **The Committee therefore trusts that the Government's next report will indicate the legislative measures taken to ensure that full effect is given to this provision of the Convention for all women workers regardless of the number of children.**

Article 4(4) and (8). Cash and medical benefits. The Government states that the country is so far unable to provide maternity benefits by means of a compulsory social insurance scheme or out of government funds; cash benefits continue to be provided by the employer. The Government also states that nationals are covered by free medical services provided by the State, including maternal and childcare. **Recalling that the employer shall not be individually liable for the payment of maternity cash benefits, the Committee hopes that, in its next report, the Government will be in a position to indicate measures taken or envisaged towards ensuring that maternity cash benefits are provided by means of compulsory social insurance or out of public funds.**

Article 4(1) (in conjunction with Article 3(4), (5) and (6)). Entitlement to cash benefits during supplementary leave. The Committee notes the reply of the Government stating that, in the event of delayed confinement or sickness resulting from pregnancy or confinement, a woman worker may take supplementary leave without pay and that female employees in the public service can take their own unutilized leave. The Committee recalls that, according to Article 4(1) of the Convention, any extension of maternity leave resulting from the application of Article 3(4), (5) and (6) must qualify for cash benefits. The Committee notes that the Government has taken note of this matter but that no action has so far been undertaken to amend the law. **The Committee therefore expresses the hope that the Government will, in the very near future, take all the necessary measures to fully apply these provisions of the Convention.**

Article 1(1). Scope of coverage. Domestic and agricultural workers. The Government indicates that, due to constraints with regard to enforcement and especially for the reason that they are not covered by the maternity benefit laws, female domestic workers and subsistence agricultural workers still do not benefit from the protection guaranteed by the Convention. The Committee recalls that, in the previous report, the Government promised to undertake measures to cover, inter alia, female domestic workers in private households, wage-earning women working at home, as well as agricultural workers. **The Committee would be grateful if the Government would indicate the progress made in this respect in its next report.**

Article 1(4). Application of the Convention to women workers on plantations. In reply to the Committee's previous comments, the Government indicates that most estates ceased to apply alternative maternity benefits specified by the Maternity Benefits Ordinance No. 32 of 1939. Since the alternative maternity benefits scheme is now not in operation, action would be taken in consultation with the constituents to repeal the relevant provisions. However, no policy decisions have yet been taken in this regard. **The Committee once again hopes that such decisions will soon be taken in order to bring the legislation into conformity with existing practice in the country and eliminate any differences between the maternity benefits granted to workers on plantations and those granted to other workers.**

Article 5. Nursing. **The Committee trusts that the Government will, in the very near future, take measures in order to amend the Shop and Office Employees Act No. 19 of 1954 so as to provide for interruptions of work for the purpose of nursing to be counted as working hours and remunerated accordingly.**

Article 6. Protection against dismissal during maternity leave. **The Committee again expresses the hope that in its next report the Government will indicate the measures taken or envisaged to amend the Establishment Code so as to ensure protection for public employees both against dismissal and the receipt of a notice of dismissal during the period of maternity leave.**

[The Government is asked to reply in detail to the present comment in 2011.]

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

Fiji

(Ratification: 2002)

National policy to promote equality of opportunity and treatment. The Committee notes with **interest** the adoption on 15 December 2008 by the National Council for Building a Better Fiji (NCBBF) of the Peoples Charter for Change, Peace and Progress, which aims to build a society based on equality of opportunity for all Fiji citizens and on peace. The Charter, which was drafted on the basis of the findings and recommendations contained in the Report on the State of the Nation and the Economy (SNE Report) and after consultations held throughout the country, proclaims that equality and dignity of all citizens, respect for the diverse cultural, religious and philosophical beliefs, social and economic justice, equitable access to the benefits of development, and merit-based equality of opportunities for all shall be leading principles and aspirations. The Charter also sets out key measures and actions to be taken, such as the promulgation of an Anti-Discrimination Act, the development of education, vocational training and job placement, the promotion of multicultural education and the gradual phasing out of institutional names that denote racial affiliations, and the elimination of racial and inappropriate categorization and profiling in government records and registers. Other measures also include the increase of the participation of women at all levels of decision-making, the enactment of a code of conduct for public servants and persons who hold statutory appointments, the reform of the public sector, including the removal of any political interference and the compulsory training of civil servants, the development of cooperation between the Government and the private sector, and the introduction of a national minimum wage. The Charter also contains specific measures concerning indigenous peoples and their institutions. In this respect, the Committee notes that the NCBBF made a number of recommendations in the SNE Report, such as the need to promulgate legislation prohibiting discrimination based on race, religion and sexual orientation, as well as legislation protecting the rights of minority ethnic groups (Indians, Pacific Islanders, Chinese, European and landless Fijians), especially with the view to improving access to land. **The Committee requests the Government to provide information on the implementation of the measures envisaged in the Peoples Charter for Change, Peace and Progress to prohibit and eliminate discrimination, in particular racial discrimination, and to promote equal opportunities for all in relation to access to education, vocational training and employment in both the private and the public sectors.**

Sexual harassment. The Committee notes with **interest** the adoption by the Government of the 2008 National Policy on Sexual Harassment in the Workplace, which was developed in consultation with the tripartite social partners. It notes in particular that the Policy provides for a definition of sexual harassment and a list of acts that constitute sexual harassment, and establishes the employer's responsibilities: every employer must have an internal written policy and a grievance procedure on sexual harassment at the workplace, which are to be developed by both staff and managers (paragraph 5.1). The Committee further notes that the Policy highlights the consequences of sexual harassment not only for the victim but also for the entire staff and the enterprise itself and describes the complaint mechanisms available under the Human Rights Commission Act 1999, section 154 of the Penal Code and Part 13 of the Employment Relations Promulgation 2007. **The Committee requests the Government to provide information on the manner in which the 2008 National Policy on Sexual Harassment is implemented at the workplace level, indicating in particular any internal written policies adopted and grievance procedures put in place and any preventive measures taken by employers. The Committee further requests the Government to provide information on cases of sexual harassment identified by or referred to the labour inspectorate or any disputes concerning sexual harassment brought before the competent bodies, either under the Human Rights Commission Act 1999, section 154 of the Penal Code or Part 13 of the Employment Relations Promulgation 2007.**

Equal access to education and training. The Committee notes that the Peoples Charter for Change, Peace and Progress contains numerous proposed measures to ensure access to education for all, including the establishment of a statutory body for community and non-formal learning, the strengthening of early childhood education – especially in rural areas – the enhancement of skills and vocational training and the promotion of entrepreneurship training, the facilitation of job placement in partnership with the private sector and the introduction of a grant system. The Committee further notes that the SNE Report emphasizes the need for the education system to include the teaching and understanding of various cultural groups in order to foster unity and to develop an inclusive based education system.

The Committee understands from the information in the SNE Report and the provisions of the Peoples Charter that the education system will undergo an extensive reform. **As a consequence, the Committee requests the Government to clarify whether the system established under the Education (Establishment and Registration of Schools) Regulations, 1966, providing that in the admission process preference may be given to pupils of a particular race or creed, will still be in force. If so, the Committee reiterates its previous request for information on the application of these provisions in practice and for statistical information on the number of schools applying race or creed as an admission requirement as well as the number of pupils enrolled in these schools. Please also provide information on the implementation of the reform of the educational system, in particular on the measures taken to ensure the equal access of boys and girls, men and women from all ethnic groups to education and vocational training and their results.**

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

Honduras

(Ratification: 1980)

Articles 1 and 2 of the Convention. Active policy designed to promote full, productive and freely chosen employment. The Committee notes the detailed report and the full documentation received in September 2009. The Government lists the measures intended to promote economic growth, increase income and reduce the fiscal deficit and tax burden. The Government's objective is to create high-quality employment; carry out investment in economic and social infrastructure in order to promote productivity, investment and decent work; and strengthen investment in education, training, research and technological development. In the 2010 General Survey concerning employment instruments, the Committee emphasized that Executive Decree No. PCM-05-2007 of 2007 integrates the "National Plan for the Creation of Decent Employment" into the country's poverty reduction strategy and gives it the status of state policy (2010 General Survey, paragraph 57). The Government points out that in its report since 2008 the country is no longer in the category of "heavily indebted poor country", having moved into the category of "lower middle income country". According to the National Institute for Statistics, the percentage of households living in poverty in 2009 was 59.2 per cent and 36 per cent of households were classified as living in extreme poverty. In 2009 the rate of open unemployment was 2.9 per cent and the rate of invisible underemployment was 29.8 per cent. With the implementation of the National Decent Work Programme (PNTD), the Government is seeking to generate some 425,000 jobs during 2006–09 and some 650,000 jobs in the following six years. The PNTD seeks to promote decent work with the emphasis on young people, the development of micro-, small and medium-sized enterprises, reduction of informal work and underemployment, and the improvement of services relating to employment, vocational training and labour market information. The Government also states that monitoring instruments for evaluating the management of comprehensive employment policies are being applied in order to be able to measure their results. **The Committee requests the Government to supply information in its next report on the results achieved in the creation of productive employment in the context of the PNPD. The Committee requests that up-to-date information be included on the size and distribution of the workforce and on the nature and extent of unemployment, as an essential component of the implementation of an active employment policy within the meaning of the Convention.**

Article 3. Participation of the social partners. Measures for alleviating the impact of the crisis. The Committee observes the negative impact of the international financial crisis on public finance, growth in GDP and private, national and foreign investment, causing a drop in income and employment. The Government indicates in its report that efforts are being made to ensure macroeconomic stability and stimulate the creation of productive employment, as well as boosting training of the workforce in priority population groups and sectors of production. The Committee also notes the tripartite commission set up to construct a space for dialogue, coordination, negotiation and consultation with special emphasis on the "National Plan for the Creation of Decent Employment" and the "Support policy for supporting the competitiveness of micro-, small and medium-sized enterprises". In the 2010 General Survey concerning employment instruments, the Committee underlines the importance of ongoing, genuine tripartite consultations for tackling and alleviating the consequences of the global economic crisis (2010 General Survey, paragraph 788). **The Committee requests the Government to supply information in its next report on the consultations held with a view to formulating and implementing an active employment policy enabling the negative impact of the global crisis to be overcome. The Committee also requests the Government to supply information on the consultations held with representatives of the persons affected by the measures to be taken from other sectors of the economically active population, such as those working in the rural sector and the informal economy.**

The Committee notes Decree No. 230-2010 of November 2010 establishing the National Solidarity Plan for anti-crisis employment which includes the National Programme on Hourly Employment. The Committee notes the opposition expressed by the General Federation of Workers (CGT), the Workers' Confederation of Honduras (CTH) and the Single Confederation of Workers of Honduras (CUTH) towards the draft National Solidarity Plan in a communication sent to the Government in October 2010. **The Committee requests the Government to indicate in its next report the manner in which account has been taken of the opinions and experience of the representatives of employers' and workers' organizations in the formulation and implementation of the aforementioned Plan. The Committee requests the Government to provide information on the supervision and monitoring of the Programme, the extent to which the beneficiaries have succeeded in obtaining productive employment and details of age, sex, place of residence, training received and any other data enabling a quantitative and qualitative examination to be made of the employment created.**

Coordination of policies. The Government states that it is joining forces to improve the employability and competitiveness of the workforce by means of a National Vocational Training Programme which is integrated with the creation of productive work. The Committee also notes that the National Competitiveness Strategy identifies as motors of development the service-oriented *maquila* (export processing) sector, the full development of agri-food potential, promotion of the forestry sector and the full development of tourism. **The Committee requests the Government to include information in its next report on the steps taken to coordinate occupational education and training policies with prospective employment opportunities and to improve the competitiveness of the economy.**

Impact of trade agreements. In its previous comments the Committee referred to the entry into force of the Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR). **In view of the importance of exports for sustaining productive employment in the country's economy, the Committee again requests the Government to include information in its next report on the impact of trade agreements on the generation of productive employment.**

Export processing zones. The Committee notes that, according to the Honduran Association of Maquila Enterprises, in January 2009 there were 250 enterprises working in the export processing (*maquila*) sector employing nearly 119,000 workers. More than 12,000 jobs have been lost in this sector since 2008. The highest levels of activity remain in textiles, clothing and vehicle parts. **The Committee requests the Government to continue to supply information on the contribution of the export processing zones towards the creation of lasting, high-quality employment.**

Micro-, small and medium-sized enterprises (MSMEs). According to the Ministry of Industry and Trade, the 280,000 MSMEs in the country generate approximately 25 per cent of GDP and more than 700,000 jobs. In October 2008 Decree No. 135 approving the Act for the promotion and development of competitiveness of MSMEs was adopted. The Act seeks to promote a favourable environment in which urban and rural MSMEs can develop their

competitiveness and establish an enterprise culture, facilitate access to financing, create conditions for the establishment and consolidation of production lines and draw up strategic plans for ensuring the full development of the sector. Funds of 1,000 million lempiras were assigned to the development of the MSMEs. ***The Committee requests the Government to supply information on the impact of the new legal framework relating to MSMEs on the creation of employment and the reduction of poverty.***

Migrant workers. The Committee notes that migrants account for more than 5 per cent of the population. The destination of 81.1 per cent of migrants is North America. Remittances from the United States to Honduras amount to some US\$2,600,000 annually. The Government states that procedures are being implemented to organize the flow of labour-related remittances and investment and to reduce their utilization in the consumer sphere, ensuring that they are undertaken within proposed plans for the reduction of unemployment and underemployment. ***The Committee requests the Government to supply information on the manner in which programmes for sound investment of remittances sent by migrant workers have contributed to the creation of productive employment.***

Youth employment. According to the National Youth Forum, the unemployment rate for economically active young persons stands at 5.2 per cent and is even higher in urban areas, especially the city of Tegucigalpa (10.8 per cent), while rural unemployment stands at 2.9 per cent. The rate of open unemployment for young persons who have completed secondary or higher education is 8.6 per cent and 8 per cent respectively. The Committee observes that young persons who have received training face particular problems in finding employment. The Government indicates that it is necessary to eliminate the social problems that represent a real risk for the youth population, including violence, poor access to health care and education, and also exclusion from political, social and economic opportunities. The Committee notes that the National Youth Policy and its Strategic Plan have been approved. The Plan of Action for Youth Employment 2009–11 has been adopted in order to promote the employability of young people by means of access to technical and vocational training. The strategic components of the Plan of Action include promoting the development of young entrepreneurs and increasing access to productive assets to discourage the migration of young persons between 15 and 29 years of age who form a vulnerable section of the population. The Committee also observes that there is a growing problem of unemployment among educated workers, particularly young university graduates, who are unable to find secure employment commensurate with their skill level. This is now an issue for both advanced market economies and developing countries. Not only are their skills underutilized but this pattern of casual jobs can prove detrimental to their lifetime career progression (2010 General Survey, paragraph 800). ***The Committee urges the Government to continue to focus on the need to integrate young persons in the labour market. The Committee requests the Government to include information in its next report on the results achieved by the National Youth Policy and the Plan of Action for Youth Employment 2009–11.***

Minimum Age Convention, 1973 (No. 138)

Azerbaijan

(Ratification: 1992)

Article 2(1) of the Convention. 1. *Scope of application.* The Committee had previously taken note of section 7(2) of the Labour Code of 1999, which rules that "labour relations shall be established upon the execution of a written employment contract", and section 4(1) declaring that "this Code applies to all enterprises, establishments, organizations as well as workplaces where an employment agreement exists". The Committee had requested the Government to supply information on the measures taken to ensure the application of the Convention to all types of work outside an employment relationship.

The Committee notes the absence of information in the Government's report on this point. The Committee notes, however, that according to a survey conducted by the State Statistical Committee of the Republic of Azerbaijan in cooperation with ILO-IPEC, entitled: *Working children in Azerbaijan – The analysis of child labour and labouring children survey, 2005*, the majority of working children (about 65 per cent) are employed as unpaid family workers, while 25.1 per cent of children work on their own account and less than 10 per cent are wage workers. The survey further indicates that about 84.4 per cent of child labourers are found in the agricultural sector. **Recalling that Convention No. 138 requires the fixing of a minimum age for all types of work or employment and not only for work under an employment contract, and observing that it has been raising this matter for several years, the Committee urges the Government to take the necessary measures to ensure that children carrying out an economic activity on their own account are granted the protection afforded by the Convention. In this regard, it requests the Government to envisage the possibility of taking measures to adapt and strengthen the labour inspection services so as to ensure that the protection envisaged by the Convention is provided to children who work on their own account or in the informal economy.**

2. *Minimum age for admission to employment or work.* The Committee had recalled that the minimum age of 16 years was specified under *Article 2(1)* of the Convention as regards Azerbaijan. It had noted with regret that the Labour Code, in section 42(3), allows a person who has reached the age of 15 to be part of an employment contract; section 249(1) of the same Code specifies that "persons who are under the age of 15 shall not be employed under any circumstances". Moreover, the Individual Contracts of Employment Agreement Act, section 12(2), sets the minimum age for concluding an employment contract at 14 years.

The Committee notes the Government's information that pursuant to the amendments made to the Labour Code on December 2009 (Law of the Republic of Azerbaijan of 4 December 2009, No. 924-IIIQD), subsection (2) of section 249 shall be deleted. It notes, however, that this provision deals with admission of children of general vocational schools and who have attained the age of 14 years of age for industrial training. It also notes the Government's information that section 46(4) of the Labour Code which was amended in 2009 states that the contracts concluded with persons who have not reached the age of 15 years shall be invalid. The Committee had observed for a number of years that sections 42(3) and 249(1) of the Labour Code and section 12(2) of the Individual Contracts of Agreement Act and section 46(4) of the Labour Code as amended, permit a child of 14 or 15 years to conclude a contract of employment, even though the specified minimum age for admission to employment or work is 16 years. The Committee once again points out that the Convention allows and encourages the raising of the minimum age but does not permit lowering of the minimum age once specified. **Observing that it has been raising this matter for several years, the Committee urges the Government to take the necessary measures to ensure that no children under the age of 16 years is permitted to work, except for light work as permitted under Article 7 of the Convention.**

Article 3(2). Determination of types of hazardous work. The Committee had previously noted the Government's indication that a list of arduous and hazardous industries or occupations where the employment of persons under 18 years of age is prohibited was approved by Decision No. 58 of the Cabinet of Ministers of the Republic of Azerbaijan on 24 March 2000. The Committee notes the Government's indication that the list of hazardous work prohibited to children under 18 years and approved by Decision No. 58 of the Cabinet of Ministers shall be supplied to the Office in the near future. **Observing that the list of hazardous types of work was adopted in 2000, the Committee expresses the firm hope that a copy of this list will be sent along with the Government's next report.**

Article 7. Light work. The Committee had previously noted that section 249(2) of the Labour Code allows youths who have reached the age of 14 to work after school hours in light duty work, which poses no hazard to their health, and upon the written consent of their parents. It had further noted that sections 91(2), 119(1) and 133(3) of the Labour Code lay down the conditions of work of persons under 16 years of age and sections 252 and 254 provide for the conditions of work of persons under 18 years of age. The Committee had recalled that according to *Article 7(3)* of the Convention, the competent authority shall determine the activities in which employment or work may be permitted as light work. **Noting the absence of information in this regard, the Committee once again requests the Government to supply further information on the types of light work that are permitted for persons who have attained 14 years of age.**

Article 9(1). Penalties. Following its previous comments, the Committee notes the Government's indication that according to section 12(2) of the Labour Code as amended in 2009, an employer who violates the provisions related to the employment of persons who have not reached 15 years of age and the prohibition on engaging children in activities endangering their life, health or morality shall be brought to corresponding responsibility in accordance with the procedure established by law. It also notes the Government's reference to sections 310–313 of the Labour Code which deal with the liability for violating the rights defined in this Code, as well as the disciplinary, administrative and criminal actions for the violation of the labour law. **The Committee requests the Government to indicate the provision which establishes penalties for the breach of the provisions giving effect to the Convention.**

Parts III and V of the report form. Labour inspection and practical application of the Convention. The Committee notes the Government's indication that, according to section 308 of the Labour Code, the Office of the Public Prosecutor, as well as the State Labour Inspectorate, exercise control over the strict application of the Labour Code. Furthermore, the public control over the observance of the labour legislation shall be carried out by the trade unions and the employers' organizations. The Committee notes, however, that the Committee on the Rights of the Child, in its concluding observations

of 17 March 2006 (CRC/C/AZE/CO/2, paragraphs 61–62), expressed concern at the high number of working children in Azerbaijan, especially in rural areas, and that the regulations protecting children from exploitative and hazardous work are not consistently applied and respected. It also notes that according to the survey conducted in 2005 by the State Statistical Committee of the Republic of Azerbaijan in cooperation with ILO–IPEC, more than 156,000 children aged between 5 and 17 years are estimated to be engaged in some form of economic activity, out of which 84.4 per cent work in the agricultural sector, and about 67.6 per cent of working children are estimated to be engaged in hazardous work. ***The Committee expresses its concern over the number and situation of working children in Azerbaijan, as well as the weak enforcement of the Convention and accordingly urges the Government to redouble its efforts to improve this situation including through measures to strengthen the capacity and expand the reach of the labour inspection system. It requests the Government to provide information on the concrete measures taken in this respect and on the results achieved. The Committee once again asks the Government to supply data to give a general appreciation of the manner in which the Convention is applied, for instance, statistical data on the employment of children and young persons, extracts from the report of inspection services, and information on the number and nature of contraventions reported.***

[The Government is asked to supply full particulars to the Conference at its 100th Session and to reply in detail to the present comments in 2011.]

Mexico

(Ratification: 1984)

Follow-up to the recommendations of the Tripartite Committee (representation made under article 24 of the Constitution of the ILO). The Committee notes the discussions that took place in the Conference Committee on the Application of Standards in June 2010, the conclusions of the Conference Committee, a communication from the National Union of Federal Roads and Bridges Access and Related Services of Mexico which was sent to the Government on 2 August 2010, and the Government's report received on 14 September 2010.

A. Conference Committee on the Application of Standards. The Committee notes that in its conclusions the Conference Committee asked the Government to provide detailed up-to-date information for the 2010 meeting of the Committee of Experts on the follow-up measures taken with respect to the recommendations adopted by the Governing Body, concerning the representation made under article 24 of the ILO Constitution in relation to the accident that took place in the Pasta de Conchos mine. The Government was to have provided information on the number and nature of accidents, in both the formal and informal sectors of the mining industry; the risk evaluation methods used in the mining industry; the compensation actually paid and compensation still owing to the survivors and the families of the victims – including compensation for damages to be borne by the company involved in this case – and the relevant state benefits, and also any social benefits provided for the families of miners without social protection. Furthermore, the Committee urged the Government to ensure that all relevant actions and measures relating to this case are taken in close cooperation with the social partners and asked the Committee of Experts to continue to follow up on events and on progress made.

B. Communication from the National Union of Workers of Federal Roads and Bridges Access and Related Services of Mexico (SNTCPF). The Committee notes the detailed communication which alleges failure by the Government of Mexico to comply with the recommendations made by the Governing Body in its report on the representation. The Committee notes that the trade union – which was one of the complainants – asks for a recommendation to be issued complementing the report on the representation (document GB.304/14/8). The Committee informs the union that, according to established practice, when facts and allegations similar to those of a representation are presented, it is for the Committee to examine them in the context of the follow-up to measures taken further to the recommendations made by the Governing Body. Noting that the Government has still not made its comments, the Committee will deal with this communication in greater detail at its next meeting, in the light of any comments that the Government sees fit to make. The key points of the lengthy communication would appear to be the following:

(a).. *Registration of reliable data on existing mines, adequate OSH measures and labour inspection.* The trade union alleges failure to apply Official Mexican Standard NOM-032-STPS-2008, inasmuch as there is no register providing a full list of legal, illegal and clandestine mines in the coalmining region of Coahuila, and as a result it is impossible to plan the necessary measures, the labour inspectorate is unable to monitor them and there is no way of knowing the percentage of mines that were inspected. The union refers to discrepancies in the figures for the mines recognized by different state bodies (the Ministry of Labour and Social Security (STPS), the Mexican Geological Service (DGM), the Ministry of the Environment and Natural Resources (SEMARNAT) and COCOSHT (the state advisory committee on OSH)).

(b).. *Pocito mines. Lule and "Ferber" pocito mine.* The trade union's report contains extensive information on the pocito mines, stating that many of them are clandestine. With regard to the "Lulne", the union describes the lack of OSH measures in the mine and indicates that, although the mine was closed down, nobody informed the workers. The union indicates that the various inspection documents are not displayed in the mine and the workers are not informed of them. As regards the "Ferber" pocito mine, it indicates that the labour inspectorate, during an inspection on 13 August 2009, established that there was failure to comply with 76 safety rules, including the requirement for the mine to have two exits and the provision of a methanometer and emergency breathing equipment. After the failure to comply with 76 safety rules was recorded, the inspection report stated as follows: "The representative of the enterprise is therefore informed that the access of personnel working inside the mine must be restricted until the employer or legal representative of the enterprise complies with the safety measures indicated. Consequently, should the employer or legal representative continue with work inside the mine, he will be held fully responsible for endangering the physical safety of the workers in the event of any accident". The union indicates that on 11 September 2009 a 23-year-old worker died as a result of a rockslide. According to the union, as far as the Coahuila STPS is concerned, it appears sufficient to fill in inspection forms and have the workers believe that it is protecting their rights, and the union describes inspection activities in the region in question as "acts of simulation".

(c).. *Impact of measures.* The union indicates that the enactment of NOM-032-STPS-2008 did not produce any change in the region, that even in 2009 the mortality rate increased by 200 per cent, and that enterprises will not comply with the standard as long as it is cheaper to pay fines than pay for the introduction of safety measures.

(d).. *Systematic negligence. Ventilation.* The union states that the accident at Pasta de Conchos was not an isolated tragic incident but evidence of systematic negligence in the application of safety and health standards. It states that it can prove that the accident was due not only to a lack of "dusting" but also to a lack of adequate ventilation. It claims that this is important for the future since the Government continues to maintain that it did not know what happened to cause the accident and this claim of not knowing has allowed the suspicion to remain, in the history of coalmining in Mexico, that it could have been a worker who was responsible and has enabled the Government to shirk its responsibilities in OSH. The union adds that the Government is responsible for determining unequivocally the cause of the accident. The union also claims that there are plans to exploit the methane gas connected with the coal and that the Government states that it will extract the methane gas beforehand and this will make for greater safety, but in reality this will lead to more fatalities because there are no applicable safety and health standards. The union also mentions that workers were reportedly recruited to locate the bodies of the deceased workers without any inspection of the site and with the only available methanometer non-operational.

(e).. *Compensation and treatment of the victims' families.* The union states that the relevant benefits were calculated incorrectly, payments started at the end of 2009 but without being adjusted to wage levels, that the Pasta de Conchos Family Support Association was not included in dialogue, that the victims' families have been improperly treated by various state bodies and that their lawyers have been subjected to harassment, threats and

intimidation and their offices have been raided.

The Committee requests the Government to supply information on the communication from the trade union and, in particular, on the points referred to by the Committee in the above paragraphs, taking account of the general context of the follow-up to the Governing Body's report, including the relevant comments indicated below.

C. The Government's report. The Committee will examine in the following paragraphs the information supplied by the Government as follow-up to the recommendations of the Conference Committee on the Application of Standards and the Committee's observation of 2009, relating to the measures adopted to comply with the recommendations made in the aforementioned Governing Body report (GB.304/14/8).

Request for information on any developments concerning the possible ratification of the Safety and Health in Mines Convention, 1995 (No. 176), based on Official Mexican Standard NOM-032-STPS-2008 concerning safety in underground coalmines. Ventilation. Protection against undue consequences in the event of interruption of work. In its previous observation the Committee noted the adoption of Official Mexican Standard NOM-032-STPS-2008 of 23 December 2008 concerning safety in underground coalmines, drawn up with the technical assistance of the Office. Moreover, while noting the Government's indication that this standard includes provisions from Convention No. 176, the Committee hoped that this could facilitate the ratification of that Convention and asked the Government to supply information on any developments in this respect. The Committee notes that, according to the report, the STPS recommended in 1998 that the Convention should not be ratified on the grounds that the labour legislation does not have such specific labour standards as those laid down within *Article 7(f)* of Convention No. 176 which establishes the obligation of the employer to ensure adequate ventilation for all underground workings to which access is permitted, and *Article 13(e)*, concerning the right of workers to remove themselves from any location at the mine when circumstances arise which appear, with reasonable justification, to pose a serious danger to their safety or health. The Government indicates that no amendments have been made to date to the Federal Labour Act in relation to these two aspects of the Convention because the reasons why Convention No. 176 has not been ratified continue to apply. The Committee notes that Chapter 8 of the recently adopted NOM-032-STPS-2008 contains detailed provisions on ventilation in coalmines and that it ascertained in previous comments that *Article 13* of Convention No. 155 applies in practice in Mexico. The Committee refers to this last matter in its direct request. **The Committee requests the Government to contemplate the possibility of requesting technical assistance from the Office with a view to overcoming the remaining obstacles to the possible ratification of Convention No. 176. The Committee requests the Government to continue to supply information in this regard.**

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 the Governing Body, in paragraph 99(b) of its report, 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, continue 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) is working on nine projects, including the development of a national information system on occupational accidents and diseases, and that the Government also provides information on online training workshops and diplomas. **The Committee requests the Government to supply information on the aforementioned system and requests it to provide further details of the application of Articles 4 and 7 of the Convention to hazardous types of work such as coalmining. The Government is also requested to indicate whether it has a register of existing mines, including pocito mines, and to provide information on OSH policies adopted or planned in relation to large, medium-sized and small enterprises;**

(ii)... *conclude and adopt the 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 the indication in the Government's report that, in relation to NOM-032-STPS-2008, a special inspection operation for underground coalmines was launched on 25 March 2009. The Government indicates that an inspection protocol was used for this operation which was submitted to the members of the Subcommittee for the Coalmining Region at its ordinary session of 17 March 2009 and that this was updated for the actions of 2010, including the material relating to training and skills. The Government also indicates that between March and October 2010 a total of 11 underground mines and 20 pits (*pozos*) were inspected in Coahuila. **The Committee requests the Government to continue to supply information on its application in practice, also taking into account the comments made by the SNTCPF.**

Article 9. Adequate and appropriate inspection system. The Committee also notes paragraph 99(b)(iii) and (iv) and 99(d) of the Governing Body's report, in which the Government was asked, in consultation with the social partners, to continue 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 with Article 9 of Convention No. 155, in order to reduce the risk that accidents such as the accident in Pasta de Conchos occurs in the future;*

(iv)... *monitor closely the organization and effective operation of its system of labour inspection taking due account of the Termination of Employment Convention, 1982 (No. 158), including its paragraph 26(1);*

.....

(d)... *review the potential that the Labour Inspection Convention, 1947 (No. 81), provides to support the measures that 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 the Government's statement that the STPS is undertaking various actions within the context of the sectoral objective aimed at

promotion and monitoring of compliance with labour standards. This objective seeks to increase the number of workplaces which comply with OSH standards, undertake actions relating to the supervision and monitoring of inspection, generate a culture of self-evaluation, and impose penalties designed to have a heavy impact on offenders. The Government highlights the strategy implemented to strengthen the enforcement of labour standards with a view to ensuring that all large and medium-sized coalmining companies comply with the laws and regulations relating to OSH and implement remedial measures. The Government indicates that, in cases where conditions endangering the health, safety and lives of the workers and posing a risk to installations are detected, the Federal Labour Inspectorate restricts coalmining activities from the date of the inspection visit in question until such time as safety and health measures are complied with, and proceeds to issue a warning. The Committee notes the Government's indication that the text of the warning is as follows: "Imminent danger. The Ministry of Labour and Social Security (STPS) restricts the access of workers to this area In the event that work operations continue, they shall be the exclusive responsibility of the employer". The Committee notes that the trade union considers in its communication that the abovementioned measure is inadequate and refers to the example of the Felber mine. **The Committee requests the Government to ensure that the labour inspectorate enforces the interruption of work in areas where there is imminent danger, and to examine these matters in consultation with the social partners and provide information in this respect.**

With reference to its previous comments, the Committee also notes the information on the follow up given to labour inspection measures. It notes that 931 measures were ordered, 899 of which were not upheld (owing to various situations such as areas to which measures applied no longer being exploited, and therefore being closed and sealed off, or machinery and equipment to which the measure applied being withdrawn from service), 32 measures were upheld and, of these, 20 were complied with and 12 were not complied with. **The Committee considers that, in the light of the report on the representation, it is essential to verify that action is taken to follow up on the measures issued, and requests the Government, in consultation with the social partners, to examine ways of creating mechanisms enabling it to substantially increase its activities to uphold or verify the implementation of the measures issued and to continue to supply information in this regard.**

Degree of application and impact of the measures taken. The Committee notes that, according to the Government, inspections are undertaken on the basis of the "Protocol of inspection for underground coalmines", which coincides with the provisions of the procedure for the evaluation of conformity (PEC), provided for in Chapter 18 of NOM-032-STPS-2008. The Committee also notes the Government's indication that in April 2010 it launched the special inspection operation to inspect underground coalmines, including 20 pits (*pozos*) and open-cast mines, and that 28 workplaces were visited with 88 inspections, of which 30 related to general safety and health conditions. The Committee observes that, since the accident, the Government has established a particular standard and a protocol of application. It notes, however, that the figures supplied do not provide a clear picture of the degree of application of OSH standards in coalmines. In order to verify the improvements made and progress achieved, it would be necessary to have reliable data on the number and types of mines that exist in the state where the accident occurred, drawing a distinction between large, medium-sized and small mines (*pocitos*), the estimated percentage of unregistered mines, workers and accidents. This would enable progress to be measured at intervals. **The Committee therefore requests the Government to provide information on the mines existing in the state of Coahuila, drawing a distinction between large, medium-sized and small mines (*pocitos*), indicating if possible the number of registered and unregistered *pocitos*, the number of accidents and fatalities each year, and existing policy for ensuring compliance with OSH standards in the three abovementioned sectors. Finally, the Committee repeats the request for information made by the Conference Committee on the Application of Standards, including on the risk evaluation methods used in the mining sector.**

II. Other measures

Compensation. The Committee noted that the Governing Body, in paragraph 99(c) of the document referred to above, asked the Government to:

(c)... ensure, considering the time that has elapsed 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.

Humanitarian aid. With reference to its previous comments, the Committee notes the elements laid out by the Office of the Federal Attorney for the Defence of Labour (PROFEDET) in its requests representing the widows and children of 56 deceased workers. It also notes that 750,000 pesos were granted to 63 out of 65 beneficiaries and 80,800 pesos were granted to 61 families and that this money was not by way of compensation but by way of "humanitarian aid". The Committee notes that the trade union disagrees with various aspects of the criteria used and the amounts due. The Committee considers it essential with respect to the workers who died in the accident at the Pasta de Conchos mine that their families receive amounts of money which enable them to live decently and that the State and the employers assume their responsibilities in this regard. **The Committee indicates that it will deal with this matter in depth in its next comment and requests the Government to make comments on the matters raised by the trade union in its communication and also to indicate whether, in addition to this "humanitarian aid", the families of the workers have received adequate and effective compensation and the amount thereof. Furthermore, it is unclear to the Committee, from the information supplied, how the amounts of 750,000 and 80,800 pesos were determined which, according to the Government, are not compensation (for example, whether wage supplements were counted and, if so, which) and the criteria for changing the amount from the initial offer made by Industrial Minera M□co (IMMSA), which was the equivalent of ten years' wages according to paragraph 26 of the report, to the subsequent amount, which was lower, and it requests the Government to indicate clearly which of the two amounts was actually granted to the workers.**

Compensation. The Committee notes the Government's indication that the amounts determined by way of compensation and other benefits to the family members of the 65 deceased miners were determined in each specific case in the legal proceedings instituted by the families. The Government indicates that IMMSA, on its own behalf or acting on behalf of General Hulla (GH), has deposited credit instruments in 58 cases which the Government indicates with their numbers; in five cases the corresponding cheques have not been displayed and two are still being processed. The Committee points out to the Government that it cannot fully understand from this information whether adequate and effective compensation was paid rapidly in accordance with the national legislation. It also notes the disagreement of the trade union and the families on this point. **The Committee requests the Government to provide clearer information in this respect, also taking into account the comments of the trade union, and any other information that contributes to an understanding of the effect given to this recommendation.**

State and social benefits. The Committee notes the Government's indication that, through the Ministry of Social Development, support amounting to 1 million pesos was provided to cater for 65 productive projects of up to 15,000 pesos per person; a pledge was made to provide workshops on productive support; a pledge was made to support a project for the construction and equipment of a social, cultural and childcare centre for women

belonging to the families of the accident victims; basic products were also provided; INFONAVIT liquidated the total balance of the credits previously taken out by the deceased workers as well as measures relating to mortgages, while the National Fund for Public Housing provided support with a grant of 33,000 pesos so that the persons concerned could obtain housing. While noting the information supplied by the Government, the Committee cannot fail to note that the communication from the trade union, including its appendices such as the report from the *Pastoral Laboral* National Team, seriously questions the payments and benefits and the attitude of the state bodies, including PROFEDET, as regards treatment of the deceased workers' widows. The Committee recalls that the Governing Body in its report made special mention of the families of the victims. ***The Committee requests the Government to provide detailed information on all aspects of the communication which relate to the families of the victims in order to gain a clearer picture of the situation and of the existing disputes and court cases. In general, the Committee trusts that the Government will take all necessary steps to find an appropriate solution, including by means of dialogue, to the complaints submitted by the families of the victims of the Pasta de Conchos accident. The Committee also trusts that the families will be given support by the Government, and it requests the Government to provide information in this regard. It also requests information on the allegations of harassment of the lawyers representing the victims' families.***

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

[The Government is asked to reply in detail to the present comments in 2011.]

Canada

(Ratification: 1988)

The Committee notes the information provided by the Government in its latest report, including information concerning the application of the Convention, in law and practice, in a number of the provinces and territories. It also notes the statistical information on the application of the Convention, which has been dealt with in a request addressed directly to the Government. As regards *legislative and other measures undertaken*, the Committee welcomes the information indicating that representatives of the Canadian employers' and workers' organizations are participating in the Federal Regulatory Review Committee on the revision of Part X (Hazardous Substances) Regulations, and that this Committee has proposed lowering the occupational exposure limit on asbestos from 1 to 0.1 fibre/cubic centimetre, as well as new provisions that would specify requirements for an asbestos management programme for asbestos removal from any building/facility in federal jurisdiction. The Committee notes that following extensive consultation with industry, labour and technical experts, comprehensive new Workplace Safety and Health Regulations, which include new requirements to address asbestos hazards, took effect on 1 February 2007 in Manitoba. The Committee also notes the revised Occupational Health and Safety Regulations of 1 September 2009 in Newfoundland and Labrador; and the replacement in Ontario of Regulation 837 Respecting Asbestos by the O. Reg. 490/09 Designated Substances (effective 1 July 2010), which maintains worker protections while easing compliance for employers. **The Committee asks the Government to continue to provide information on the legislative measures undertaken concerning the Convention.**

The Committee also notes the comments by the Canadian Labour Congress (CLC), concerning the application of the Convention which were transmitted to the Office together with the Government's report, but which were not specifically addressed by the Government in its report.

Article 3(1) and (2) of the Convention. Measures to be taken for the prevention and control of health hazards due to occupational exposure to asbestos; periodical review in the light of technical progress and scientific knowledge. Article 10(b). Total or partial prohibition of the use of asbestos. The Committee notes that according to the CLC there is a compelling body of evidence showing that the most efficient way to eliminate asbestos-related disease is to stop producing and using it. The CLC indicates that the views of the ILO, the World Health Organization (WHO) and the United Nations Environment Programme (UNEP) in this matter must be respected as the main legitimate source of information. With reference to the Ninth International Conference on Occupational Respiratory Diseases in Kyoto in 1997 (Kyoto Conference) the CLC states that chrysotile is contaminated by tremolite and other amphibole group fibres and that these cannot be separated which is reason enough to justify a prohibition of all forms of asbestos. The Committee also notes that the CLC states that, in their view, the Canadian Government should introduce a total prohibition of the use of asbestos or products containing asbestos in work processes within the country, and for the phasing out of asbestos exports. The CLC refers to the "National Programme for the Elimination of Asbestos-Related Diseases" (NPEAD) – a programme specifically designed by the ILO and WHO for countries that use chrysotile asbestos but wish to eliminate asbestos-related diseases – and states that NPEAD is designed as a national institutional framework for strategic preventative strategies for the regional to the enterprise levels to take account of health, economic and social aspects of the problem, including indirect costs such as loss of potential income and the number of jobs offset by any changes. The CLC also indicates that if planned properly, job losses can be effectively offset by developing a positive employment transition process that is linked to the prohibition of asbestos and the promotion of alternative technology. The CLC also refers to the ILO Employment Policy Convention, 1964 (No. 122), ratified by Canada, and its accompanying Recommendation, together with the ILO Resolution on Social and Economic Consequences of Preventive Action at the 59th Session (June 1974) of the International Labour Conference, as important guideposts for establishing and implementing such an employment policy. The CLC also notes that NPEAD envisages the replacement of asbestos by other materials or products or the use of alternative technology. **In the light of these comments by the CLC, the Committee requests the Government to provide further detailed and up-to-date information on measures taken to give effect to Articles 3(1) and (2) and 10(b), taking into account, in particular, technological progress and advances in scientific knowledge.**

Articles 4 and 22(1). Consultation with the most representative organizations of employers and workers. The Committee notes the allegations by the CLC that, to their knowledge, consultations as required under these provisions of the Convention have not taken place in the recent past. **The Committee asks the Government to respond to this comment by the CLC and to provide further information on measures taken to ensure a full application of these provisions of the Convention.**

Article 17(2). Protection of workers and limiting the release of asbestos dust in the context of demolition work. The Committee notes that in its comments the CLC also refers to the WHO International Programme on Chemical Safety (IPCS), which in their view makes it clear that asbestos should not be used in construction materials because of the impossibility of protecting construction workers, their families and building occupants. **The Committee requests the Government respond to the comment by the CLC and to provide further information on the measures taken to ensure a full application of this provision of the Convention.**

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

[The Government is asked to reply in detail to the present comments in 2011.]

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

Paraguay

(Ratification: 2001)

Article 3 of the Convention. Worst forms of child labour. Clause (a). Sale and trafficking of children. The Committee previously noted that, according to a 2005 study on the trafficking of persons in Paraguay by the NGO Grupo Luna Nueva referred to by the International Trade Union Confederation (ITUC) in its comments, the trafficking of persons, including boys and girls, at both the international and domestic levels, was on the increase in the country. The number of cases of trafficking reported increased from eight in 2002, involving 12 girls under 18 years of age, to 118 in 2005, involving 145 girls under 18 years of age. According to the same study, Paraguay is a country of origin and of destination. Of the 145 girls involved in the cases of trafficking of persons reported in 2005, around 62 per cent were taken to Argentina, approximately 28 per cent were displaced within the country and 10 per cent were removed to other countries, including Brazil. The Committee observed that, although section 129 of the Penal Code prohibits the international trafficking of persons for prostitution, it does not prohibit the international trafficking of persons for economic exploitation or domestic trafficking. Noting the convergent information demonstrating the existence of the international and domestic trafficking of young persons under 18 years of age for both economic and sexual exploitation, the Committee observed that the national legislation applicable to this worst form of child labour displayed shortcomings.

The Committee notes the Government's information that the Inter-institutional Roundtable for Trafficking for the Prevention and Combatting of Trafficking in Persons (Roundtable for Trafficking), which is coordinated by the Ministry of External Affairs, was created in 2005 with the objective of elaborating policies, programmes and projects to prevent, punish and combat trafficking in persons. It notes with **satisfaction** that, as indicated by the Report for 2004–08 of the Roundtable for Trafficking supplied by the Government (Roundtable for Trafficking Report) new sections 129b and 129c of the Penal Code, as inserted by Act No. 3440/08, punish trafficking for the purposes of prostitution, slavery and forced labour through means of force, threats, deception, or trickery, prescribing penalties of up to 12 years' imprisonment. The same penalty applies to anyone who acts for commercial purposes or as a part of an organized group. Moreover, the consent of the victim does not constitute anymore a mitigating circumstance. The Committee notes the Government's indication that the Legislative Committee of the Roundtable for Trafficking at present is reviewing a bill on combating trafficking of persons, which would cover all aspects of trafficking, including prevention, investigation, sanctions, assistance and social rehabilitation of victims. **The Committee requests the Government to provide information on any developments in adopting the Bill on combating trafficking in persons and to supply a copy of it once adopted.**

Clause (b). Use, procuring or offering of children for prostitution. The Committee previously noted the ITUC's comments that the majority of child victims of prostitution were girls; however, also transsexual boys began to work in prostitution from the age of 13 years and were often the victims of trafficking to Italy. It further noted that, according to a study carried out by ILO-IPEC in June 2002 on the commercial sexual exploitation of girls and boys and to the Report of the Special Rapporteur on the sale of children, child prostitution and child pornography of 9 December 2004 (E/CN.4/2005/78/Add.1), two out of three sex workers were minors. It also noted that, since 2004, as a result of the awareness-raising campaigns undertaken in the various cities of the country on this subject and the adoption of regulations on the closure of bars and brothels, the problem became more clandestine and children engaged in prostitution were more likely to be found in flats and on the outskirts of towns. Finally, the Committee observed that, although the national legislation is in conformity with the Convention, the use, procuring or offering of children under 18 years of age for prostitution still occurred in practice.

The Committee notes the Government's information that in 2009 the National Committee for Childhood and Adolescence (SNNA) reactivated the Inter-institutional Roundtable for the Elimination of the Commercial Sexual Exploitation of Children, one of the objectives of which is to be recognized at the national level. It further notes the Government's indication that a study on transsexual child victims of sexual exploitation was carried out in collaboration with the ILO. The Committee notes that, according to the Roundtable for Trafficking Report, the Government of Paraguay jointly with the government members and associates of MERCOSUR, are carrying out the Nilur initiative to defend the rights of children and adolescents in the region. The initiative aims to raise awareness of commercial sexual exploitation, improve country legal frameworks, and exchange best practices to tackle issues related to victim protection and assistance. The Paraguayan Ministry of Tourism is part of the Joint Group for the Elimination of Commercial Sexual Exploitation of Children in Tourism, which conducts prevention and awareness-raising campaigns to combat the commercial exploitation of children in Latin America. **The Committee requests the Government to provide information on any activities carried out by the Inter-institutional Roundtable for the Elimination of the Commercial Sexual Exploitation of Children, in the framework of the Nilur initiative and by the Joint Group for the Elimination of Commercial Sexual Exploitation of Children in Tourism, and the results achieved. It also requests the Government to provide information on the results of the study on transsexual child victims of sexual exploitation, and on any action taken following this study. It finally requests the Government to provide information on the application of sanctions in practice, including, for instance, reports on the number of convictions.**

Article 5. Monitoring mechanisms. Trafficking and commercial sexual exploitation. The Committee previously noted the ITUC's comments that very few controls were carried out at borders, which made it very easy to transport children from Ciudad del Este or from Pedro Juan Caballero to Foz de Iguaz, Brazil, and from Encarnación to Puerto Falcón, Posadas and Clorinda in Argentina. It noted the ITUC's indication that Argentinian customs officers regularly apprehend minors who have crossed the Paraguayan border without being intercepted and either do not have identity documents or have documents belonging to other persons. By way of example, according to a study carried out by the International Organization for Migration (IOM), up to November 2004 Argentinian customs officers on the borders of Puerto and Falcón/Clorinda refused entry to around 9,000 persons, of whom 40 per cent were minors without proper documentation. The ITUC added that several Paraguayan officials in the Department of Migration and Identification and the Department of Immigration believed that they did not have the authority to intervene in cases of trafficking and supposed that the offence of the trafficking of persons could only be committed in the country of destination of the victims. Accordingly, victims of trafficking were unlikely to lodge complaints as they lacked confidence in the judicial system and feared reprisals from the traffickers. The Committee further noted the ITUC's information that few cases of trafficking of persons were reported and there were few prosecutions also due to the lack of awareness of the phenomenon in society, particularly among the police. It finally noted the ITUC's statement that the police did not have personnel specialized in investigations into the commercial sexual exploitation of children and that law enforcement agencies did not clearly understand that children engaged

in prostitution may be victims of crime and that, in practice, they were often treated as prostitutes and criminals.

The Committee notes the information contained in the Roundtable for Trafficking Report that a special Unit for Trafficking of Persons has been created within the police. It further notes the information contained in the Government's report that, in the framework of an inter-institutional five-year project to address situations of abuses against children, adolescents and women (2008–13), special units dealing with children, adolescents and women have been created and trained. These units will also intervene in cases of the commercial sexual exploitation of children. It finally notes that one of the objectives of the

ILO–IPEC project “Combating the worst forms of child labour through horizontal cooperation in South America 2009–13”, is strengthening the labour inspection and other law enforcement agencies, such as labour courts, judges and prosecutors. ***The Committee requests the Government to redouble its efforts to strengthen the capacity of the law enforcement agencies, particularly the police, the judiciary and custom officers in combating the trafficking and commercial sexual exploitation of children, and to provide information on any further measures taken in this regard. It also requests the Government to provide information on the results of the ILO–IPEC project “Combating the worst forms of child labour through horizontal cooperation in South America” in terms of strengthening law enforcement agencies.***

Article 7(1). Penalties. Trafficking. The Committee previously noted the ITUC's indication that, between 2002 and 2004, penal sanctions were only imposed in 21 cases of trafficking. It notes the information contained in the Roundtable for Trafficking Report that, according to data of the SNNA, the Women Unit, and the Attorney-General's Office, 84 cases of trafficking persons for sexual and labour exploitation, which involved 103 women and 43 children and adolescents (42 girls and one boy under 18 years of age), were reported between 2004 and 2008. According to the same source, in February 2009, 15 persons were condemned for trafficking of persons, whilst another 50 were being prosecuted by the Attorney-General. However, the Attorney-General's Office indicate that only 50 per cent of the cases of trafficking occurring between 2004 and 2008 had been brought before the judicial authorities. The Roundtable for Trafficking Report also indicates that, whilst actions taken in 2008 to address trafficking led to an increase in the number of cases reported in the same year compared with previous years, the number of non-reported cases of trafficking is still very relevant. The Committee notes information contained in the Government's report that, according to data provided by the Anti-Trafficking Prosecutorial Unit established by the Paraguayan Attorney-General's Office in 2008, between 2008 and 2009, 22 trials regarding cases of trafficking were concluded with the punishment of the offenders.

The Committee, however, notes that, according to the 2009 report on trafficking of persons in Paraguay, available on the Office of the High Commissioner for Refugees website (www.unhcr.org) (Trafficking Report 2009), during 2008 some government officials, including police, border guards and elected officials reportedly facilitated trafficking crimes by accepting payments from traffickers; other officials reportedly undermined investigations or alerted suspected traffickers of impending arrests. Despite the serious nature of such allegations, Paraguayan authorities took only some limited steps to investigate acts of trafficking-related corruption and there were no prosecutions related to official complicity in trafficking offences. It also notes that the Committee on the Rights of the Child (CRC), in its concluding observations of 29 January 2010, while welcoming the measures adopted by Paraguay to combat trafficking, was concerned that Paraguay continued to be a source and destination country for women and children victims of trafficking for sexual exploitation and forced labour and urged the state party, amongst others, to investigate and prosecute all cases of trafficking of children to avoid impunity (CRC/C/PRY/CO/3, paragraphs 72 and 73). The Committee expresses its **deep concern** at the weakness of the national institutions responsible for enforcing the legislation on trafficking, as well as at allegations of complicity of government officials with human traffickers. ***The Committee therefore urges the Government to redouble its efforts to strengthen the capacity of law enforcement agencies in order to ensure that persons who traffic in children for the purposes of labour or sexual exploitation are in practice prosecuted, and that sufficiently effective and dissuasive penalties are imposed. It finally requests the Government to continue to provide information on the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied for violations of the legal prohibitions on the sale and trafficking of children.***

Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing children from becoming engaged in the worst forms of child labour, removing them from these worst forms of child labour and ensuring their rehabilitation and social integration. Trafficking and commercial sexual exploitation. The Committee previously noted that one of the objectives of the ILO–IPEC project on the prevention and elimination of domestic work by children and the commercial sexual exploitation of children was to prevent the engagement of children in commercial sexual exploitation and to remove children who are already engaged in this activity. It noted that, during the course of 2006, around 150 children were removed from this worst form of child labour and received psychological help and assistance in their schooling. At the beginning of 2007, around 50 children were detected in situations of commercial sexual exploitation. The Committee also noted that shelters for child victims of commercial sexual exploitation were established.

The Committee notes the Government's information that a trafficking unit has been created within the SNNA, aimed at assisting child victims of trafficking until their social integration. The operational plan of the SNNA for 2009 is also aimed at strengthening this unit with appropriate human resources. Moreover, in order to prevent trafficking of children and assist child victims of trafficking, regional offices of the SNNA were created in the border departments of Alto Paraná, Ciudad del Este and Encarnación. The Committee notes the Government's information that, according to the data of the trafficking unit of the SNNA, between 2007 and 2008, 20 cases of children or adolescents victims of trafficking were reported and addressed, while 24 cases were reported between January and August 2009.

The Committee notes the Government's indication that two programmes were launched with the support of the EU and in collaboration with ILO–IPEC. The first – Alas Abiertas – is aimed at eliminating the trafficking and commercial sexual exploitation of children in Encarnación and is carried out by the NGOs BECA and CECTEC. The second is aimed at eliminating the internal trafficking of children through the rehabilitation of child victims of trafficking and is implemented by the NGOs Luna Nueva and INECIP. As a result of the second project: (a) the number of child victims of trafficking and commercial sexual exploitation decreased; (b) assistance to child victims of trafficking and commercial sexual exploitation improved; and (c) enforcement mechanisms were improved. The Committee notes the Government's information that the SNNA funds NGOs in charge of preventing the trafficking and commercial sexual exploitation of children and protecting and assisting child victims of these worst forms of child labour. In this framework, the Foundation Arco Iris is carrying out a one-year project (May 2009–May 2010) for assisting, through medical, psychological and legal assistance, children and adolescents victims of trafficking, and ensuring their rehabilitation and social integration, while Luna Nueva is in charge of providing a shelter for child victims of commercial sexual exploitation. ***The Committee requests the Government to provide information on the number of child victims of trafficking and commercial sexual exploitation who have been effectively removed, rehabilitated and socially integrated as a result of the measures implemented.***

Clause (d). Children at special risk. Children working in domestic service – the “criadazgo” system. In its previous comments, the Committee noted the ITUC’s indication that, according to a study carried out between 2000 and 2001, over 38,000 children between the ages of 5 and 17 years worked in domestic service in the houses of others. Moreover, children engaged under the “criadazgo” system, lived and worked in the houses of others in exchange for accommodation, food and basic education. The numbers involved were not known since, as these children were normally considered not to be working, they were not taken into account in statistics. However, the ITUC indicated that a study undertaken in 2002 by the Documentation and Studies Centre showed that nearly 60 per cent of children working in domestic service and those engaged under the “criadazgo” system were aged 13 years and under. According to the ITUC, in so far as these children do not control their conditions of employment, a majority of them work under conditions of forced labour. The Committee noted that section 2(22) of Decree No. 4951 of 22 March 2005, issued under Act No. 1657/2001 and approving the list of hazardous types of work, provides that domestic work by children and work under the “criadazgo” system are considered to be hazardous types of work. It also noted that, according to ILO-IPEC information relating to the implementation of the project on the prevention and elimination of domestic work by children and the commercial sexual exploitation of children, children at risk of being engaged in domestic service and children who worked as domestics were enrolled in school.

The Committee notes the Government’s information that a study on child domestic work in urban and rural areas of Paraguay was carried out in collaboration with ILO-IPEC in 2005. It notes that this study indicates that, according to data of 2002, almost 11 per cent of children between 10 and 17 years work as remunerated domestic workers. Moreover, approximately one third of the child domestic workers are employed as remunerated domestic workers, whilst two-thirds work under the “criadazgo” system. The Committee further notes that the CRC, in its concluding observations of 29 January 2010, expressed its deep concern on the persistence of the practice of “criadazgo” and recommended the state party to continue to eliminate this practice (CRC/C/PRY/CO/3, paragraphs 66 and 67). **Noting the absence of information on this point, the Committee urges the Government to take effective and time-bound measures to protect children working as domestic workers or under the “criadazgo” system from the worst forms of child labour. It also requests the Government to provide information on the manner in which the enforcement of section 2(22) of Decree No. 4951 of 22 March 2005, which prohibits children under 18 years from performing domestic work and work under the “criadazgo” system as types of hazardous work, is ensured in practice, including information on the number and nature of penalties applied.**

Clause (e). Special situation of girls. The Committee previously noted that, according to the ITUC’s comments, activities relating to commercial sexual exploitation are linked to international trafficking networks and particularly affect girls. **Noting that no information was provided on this point, the Committee requests the Government to provide information on the manner in which it intends to pay particular attention to such girls and thereby prevent them from being engaged in commercial sexual exploitation and remove them from this worst form of child labour.**

Article 8. Enhanced international cooperation. Following its previous comments, the Committee notes with **interest** that the Government is carrying out various projects of regional cooperation to combat the trafficking of children for sexual exploitation. It notes the Government’s information that the project “Ciudades gemelas”, which is aimed at establishing a regional strategy for combating trafficking of children and adolescents for sexual exploitation in MERCOSUR and is funded by the Inter-American development Bank (IDB), is at its initial stage. It involves 14 border cities of MERCOSUR (Argentina, Brazil, Uruguay and Paraguay), including Ciudad del Este (Paraguay), Foz de Iguazu (Brazil) and Puerto Iguazú (Argentina). The project is aimed at preventing and addressing trafficking through the mobilization, organization, strengthening and integration of local networks and services. The Committee notes the Government’s information that the project called “Exchange of experiences and legal Argentinian framework on combating trafficking, with special emphasis on children and adolescents” between Paraguay (through the SNNA) and Argentina, is awaiting approval. This is aimed, among others, at: training Paraguayan officials at the National Committee for Childhood, Adolescence and Family in Argentina; elaborating a bill on trafficking in persons for Paraguay; developing protocols for assistance to victims of trafficking; and a procedural manual for assisting victims. **The Committee requests the Government to continue to supply information on the measures taken to eliminate the cross-border trafficking of children, and on results achieved.**

Part V of the report form. Application of the Convention in practice. The Committee notes the statistics supplied by the Government on children involved in trafficking between 2008 and 2009. **It requests the Government to continue to provide information on the nature, extent and trends of the worst forms of child labour, including updated statistics on the number of children under 18 years involved in domestic work, working under the “criadazgo” system, and involved in commercial sexual exploitation.**

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

Uzbekistan

(Ratification: 2008)

The Committee notes the Government’s communication of 25 January 2010 in reply to the 2009 communication of the International Organisation of Employers (IOE), and the Government’s reports dated 3 February 2010 and 7 June 2010. The Committee also notes the communication of the International Trade Union Confederation (ITUC) dated 25 August 2010. The Committee further notes the joint communication dated 22 November 2010 from the ITUC, the European Trade Union Confederation (ETUC), the European Trade Union Federation: Textiles, Clothing and Leather (ETUF:TCL), the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers’ Association (IUF) and the European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT), as well as the joint communication dated 22 November 2010 from the European Apparel and Textile Confederation (EURATEX) and the ETUF:TCL. The Committee finally takes note of the detailed discussions that took place at the 99th Session of the Conference Committee on the Application of Standards in June 2010 concerning the application by Uzbekistan of Convention No. 182.

Article 3, clauses (a) and (d), and Article 7(1) of the Convention. Worst forms of child labour and penalties. Forced or compulsory labour in cotton production and hazardous work. The Committee previously noted the various legal provisions in Uzbekistan which prohibit forced labour, including article 37 of the Constitution, section 7 of the Labour Code, and section 138 of the Criminal Code. It also noted that section 241 of the Labour Code prohibits the employment of persons under 18 years of age in work in unfavourable conditions or which may harm their health, safety or morals. The Committee further noted that the “List of occupations with unfavourable working conditions in which it is forbidden to employ persons under 18 years of

age" prohibited children from watering and gathering cotton by hand and noted the IOE's indication that the Uzbek Prime Minister signed a decree banning child labour in cotton plantations in Uzbekistan in September 2008. However, the Committee also noted the IOE's assertion that, despite the legislative framework against forced labour, schoolchildren (estimates ranging from half a million to 1.5 million schoolchildren) are forced by the Government to work in the national cotton harvest for up to three months each year. Moreover, the Committee noted that the Committee on Economic, Social and Cultural Rights expressed its concern at the situation of school-age children obliged to participate in the cotton harvest instead of attending school during this period (24 January 2006, E/C.12/UZB/CO/1, paragraph 20), and that the Committee on the Rights of the Child expressed concern at the serious health problems (such as intestinal and respiratory infections, meningitis and hepatitis) experienced by many schoolchildren as a result of this participation (2 June 2006, CRC/C/UZB/CO/2, paragraphs 64–65).

The Committee notes the statement in the ITUC's allegations that state-sponsored forced child labour continues to underpin Uzbekistan's cotton industry. The ITUC contends that a vast disparity exists between legal commitments made to eradicate forced child labour and the practical implementation, as seen in the forcible involvement of hundreds of thousands of schoolchildren in the autumn 2009 harvest. In this regard, the ITUC asserts that, despite the Government's denial, sources in the country confirm the widespread mobilization of forced labour (particularly of children) in the 2009 cotton harvest in at least 12 of Uzbekistan's 13 regions: Andijan, Bukhara, Jizzakh, Ferghana, Karakalpakstan, Kaskadrya, Khoresm, Navoi, Samarkand, Syrdarya, Surkhandarya and Tashkent. The ITUC communication emphasizes that this involvement is not the result of family poverty, but state-sponsored mobilization which benefits the Government. The ITUC further states that production quotas (originating from the central Government and distributed through district education departments) are supplied to head teachers who then mobilize students, and that this forced labour involves children as young as 9 years old (though the majority of schoolchildren involved are 11 years or older). The ITUC alleges that these children are required to work every day, even on weekends, and that the work involved is hazardous, involving carrying heavy loads, the application of pesticides and harsh weather conditions, with accidents reportedly resulting in injuries and deaths. These children are provided with insufficient drinking water, and often resort to drinking water contaminated with pesticides out of the irrigation system. Moreover, the ITUC underlines that, although forced labour was again part of the harvest in 2010, there was an increase in surveillance operatives in cotton fields to prevent documentation of the issue, and that accurate figures on the issue are impossible to obtain. The ITUC recommends that the Government take urgent action, including measures to publicly renounce the use of forced child labour in the cotton industry, to commit all necessary resources to address this phenomenon, to improve ethical and technical standards in the cotton industry and to strengthen social dialogue in the country.

The Committee notes the Government's reply to the IOE's communication which states that the allegations concerning widespread forced labour in agriculture are an unfounded attempt by foreign actors to undermine the reputation of Uzbek cotton in the global market. The Government states that almost all of the cotton produced in the country is produced on private cotton farms, and that the well-developed education system is an obstacle to the employment of children in forced labour. The Government further indicates that it is traditional for older children to assist in family businesses, and that this practice is not prohibited. With regard to penalties, the Government states that on 21 December 2009 the Act on additions and amendments to the Uzbekistan Code of Administrative Liability was adopted which increased the penalty for violations of labour legislation and compulsory labour of persons under 18 years of age.

The Committee notes the statement in the UNICEF publication entitled "Risks and Realities of Child Trafficking and Exploitation in Central Asia" of 31 March 2010 that the issue of seasonal mobilization of children for the cotton harvest in Uzbekistan is a growing concern internationally and at home (page 49). The Committee also notes that the Committee on the Elimination of Discrimination Against Women, in its concluding observations of 26 January 2010, expressed its concern regarding the educational consequences of girls and boys working during the cotton harvest season, and requested the Government to guarantee that the cotton harvest season does not compromise the right of these children to education (CEDAW/C/UZB/CO/4, paragraphs 30–31). Moreover, the Committee notes that the UN Human Rights Committee, in its concluding observations of 7 April 2010, stated that it remained concerned about reports that children are still employed and subjected to harsh working conditions, in particular for cotton harvesting. The UN Human Rights Committee emphasized that the Government should ensure that its national legislation and international obligations regulating child labour are fully respected in practice (CCPR/C/UZB/CO/3, paragraph 23).

Furthermore, the Committee notes that the Conference Committee on the Application of Standards concluded that, although various legal provisions prohibit forced labour and the engagement of children in hazardous work, this remains an issue of grave concern in practice. It accordingly urged the Government to take the necessary measures to ensure the effective implementation of national legislation prohibiting compulsory labour and hazardous work for children.

The Committee notes the convergence of allegations and the broad consensus among the United Nations bodies, the representative organizations of employers and workers and NGOs, regarding the continued practice of mobilizing schoolchildren for work in the cotton harvest. The Committee must therefore echo the **serious concern** expressed by these bodies at the continued practice whereby a significant number of children under 18 are taken from school each year and made to work in the cotton fields under hazardous conditions. 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 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 joins the Committee on the Application of Standards in urging the Government to take immediate and effective 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 the necessary measures to ensure that thorough investigations and robust prosecutions of offenders are carried out and that sufficiently effective and dissuasive sanctions are imposed in practice.**

Articles 5 and 6. Monitoring mechanisms and programmes of action to eliminate the worst forms of child labour. National Plan of Action for the application of ILO Conventions Nos 138 and 182 (NPA on Convention No. 138 and Convention No. 182). The Committee previously noted that the NPA on Convention No. 138 and Convention No. 182 (approved in 2008) included measures to address the forced labour of children, in particular in the agricultural sector, including: monitoring of the prohibition of the use of school pupils in forced labour; public control of the prohibition of the use of forced child labour in territories of self-governing bodies of citizens; the establishment of a working group to locally monitor the prohibition of the use of forced labour in cotton picking of school pupils; and initiatives to inform farmers on matters related to the prohibition of violating legislation on the engagement of children in agricultural work. However, the Committee also noted the IOE's allegation that it remained uncertain as to whether the

implementation of these adopted measures would be sufficient to address the deeply rooted practice of forced child labour in the cotton fields.

The Committee notes the ITUC's statement that the NPA on Convention No. 138 and Convention No. 182 requires improvement. For the NPA on Convention No. 138 and Convention No. 182 to be credible and effective, forced child labour needs to be eradicated, and the monitoring of this phenomenon must be completely independent. The ITUC recommends that a comprehensive national action plan which recognizes and addresses the root causes of this practice must be put in place.

The Committee notes the detailed report submitted by the Government dated 3 February 2010 on the implementation of the NPA on Convention No. 138 and Convention No. 182. The Government indicates in this report that on 3 November 2009, the Ministry of Public Education and the Ministry of Higher and Secondary Special Education adopted and implemented a joint resolution on "Measures to apply the Minimum Age Convention and the Worst Forms of Child Labour Convention in the education system" (No.1-04/340, No. 43 and No. 322). Pursuant to this resolution, heads of educational institutions have personal responsibility for the protection of students and their attendance at school and that monitoring will be carried out concerning the prohibited use of compulsory labour of students in schools. The Committee also notes that, by February 2010, information seminars were held in 11 provinces to explain the prohibition on employing children in agricultural work to farmers. The Committee further notes the information in the Government's report of 7 June 2010, that an interdepartmental working group was established, and a programme approved, for on-the-ground monitoring to prevent the use of forced labour by schoolchildren during the cotton harvest. The Government indicates that the supervision of labour legislation and regulations (including the prohibition on employing children in adverse working conditions) is carried out by the specifically authorized stated legal and technical inspections of the Ministry of Labour and Social Protection and trade union workers, pursuant to section 9 of the Labour Code and Government Resolution No. 29 of 19 February 2010. In addition, the Committee notes the Government's indication in this report that it is collaborating with UNICEF, which is carrying out a subproject entitled "Support for the implementation of the NPA on child labour" within the framework of the UNICEF Child Protection Programme for the country. In this regard, the Committee notes that the 2009 UNICEF factsheet entitled "Uzbekistan Fast Facts" (available on the UNICEF website: www.unicef.org) states that ensuring all children stay in school throughout the entire academic year and are not forced to harvest cotton is a priority for the Child Protection Programme. Another document on the UNICEF website entitled "The situation of women and children in Uzbekistan" states that the issue of child labour in the cotton sector remains to be fully addressed.

While noting the Government's information on the numerous measures taken to monitor the involvement of schoolchildren in the cotton harvest, including measures taken within the framework of the NPA on Convention No. 138 and Convention No. 182, the Committee notes an absence of information from the Government on the concrete results of this monitoring, particularly information on the number of children, if any, detected by the labour inspectorate (or any other national monitoring mechanism) engaged to work in the cotton harvest. **The Committee accordingly requests the Government to provide information on the concrete impact of the various measures taken to monitor the prohibition of the use of forced child labour in the agricultural sector. Furthermore, the Committee urges the Government to strengthen the capacity and expand the reach of the labour inspectorate in enforcing the laws giving effect to the Convention to ensure that school-age children in rural and disadvantaged areas are not removed from school for the purpose of cotton production and harvesting. It requests the Government to provide detailed information on the results achieved in this regard, particularly the number and nature of violations detected with regard to children under 18 working in the cotton harvest, and the penalties imposed.**

Part V of the report form. Application of the Convention in practice. Forced or compulsory labour in cotton production and hazardous work. The Committee notes that, while the Government provides information on the application of labour legislation and the employment of children in general, the Government does not provide any information on the engagement of children in the autumn 2010 cotton harvest, including their use in situations of forced labour or hazardous work. Nonetheless, it appears to the Committee that this practice remains prevalent in the country, especially in view of the ongoing project carried out with the assistance of UNICEF to address the situation of child labour in the cotton sector. In light of the Government's assertion that children are not involved in the cotton harvest, the Committee considers it essential that independent monitors be granted unrestricted access to document the situation during the cotton harvest. In this regard, the Committee observes that the ITUC, ETUC, IUF, EFFAT, ETUF:TCL and EURATEX believe that a mission must be carried out as soon as possible in order to address the practice of child labour in the cotton sector and to initiate steps towards its eradication. The Committee further observes that the Conference Committee on the Application of Standards urged the Government to accept a high-level ILO 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. **Noting that the Government has yet to respond positively to this recommendation, the Committee strongly encourages the Government to accept a high-level ILO tripartite observer mission, and expresses the firm hope that such an ILO mission can take place in the very near future.**

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 100th Session and to reply in detail to the present comments in 2011.]

The Committee notes the Government's communication of 25 January 2010 in reply to the 2009 communication of the International Organisation of Employers (IOE), and the Government's reports dated 3 February 2010 and 7 June 2010. The Committee also notes the communication of the International Trade Union Confederation (ITUC) dated 25 August 2010. The Committee further notes the joint communication dated 22 November 2010 from the ITUC, the European Trade Union Confederation (ETUC), the European Trade Union Federation: Textiles, Clothing and Leather (ETUF:TCL), the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF) and the European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT), as well as the joint communication dated 22 November 2010 from the European Apparel and Textile Confederation (EURATEX) and the ETUF:TCL. The Committee finally takes note of the detailed discussions that took place at the 99th Session of the Conference Committee on the Application of Standards in June 2010 concerning the application by Uzbekistan of Convention No. 182.

Article 3, clauses (a) and (d), and Article 7(1) of the Convention. Worst forms of child labour and penalties. Forced or compulsory labour in cotton production and hazardous work. The Committee previously noted the various legal provisions in Uzbekistan which prohibit forced labour, including article 37 of the Constitution, section 7 of the Labour Code, and section 138 of the Criminal Code. It also noted that section 241 of the Labour Code prohibits the employment of persons under 18 years of age in work in unfavourable conditions or which may harm their health, safety or morals. The Committee further noted that the "List of occupations with unfavourable working conditions in which it is forbidden to employ persons under 18 years of

age" prohibited children from watering and gathering cotton by hand and noted the IOE's indication that the Uzbek Prime Minister signed a decree banning child labour in cotton plantations in Uzbekistan in September 2008. However, the Committee also noted the IOE's assertion that, despite the legislative framework against forced labour, schoolchildren (estimates ranging from half a million to 1.5 million schoolchildren) are forced by the Government to work in the national cotton harvest for up to three months each year. Moreover, the Committee noted that the Committee on Economic, Social and Cultural Rights expressed its concern at the situation of school-age children obliged to participate in the cotton harvest instead of attending school during this period (24 January 2006, E/C.12/UZB/CO/1, paragraph 20), and that the Committee on the Rights of the Child expressed concern at the serious health problems (such as intestinal and respiratory infections, meningitis and hepatitis) experienced by many schoolchildren as a result of this participation (2 June 2006, CRC/C/UZB/CO/2, paragraphs 64–65).

The Committee notes the statement in the ITUC's allegations that state-sponsored forced child labour continues to underpin Uzbekistan's cotton industry. The ITUC contends that a vast disparity exists between legal commitments made to eradicate forced child labour and the practical implementation, as seen in the forcible involvement of hundreds of thousands of schoolchildren in the autumn 2009 harvest. In this regard, the ITUC asserts that, despite the Government's denial, sources in the country confirm the widespread mobilization of forced labour (particularly of children) in the 2009 cotton harvest in at least 12 of Uzbekistan's 13 regions: Andijan, Bukhara, Jizzakh, Ferghana, Karakalpakstan, Kaskadrya, Khoresm, Navoi, Samarkand, Syrdarya, Surkhandarya and Tashkent. The ITUC communication emphasizes that this involvement is not the result of family poverty, but state-sponsored mobilization which benefits the Government. The ITUC further states that production quotas (originating from the central Government and distributed through district education departments) are supplied to head teachers who then mobilize students, and that this forced labour involves children as young as 9 years old (though the majority of schoolchildren involved are 11 years or older). The ITUC alleges that these children are required to work every day, even on weekends, and that the work involved is hazardous, involving carrying heavy loads, the application of pesticides and harsh weather conditions, with accidents reportedly resulting in injuries and deaths. These children are provided with insufficient drinking water, and often resort to drinking water contaminated with pesticides out of the irrigation system. Moreover, the ITUC underlines that, although forced labour was again part of the harvest in 2010, there was an increase in surveillance operatives in cotton fields to prevent documentation of the issue, and that accurate figures on the issue are impossible to obtain. The ITUC recommends that the Government take urgent action, including measures to publicly renounce the use of forced child labour in the cotton industry, to commit all necessary resources to address this phenomenon, to improve ethical and technical standards in the cotton industry and to strengthen social dialogue in the country.

The Committee notes the Government's reply to the IOE's communication which states that the allegations concerning widespread forced labour in agriculture are an unfounded attempt by foreign actors to undermine the reputation of Uzbek cotton in the global market. The Government states that almost all of the cotton produced in the country is produced on private cotton farms, and that the well-developed education system is an obstacle to the employment of children in forced labour. The Government further indicates that it is traditional for older children to assist in family businesses, and that this practice is not prohibited. With regard to penalties, the Government states that on 21 December 2009 the Act on additions and amendments to the Uzbekistan Code of Administrative Liability was adopted which increased the penalty for violations of labour legislation and compulsory labour of persons under 18 years of age.

The Committee notes the statement in the UNICEF publication entitled "Risks and Realities of Child Trafficking and Exploitation in Central Asia" of 31 March 2010 that the issue of seasonal mobilization of children for the cotton harvest in Uzbekistan is a growing concern internationally and at home (page 49). The Committee also notes that the Committee on the Elimination of Discrimination Against Women, in its concluding observations of 26 January 2010, expressed its concern regarding the educational consequences of girls and boys working during the cotton harvest season, and requested the Government to guarantee that the cotton harvest season does not compromise the right of these children to education (CEDAW/C/UZB/CO/4, paragraphs 30–31). Moreover, the Committee notes that the UN Human Rights Committee, in its concluding observations of 7 April 2010, stated that it remained concerned about reports that children are still employed and subjected to harsh working conditions, in particular for cotton harvesting. The UN Human Rights Committee emphasized that the Government should ensure that its national legislation and international obligations regulating child labour are fully respected in practice (CCPR/C/UZB/CO/3, paragraph 23).

Furthermore, the Committee notes that the Conference Committee on the Application of Standards concluded that, although various legal provisions prohibit forced labour and the engagement of children in hazardous work, this remains an issue of grave concern in practice. It accordingly urged the Government to take the necessary measures to ensure the effective implementation of national legislation prohibiting compulsory labour and hazardous work for children.

The Committee notes the convergence of allegations and the broad consensus among the United Nations bodies, the representative organizations of employers and workers and NGOs, regarding the continued practice of mobilizing schoolchildren for work in the cotton harvest. The Committee must therefore echo the **serious concern** expressed by these bodies at the continued practice whereby a significant number of children under 18 are taken from school each year and made to work in the cotton fields under hazardous conditions. 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 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 joins the Committee on the Application of Standards in urging the Government to take immediate and effective 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 the necessary measures to ensure that thorough investigations and robust prosecutions of offenders are carried out and that sufficiently effective and dissuasive sanctions are imposed in practice.**

Articles 5 and 6. Monitoring mechanisms and programmes of action to eliminate the worst forms of child labour. National Plan of Action for the application of ILO Conventions Nos 138 and 182 (NPA on Convention No. 138 and Convention No. 182). The Committee previously noted that the NPA on Convention No. 138 and Convention No. 182 (approved in 2008) included measures to address the forced labour of children, in particular in the agricultural sector, including: monitoring of the prohibition of the use of school pupils in forced labour; public control of the prohibition of the use of forced child labour in territories of self-governing bodies of citizens; the establishment of a working group to locally monitor the prohibition of the use of forced labour in cotton picking of school pupils; and initiatives to inform farmers on matters related to the prohibition of violating legislation on the engagement of children in agricultural work. However, the Committee also noted the IOE's allegation that it remained uncertain as to whether the

implementation of these adopted measures would be sufficient to address the deeply rooted practice of forced child labour in the cotton fields.

The Committee notes the ITUC's statement that the NPA on Convention No. 138 and Convention No. 182 requires improvement. For the NPA on Convention No. 138 and Convention No. 182 to be credible and effective, forced child labour needs to be eradicated, and the monitoring of this phenomenon must be completely independent. The ITUC recommends that a comprehensive national action plan which recognizes and addresses the root causes of this practice must be put in place.

The Committee notes the detailed report submitted by the Government dated 3 February 2010 on the implementation of the NPA on Convention No. 138 and Convention No. 182. The Government indicates in this report that on 3 November 2009, the Ministry of Public Education and the Ministry of Higher and Secondary Special Education adopted and implemented a joint resolution on "Measures to apply the Minimum Age Convention and the Worst Forms of Child Labour Convention in the education system" (No.1-04/340, No. 43 and No. 322). Pursuant to this resolution, heads of educational institutions have personal responsibility for the protection of students and their attendance at school and that monitoring will be carried out concerning the prohibited use of compulsory labour of students in schools. The Committee also notes that, by February 2010, information seminars were held in 11 provinces to explain the prohibition on employing children in agricultural work to farmers. The Committee further notes the information in the Government's report of 7 June 2010, that an interdepartmental working group was established, and a programme approved, for on-the-ground monitoring to prevent the use of forced labour by schoolchildren during the cotton harvest. The Government indicates that the supervision of labour legislation and regulations (including the prohibition on employing children in adverse working conditions) is carried out by the specifically authorized stated legal and technical inspections of the Ministry of Labour and Social Protection and trade union workers, pursuant to section 9 of the Labour Code and Government Resolution No. 29 of 19 February 2010. In addition, the Committee notes the Government's indication in this report that it is collaborating with UNICEF, which is carrying out a subproject entitled "Support for the implementation of the NPA on child labour" within the framework of the UNICEF Child Protection Programme for the country. In this regard, the Committee notes that the 2009 UNICEF factsheet entitled "Uzbekistan Fast Facts" (available on the UNICEF website: www.unicef.org) states that ensuring all children stay in school throughout the entire academic year and are not forced to harvest cotton is a priority for the Child Protection Programme. Another document on the UNICEF website entitled "The situation of women and children in Uzbekistan" states that the issue of child labour in the cotton sector remains to be fully addressed.

While noting the Government's information on the numerous measures taken to monitor the involvement of schoolchildren in the cotton harvest, including measures taken within the framework of the NPA on Convention No. 138 and Convention No. 182, the Committee notes an absence of information from the Government on the concrete results of this monitoring, particularly information on the number of children, if any, detected by the labour inspectorate (or any other national monitoring mechanism) engaged to work in the cotton harvest. ***The Committee accordingly requests the Government to provide information on the concrete impact of the various measures taken to monitor the prohibition of the use of forced child labour in the agricultural sector. Furthermore, the Committee urges the Government to strengthen the capacity and expand the reach of the labour inspectorate in enforcing the laws giving effect to the Convention to ensure that school-age children in rural and disadvantaged areas are not removed from school for the purpose of cotton production and harvesting. It requests the Government to provide detailed information on the results achieved in this regard, particularly the number and nature of violations detected with regard to children under 18 working in the cotton harvest, and the penalties imposed.***

Part V of the report form. Application of the Convention in practice. Forced or compulsory labour in cotton production and hazardous work. The Committee notes that, while the Government provides information on the application of labour legislation and the employment of children in general, the Government does not provide any information on the engagement of children in the autumn 2010 cotton harvest, including their use in situations of forced labour or hazardous work. Nonetheless, it appears to the Committee that this practice remains prevalent in the country, especially in view of the ongoing project carried out with the assistance of UNICEF to address the situation of child labour in the cotton sector. In light of the Government's assertion that children are not involved in the cotton harvest, the Committee considers it essential that independent monitors be granted unrestricted access to document the situation during the cotton harvest. In this regard, the Committee observes that the ITUC, ETUC, IUF, EFFAT, ETUF:TCL and EURATEX believe that a mission must be carried out as soon as possible in order to address the practice of child labour in the cotton sector and to initiate steps towards its eradication. The Committee further observes that the Conference Committee on the Application of Standards urged the Government to accept a high-level ILO 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. ***Noting that the Government has yet to respond positively to this recommendation, the Committee strongly encourages the Government to accept a high-level ILO tripartite observer mission, and expresses the firm hope that such an ILO mission can take place in the very near future.***

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 100th Session and to reply in detail to the present comments in 2011.]

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

A Government representative of the United Kingdom expressed apologies on behalf of the non-metropolitan territories which had been unable to fully meet the timetable for responding to requests for reports under article 22 of the ILO Constitution. He emphasized that the failure in meeting the reporting obligations was not due to a lack of political commitment on the part of the territories, but rather a lack of capacity. He recalled that non-metropolitan territories were usually very small and largely autonomous island administrations with limited human and financial resources. On a positive note, he indicated that Bermuda and St Helena had now submitted most or all of their remaining outstanding reports while Montserrat had this time submitted all reports requested, as compared to none last year. He further added that British Virgin Islands, Bermuda and Montserrat had undertaken ILO training related to meeting reporting obligations, which he hoped would lead to tangible, long-lasting improvements to the provision of reports from these territories.

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

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

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

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

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

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

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

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

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

The Committee recalled the vital importance of the transmission of first reports on the application of ratified Conventions. In this respect, the Committee recalled that the ILO could provide technical assistance to contribute to compliance with this obligation.

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

- Dominica
 - since 2006: Convention No. 147;
- Equatorial Guinea
 - since 1998: Conventions Nos 68, 92;
- Kyrgyzstan
 - since 1994: Convention No. 111;

- since 2006: Conventions Nos 17, 184;
- since 2009: Conventions Nos 131, 144;
- Sao Tome and Principe
 - since 2007: Convention No. 184;
- Seychelles
 - since 2007: Conventions Nos 73, 147, 161, 180;
- Thailand
 - since 2009: Convention No. 159;
- Vanuatu
 - since 2008: Conventions Nos 29, 87, 98, 100, 105, 111, 182.

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

A Government representative of Luxembourg presented his Government's excuses for its failure to send, by the appropriate deadline, the reports requested, which mainly related to the maritime Conventions. It was difficult to respond to the comments of the Committee of Experts because Luxembourg had begun the process of ratifying the Maritime Labour Convention, 2006 and, as part of that process, was revising much of its legislation. The process had been slightly delayed but new legislation should be adopted in June 2011, and the reports due could be finalized in time for the next session of the Committee of Experts.

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

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

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

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

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

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

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

The Committee requested the Governments of Bahamas, Burkina Faso, Burundi, Chad, Comoros, Djibouti, Dominica, Equatorial Guinea, Gambia, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, Ireland, Kazakhstan, Kyrgyzstan, Liberia, Luxembourg, Netherlands: Aruba, Nigeria, Rwanda, San Marino, Sao Tome and Principe, Seychelles, Sierra Leone, Singapore, Solomon Islands, Togo, Trinidad and Tobago, Uganda, United Kingdom: British Virgin Islands, United Kingdom: Falkland Islands (Malvinas), United Kingdom: St Helena, Yemen, Zambia, to make all efforts to transmit as soon as possible the required information. The Committee decided to note these cases in the corresponding paragraph in the General Report.

(d) *Written information received up to the end of the meeting of the Committee on the Application of Standards*¹

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. Observations and information on the application of Conventions

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

MALAYSIA (PENINSULAR MALAYSIA) (ratification: 1957)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusions

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

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

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

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

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

Forced Labour Convention, 1930 (No. 29)

DEMOCRATIC REPUBLIC OF THE CONGO (ratification: 1960)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusions

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

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

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

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

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

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

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

MYANMAR (ratification: 1955)

See Part Three.

Labour Inspection Convention, 1947 (No. 81)

SAUDI ARABIA (ratification: 1978)

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

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

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

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

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

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

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

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

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

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

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

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

Conclusions

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

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

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

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

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

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

CAMBODIA (ratification: 1999)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusions

The Committee took note of the statement made by the Government representative, as well as the discussion that followed. The Committee recalled that the Committee of Experts had referred to the climate of impunity in the country within the context of the assassination of three trade union leaders, concerns about the independent and effective functioning of the judiciary, as well as certain discrepancies between the legislation and the practice, and the Convention.

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

The Committee deplored the fact that full, independent and impartial investigations had still not been carried out into the assassination of the trade unionists Chea Vichea, Ros Sovannareth and Hy Vuthy. It further noted with concern the allegations of threats and intimidation suffered by trade union leaders and members. Recalling that the freedom of association rights of workers and employers could only be exercised in a climate free from violence, pressure and threats of any kind, it urged the Government to take the necessary measures to bring an end to impunity in relation to such violent acts against trade unionists and to ensure that the perpetrators and the instigators of these heinous crimes are brought to justice.

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

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

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

The Committee requested the Government to provide a full report on all measures taken in this regard, and provide data by industry on the number of unions, affiliation, number of collective agreements and their coverage, to the Committee of Experts at its meeting this year. The Committee expressed the firm hope that it would be in a position to see significant progress with respect to all of these matters at its next session.

GUATEMALA (ratification: 1952)

The Government provided the following written information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Government member of Belgium, speaking also on behalf of the Government of Luxembourg, regretted having to repeat the statement he had made in 2010 and expressed his concern in its regard. The Government of Guatemala had, since 1991, been the subject of several observations by the Committee of Experts for non-observation of freedom of association. Since 2005, five high-level missions and several technical assistance programmes had been sent by the ILO to Guatemala without achieving concrete legislative results. The Guatemalan authorities must ensure freedom of association, in direct collaboration with the social partners and with the assistance of the ILO. He welcomed that a Tripartite National Commission for full implementation of the Convention, as well as a roadmap, had been established. The tripartite nature of that Commission must be preserved and if possible encouraged by an inclusive dialogue. Moreover, over the past three years, the number of violent deaths of trade unionists had increased dramatically, in a context of insecurity and increasing violence affecting the whole of the population. The Government of Guatemala must take measures to prevent harassment, persecution and assassination of trade unionists, and to combat impunity. The results of the investigations carried out should be made public. Only through such steps, the Government would prove its political willingness to combat, credibly, violence committed against trade union members and to combat impunity, in accordance with the recommendations accepted by Guatemala within the framework of the Universal Periodic Review by the United Nations Human Rights Council. In conclusion, the speaker reaffirmed the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MYANMAR (ratification: 1955)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Worker member of Japan recalled that, despite the very serious discussions that had repeatedly taken place in the Conference Committee on this case, no concrete measures had been taken to enact legislation guaranteeing all workers the right to establish and join organizations of their own choosing, or to repeal Orders Nos 2/88 and 6/88, as well as the Unlawful Association Act. These being the pieces of legislation most seriously impairing the

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

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

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

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

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

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

Conclusions

The Committee took note of the statement made by the Government representative and the detailed discussion that followed. The Committee also recalled that it had discussed this serious case on numerous occasions over the last two decades and that its conclusions had been listed in a special paragraph for continuous failure to implement the Convention since 1996.

The Committee took note of the commitment made by the Government representative that the Government would

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

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

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

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

The Committee once again urged the Government in the strongest terms to adopt immediately the necessary measures and mechanisms to ensure all workers and employers the rights provided for under the Convention. In this regard, it once again urged the Government to repeal Orders Nos 2/88 and 6/88, as well as the Unlawful Association Act and to ensure an effective constitutional and legislative framework for the full and effective exercise of trade union rights.

The Committee once again highlighted the intrinsic link between freedom of association and democracy and observed with regret that the Government still had not ensured the necessary environment for freedom of association that would give credibility to the stated transition to democracy. It therefore once again called upon the Government to take concrete steps to ensure the full and genuine participation of all sectors of society, regardless of their political views, in the review of the legislative framework and practice so as to bring them fully into line with the Convention without delay. It further recalled the importance for the effective application of the Convention of access to an independent judiciary for enforcement of the legislation.

The Committee emphasized that it was crucial that the Government take all necessary measures immediately to ensure a climate wherein workers and employers can exercise their freedom of association rights without fear, intimidation, threat or violence. The Committee continued to observe with extreme concern that the numerous detained persons referred to in previous discussions remained in prison, despite the calls for their release and without even benefiting from the recent wide amnesty granted by the Government. The Committee was therefore once again obliged to call upon the Government to ensure the immediate release of: Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win and Myo Min, as well as all other persons detained for exercising their basic civil liberties and freedom of association rights. The Committee once again recalled the recommendations made by the Committee of Experts and the Committee on Freedom of Association for the recognition of trade union organizations, including the Federation of Trade Unions of Burma and the Seafarers' Union of Burma, and

urged the Government immediately to put an end to the practice of persecuting workers or other persons for having contact with workers' organizations, including those operating in exile.

The Committee further recalled the link between freedom of association and forced labour and reiterated its previous request to the Government to accept an extension of the ILO presence to cover the matters related to the Convention and to establish a complaints mechanism for violation of trade union rights.

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

The Committee decided to include its conclusions in a special paragraph of its report. It also decided to mention this case as a case of continued failure to implement the Convention.

NIGERIA (ratification: 1960)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusions

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

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

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

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

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

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

PAKISTAN (ratification: 1951)

The Government communicated the following written information.

The provisions of this Convention were enforced in Pakistan through implementation of the Industrial Rela-

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

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

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

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

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

written information provided by the Government to this Committee.

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

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

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

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

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

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

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

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

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

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

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

The Employer members recalled that this had been a long-standing case of the Committee, and that the Government had previously provided assurances that the necessary action would be taken to reach compliance. Therefore, while recognizing the sincerity of the Government representative, they expressed scepticism regarding the assurances provided to the Committee regarding the actions that would be taken in the future. There was no doubt that, to resolve the issues raised, urgent action was required. At minimum, in addition to several points raised by the Worker members, the conclusions should state that ILO technical assistance should be undertaken promptly. Additionally, the Government should submit the text of the various legislative changes discussed to the Committee of Experts, in time for examination at its forthcoming session. This would allow a fuller appreciation of the ongoing legislative action within the country and provide an assessment as to whether compliance had been achieved with respect to the international obligations under the Convention.

Conclusions

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

The Committee took note of the Government representative's statement which referred to the process of decentralization in the country. The representative stated that this had made the implementation set-up of the Industrial Relations Act more democratic and people friendly. The current implementation mechanism was a three-tier system which provided institutional machinery at federal, provincial and district levels to facilitate for the workers and employers the registration of their respective trade unions and federations and to resolve industrial disputes. Following the Constitutional Amendment introduced in 2010, the subject of labour had been transferred to the provinces which were responsible for legislation and implementation. The provinces were

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

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

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

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

PANAMA (ratification: 1958)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusions

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

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

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

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

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

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

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

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

SERBIA (ratification: 2000)

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

it had taken appropriate steps as regards other reported cases.

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

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

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

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

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

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

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

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

Conclusions

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

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

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

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

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

SWAZILAND (ratification: 1978)

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

A. Matters in progress

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

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

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

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

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

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

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

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

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

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

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

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

B. Summary of completed matters

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusions

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

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

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

dom of association and basic civil liberties remained in force, compliance with the Convention could not be assured. In particular, the Committee deplored the continuing allegations of arrest and detention following peaceful protest actions, and regretted to be obliged once again to recall the importance it attached to the full respect of rights and basic civil liberties such as freedom of expression, of assembly and of the press and the intrinsic link between these freedoms, freedom of association and democracy. The Committee once again stressed that it was the responsibility of governments to ensure respect for the principle according to which the trade union movement could only develop in a climate free from violence, threats or fear.

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

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

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

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

TURKEY (ratification: 1993)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusions

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

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

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

The Committee recalled that it had discussed this case on several occasions. The Committee welcomed the entering into force of the constitutional amendment under Law No. 5892 repealing several provisions of the Constitution which previously restricted the right to organize, following the September 2010 referendum. The Committee noted with concern, however, the new allegations of restrictions placed on freedom of association and assembly of trade unionists. In this respect, it once again recalled that respect for civil liberties was an essential prerequisite to freedom of association and urged the Government to continue to take all necessary measures to ensure a climate free from violence, pressure or threats of any kind so that workers and employers could fully and freely exercise their rights under the Convention. The Committee urged the Government to review, in full consultation with the social partners, any legislation that might be applied in a manner contrary to this fundamental principle and to consider any necessary amendments or abrogation.

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

The Committee urged the Government, as it did last year, to elaborate a plan of action with clear time-lines to be presented to the Committee of Experts for monitoring and to continue to avail itself of the ongoing technical assistance of the ILO. The Committee requested the Government to discuss with the ILO within the remaining days of the Conference how this technical assistance could be made most effective, aimed at the rapid adoption of the necessary amendments to Acts Nos 2821, 2822 and 4688. It requested the Government to provide detailed and complete information on all progress made on these issues and to transmit all relevant legislative texts to the Committee of Experts before its next meeting.

ZIMBABWE (ratification: 2003)

The Government provided the following written information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusions

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

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

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

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

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

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

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

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

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

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

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

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

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

BELARUS (ratification: 1956)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Government member of India noted the systematic approach adopted by the Government of Belarus with regard to implementing the recommendations made by the Commission of Inquiry. The development of tripartite dialogue, the promotion of ILO standards and the protection of trade union rights constituted some of the encouraging initiatives undertaken by the Government to give effect to Conventions Nos 87 and 98. The general agree-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusions

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

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

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

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

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

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

GREECE (ratification: 1962)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusions

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

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

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

ROMANIA (ratification: 1958)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusions

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

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

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

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

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

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

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

The conclusions suggested progress that did not exist in reality.

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

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

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

URUGUAY (ratification: 1954)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusions

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

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

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

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

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

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

SRI LANKA (ratification: 1993)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusions

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

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

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

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

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

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

Fiji (ratification: 2002)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusions

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

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

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

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

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

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

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

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

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

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

Employment Policy Convention, 1964 (No. 122)

HONDURAS (ratification: 1980)

The Government provided the following written information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Minimum Age Convention, 1973 (No. 138)

Azerbaijan (ratification: 1992)

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

Conclusions

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

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

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

The Committee recalled, as required by Article 3 of the Convention, that consultation with the social partners was essential both at the earliest stages of policy formulation and during the implementation process as this enabled governments to take fully into account their experience and views. The Committee urged the Government to intensify its efforts to engage in genuine tripartite consultation on the points raised by the Committee of Experts in its observation.

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

Minimum Age Convention, 1973 (No. 138)

AZERBAIJAN (ratification: 1992)

The Government provided the following written information.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusions

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

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

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

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

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

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

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

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

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

MEXICO (ratification: 1984)

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

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

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

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

The Worker members recalled that the Committee, once again, had before it the consequences of the serious accident in the Pasta de Conchos mine in 2006 which had cost the lives of 65 miners. In March 2009, the Governing Body had approved a report following a representation concerning the violation of several occupational safety and health Conventions. The Governing Body had made a series of recommendations and entrusted their follow-up to the Committee of Experts and the Conference Committee. Among the recommendations, the Government was called upon to take measures in consultation with the social partners, including the formulation of new safety and health regulations in the coalmining industry in accordance with ILO standards. A new Official Standard was adopted in 2008 with this objective. However, they emphasized that the Standard had not changed anything in the coalmining region of Coahuila. Indeed, mortality had increased by 200 per cent in 2009. There was no register of mines in the region and the new Standard was not respected by employers, and inspections were inadequate. The Worker members noted that a periodic examination had been undertaken of the health situation targeting coalmining. For that purpose, advisory commissions were operating and the National Advisory Committee on Occupational Safety and Health was endeavouring to identify new projects. Other series of measures would be needed for the effective supervision of the effect given to the regulations through adequate and effective inspection. They recalled that the accident at Pasta de Conchos had not been a sudden and unforeseeable tragedy. It had been the consequence of negligence in complying with the safety and health standards. The Mexican labour inspection services had identified failings in relation to safety and health, but no solution had been proposed to resolve the problems. They observed that, according to the Government, measures had been taken in the context of the sectoral objective of promoting and supervising compliance with labour standards, but that the objective only concerned large- and medium-sized mines. The figures provided by the Government could not be used to gain an idea of the extent to which effect was given to the legislation, as 60 per cent of miners were engaged in the informal economy, and the figures did not include undeclared workers. Finally, the Worker members emphasized that the Governing Body had called for appropriate compensation for the 65 families affected and appropriate penalties for those responsible for the accident.

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusions

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

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

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

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

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

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

Asbestos Convention, 1986 (No. 162)

CANADA (ratification: 1988)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

information concerning asbestos-related occupational diseases.

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

Conclusions

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

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

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

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

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

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

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

PARAGUAY (ratification: 2001)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Conclusions

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

The Committee noted that the report of the Committee of Experts referred to allegations from the International Trade Union Confederation (ITUC) relating to the sale and trafficking of children, children in commercial sexual exploitation and children working in domestic service ("*criadazgo*" system).

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

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

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

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

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

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

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

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

UZBEKISTAN (ratification: 2008)

A Government representative pointed out that the legal basis for the prohibition of the worst forms of child labour had been established and was being continually improved. He recalled that protection against unacceptable forms of child labour was based on the following legislation: the Constitution, which prohibited the use of any form of forced labour; the Act on Guarantees of the Rights of the Child, which regulated the work of persons under 18 years of age, allowing them to combine work and study; the Labour Code which set the minimum age for admission to employment at 16 years (in exceptional cases at 15 years with the authorization of the child’s parents or guardians); the Administrative Responsibility Code, which provided for substantial fines for employers who committed violations of labour legislation on the use of child labour; the Act to supplement the Administrative Responsibility Code, which was adopted to punish those who bought or sold, or carried out any other transaction with regard to a minor, as well as those who exploited, recruited, transferred, delivered, concealed or carried out any other act for the purpose of exploiting a child and involving a child in any form of illegal activity; and the Act on the prevention of child neglect and juvenile delinquency, which was adopted on 29 September 2010. He recalled that, in order to implement the Committee of Experts’ recommendations, an Inter-ministerial Working Group was established by Cabinet of Ministers decision of 25 March 2011, which was chaired by the First Deputy

Minister of Labour and Social Protection, and included senior officials of the Council of the Federation of Trade Unions of Uzbekistan, the Chamber of Commerce and Industry, as well as the Ministries of Foreign Affairs, Justice, Internal Affairs, Education, Higher and Secondary Specialized Education and Health, the National Human Rights Centre, the Women’s Committee, the non-governmental youth organization “Kamolot” and farmers’ associations. The main tasks and objectives of the Inter-ministerial Working Group were the following: coordinating the activity of the relevant ministries, departments and organizations concerned with regard to the implementation of the measures, programmes and plans adopted pursuant to ILO Conventions; developing programmes and action aimed at complying with obligations under ILO Conventions; carrying out the necessary awareness-raising activities on the content and meaning of the ILO Conventions applied in Uzbekistan; liaising with international organizations on matters relating to education, health care, labour, employment, social protection and social and labour legislation. In April and May 2011, the Inter-ministerial Working Group decided on the development of measures aimed at fulfilling Uzbekistan’s obligations under ILO Conventions and updating the measures under the National Plan of Action, and approved updated reports on the application of the Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105) and Convention No. 182, as well as the information on non-ratified ILO Conventions. He further recalled that Uzbekistan was implementing a single National Programme for Training Managers, and that since 2009 it had introduced compulsory schooling for 12 years, this being a crucial factor in preventing child labour and eradicating its worst forms. Referring to recent data on, amongst others, the literacy rate, economic growth, job creation, average wages and state expenditure on social protection in Uzbekistan, he stressed that, as ILO experts had noted, the economic reforms undertaken in Uzbekistan had ensured stable economic growth, improved the level of employment, and improved incomes for families. These constituted an important precondition for reducing child labour in the country. As regards strengthening monitoring of compliance with ratified ILO Conventions, he stated that the practice of parliamentary monitoring was being introduced; an integrated policy document for the development and improvement of national monitoring of the rights of the child was being implemented with the assistance of the United Nations Children’s Fund (UNICEF); the Government Order of 19 February 2010, extended the powers of the labour inspectorate, which was authorized to suspend the activities of undertakings not found to be in conformity with labour legislation and to initiate administrative proceedings against persons responsible for contraventions. He added that concrete measures were being taken to prosecute people for violations of labour legislation: the labour inspectorate in 2010 had recorded around 10,000 contraventions of labour laws and regulations during hiring and employment; some 829 compliance orders (orders to rectify contraventions) were issued, and administrative action was taken against 782 managers and officials, with fines totalling 75 million Sumy (UZS). He further pointed out that Uzbekistan was collaborating with the ILO and the social partners in implementing the Decent Work Country Programme.

The Employer members stressed that the worst forms of child labour was a chronic problem in agriculture. The Conference Committee conclusions last year highlighted the systematic and persistent use of forced labour in the cotton fields of Uzbekistan for up to three months every year, as well as the substantial negative impact of this practice on the health and education of school aged chil-

dren obliged to participate in the cotton harvest. In particular, although various legal statutes prohibited forced labour and hazardous types of work for children, the legislation did not prevent child labour in the cotton harvest from occurring. It was not sufficient to have laws: such laws and the Constitution should be effective and enforced as required by Article 7(1) of Convention No. 182. As noted by the Committee of Experts in its 2010 observation, there was a convergence of allegations and broad consensus among the United Nations bodies, the representative organizations of employers and workers and non-governmental organizations, regarding the continued practice of mobilizing schoolchildren for work in the cotton harvest. Not all of these organizations' assessment of the situation could be wrong. According to the Government's report of 7 June 2010, an interdepartmental working group was established, and a programme approved, for on-the-ground monitoring to prevent the use of forced labour by schoolchildren during the cotton harvest. This seemed to be an implicit and tacit admission that child labour occurred. Since the last meeting with the Government last year, there had been numerous credible reports of child labour in the cotton harvest from September to October 2010. Contrary to the Government's statements, these children were supervised by their teachers, not their parents. Police and security patrolled the cotton fields in an effort to prevent observation by human rights groups and journalists, and at least one human rights activist was expelled from the country for observing the cotton harvest. The Employer members questioned the transparency of the Government: while last year the Conference Committee had urged the Government to accept an ILO high-level tripartite observer mission that would have full freedom of movement and timely access to all situations and relevant parties, including the cotton fields, the Government by inaction appeared to have rejected this conclusion. The Employer members suggested that the Government reconsider this option.

The Worker members recalled that the Convention had been adopted in 1999 with the aim of combating those inhumane and unacceptable situations, and as such constituted a relatively new instrument. The case under examination concerned the use of (often very young) children for work which, by its nature or the circumstances in which it was carried out, was hazardous. The examination of the case this year, after an examination by this Committee in 2010, had been requested by the Committee of Experts on the "double footnote" basis. The Committee of Experts had initially examined the issues related to the forced or compulsory labour of children in cotton production and in hazardous work governed by Articles 3 and 7(1) of the Convention. Denunciation of the systematic and persistent use of the forced labour of children in the cotton fields was widespread and well documented. It involved the confederation of trade unions of Uzbekistan, the International Organisation of Employers (IOE) and other non-governmental and media organizations. Since the ratification of the Convention in 2008 and the communication of the Government's first report, the Committee of Experts had noted serious problems relating to compliance with the Convention. Every year between 0.5 and 1.5 million schoolchildren were forced by the Government to work in the national cotton harvest for periods of up to three months. The latest figures available concerned the 2009 harvest; it had not been possible to obtain accurate and reliable data on the current situation. The situation involved hazardous work prohibited by the Convention which prevented the children from attending school during the harvest period. It also gave rise to serious health problems resulting from the harsh climatic conditions and the carrying of heavy loads, such as intestinal and respiratory infections and cases of meningitis

and hepatitis. Neutral and credible international bodies such as UNICEF, the Committee on the Elimination of Discrimination Against Women and the UN Human Rights Committee had also expressed their concern regarding the seasonal mobilization of vast numbers of children for the cotton harvest. At the same time, it was worrying to observe that the Government seemed unwilling to recognize the gravity of the situation, stating that it was traditional practice for the oldest children to help with the family business. In practice, the situation in question affected very young children (9, 10, 11 years of age and older), who worked under harsh conditions which posed a threat to their life and health, conditions that were covered by the Convention. It was therefore to be hoped that the Government would understand that it had an obligation, as established by the Convention, to take immediate and effective measures to ensure the elimination, as a matter of urgency, of the worst forms of child labour, and ensure the effective application of the Convention through monitoring and penal sanctions. The Committee of Experts had also examined the surveillance mechanisms and the programmes of action aimed at eliminating the worst forms of child labour covered by Articles 5 and 6 of the Convention. It observed that the Government had adopted a National Plan of Action for the application of the Minimum Age Convention, 1973 (No. 138) and Convention No. 182 comprising measures to combat the forced labour of children and also a resolution concerning measures for the application of these Conventions in the education system. The Government had taken initiatives to inform and raise the awareness of farmers and to collaborate with the UNICEF Child Protection Programme. Nevertheless, it still lacked specific, detailed information on the impact of the national plan of action and the measures taken in that context. Without such data and the effective involvement of the labour inspectorate, the objective of reducing the number of children working in the cotton harvest was impossible to achieve since the phenomenon could not be evaluated. The inspectorate needed not only human and financial resources but also the means of monitoring the use of school-age children in the cotton harvest. The Committee of Experts had underlined the lack of communicated data required in the report form on the autumn 2010 harvest. However, having recourse to changes to the law was no guarantee that the law was effectively applied and monitored and that penalties were imposed in relation to it, or that the application thereof would be the subject of consultations with the local social partners and other representatives of civil society recognized by the latter. The Worker members recalled that they had wanted to show confidence in the Government the previous year by inviting it to demonstrate its total political will without delay by agreeing to receive a high-level ILO tripartite observer mission having full freedom of movement and timely access to all situations and relevant parties, including in the cotton fields. To date, the Government had yet to agree to the mission. To show its serious intent, therefore, the Government would have to undertake to report regularly by supplying recent, concrete and complete data. It would also have to accept the observer mission called for by the Committee the previous year and agree to or, better still, propose technical assistance. Finally, the Government should enter into a partnership with the ILO's International Programme on the Elimination of Child Labour (IPEC).

The Worker member of Uzbekistan stated that the Government representative had objectively evaluated the Government's effort in combating child labour. Child labour could be eliminated only by eliminating its causes – informal employment, unemployment, economic and family-related problems. Trade unions were among the first to bring the issue of child labour to public attention.

In 2005, it called for the ratification of Conventions Nos 138 and 182. Following the ratification of these Conventions, trade unions had participated in the development of a national plan of action for their implementation. Out of 37 measures envisaged by this plan, 13 had been adopted upon trade unions' initiative. These measures included a review of the "List of occupations with unfavourable working conditions in which it is forbidden to employ persons under 18 years of age", review of regulations on lifting and carrying heavy loads, and awareness-raising among farmers. On 2 May 2011, the Federation of Trade Unions of Uzbekistan, the Association of Farmers, and the Ministry of Labour and Social Protection made a joint statement on the prohibition of child labour in the agricultural sector. The Administrative Responsibility Code had been amended so as to provide for the legal responsibility of officials and other persons for violating labour legislation concerning minors; for employing minors to perform work which could harm their health, safety or morals; as well as for forcing minors to perform work. Currently, a review of collective agreements was being undertaken with the aim of including provisions concerning protection of children's rights, obliging employers to respect the minimum age for employment and prohibiting worst forms of child labour. In 2010, the monitoring of compliance with the Labour Code carried out by trade unions revealed 6,271 cases of violations, 197 of which concerned children under 18 years. The Federation of Trade Unions of Uzbekistan conducted information sessions and seminars for trade union activists throughout the country and, together with the Farmers' Association, among farmers, to raise awareness regarding child labour. The source of child labour lay in the informal economy and family, where trade unions had no influence. In the formal sector, the problem of the worst forms of child labour did not exist. Some parents thought that it was better for their children to work than do nothing. There was nothing wrong with children helping their parents and making some pocket money. However, children were often being employed without a proper employment contract and without respecting requirements set forth by the legislation for children and adolescents concerning working hours and rest. Today, employers, parents and children should clearly understand the difference between child labour and vocational training. The Federation of Trade Unions of Uzbekistan would continue making the necessary efforts to ensure the full application of the Convention in the country.

The Government member of Hungary, speaking on behalf of the Governments of Member States of the European Union (EU) attending the Conference, as well as the candidate countries (Croatia, The former Yugoslav Republic of Macedonia, Montenegro and Iceland) and potential candidate countries (Bosnia and Herzegovina and Serbia), Norway and the Republic of Moldova, reiterated serious concern about the systematic and persistent use of forced labour, including child labour during the cotton harvest in Uzbekistan. While taking note of the adoption of the Act on Guarantees of the Rights of the Child, of the relevant amendment to the Administrative Responsibility Code and of the *Aide-memoire* on the Application of the Convention sent by the Government, she noted with deep regret the recent conclusions of the Committee of Experts. This concern was supported by well-documented allegations and broad consensus among the United Nations bodies, UNICEF, the representative organizations of employers and workers and non-governmental organizations stating that, despite the legal commitments made by the Government to eradicate forced child labour, in practice, year after year an estimated number of 0.5 to 1.5 million school-aged children were still forced to take part in the hazardous work in the cotton harvest for up to three

months each year. Whereas the Government had stated in its report that the allegations concerning widespread forced labour in agriculture were an unfounded attempt by foreign actors to undermine the reputation of Uzbek cotton in the global market, and that children were not involved in the cotton harvest as various legal provisions prohibit forced labour, she urged the Government to grant unrestricted access to independent monitors to document the cotton harvest and provide a clear picture of the situation in the country. A monitoring mission was one of the issues recently discussed by José Manuel Barroso, President of the European Commission at his meeting with President Islam Karimov in January 2010. While expressing concern that the Government did not invite the previously recommended high-level ILO tripartite observer mission despite the detailed discussions in the Conference Committee last year and the explicit request of the Committee, she strongly urged the Government to invite such a mission in good time for the 2011 harvest and provide it full freedom of movement and timely access to all situations and relevant parties, including in the cotton fields, in order to assess the actual implementation of the Convention. She further urged the Government of Uzbekistan to strengthen its efforts on this serious issue, to take immediate and effective measures to ensure the implementation of all aspects of the Convention, to carry out thorough investigations into allegations of such practices and to take robust action with regard to the prosecution of offenders.

The Government member of Switzerland stated that her Government associated itself with the statement made by the Government member of Hungary on behalf of the Member States of the European Union.

The Government member of Azerbaijan noted the positive measures taken by the Government of Uzbekistan, for instance the adoption of legislation in 2010 to prevent the exploitation of children, the establishment of the Inter-ministerial Working Group to monitor the implementation of ILO Conventions, and the 2011 decision to set up a specific programme for the eradication of child labour. He also recalled that new legislation was adopted in 2009 on compulsory education and his Government was of the view that all those measures would ultimately produce positive results for the elimination of the worst forms of child labour.

The Government member of the United States stated that her Government remained concerned that, notwithstanding the constitutional and legislative prohibitions against forced labour and child labour in Uzbekistan, there was reason to believe that many thousands of rural schoolchildren continued to be mobilized forcibly each autumn to harvest cotton under hazardous conditions. She echoed the concerns of UN bodies, employers' and workers' organizations, and non-governmental organizations, regarding this deeply rooted practice. Her Government urged the Government of Uzbekistan to implement its existing prohibitions on forced and child labour. She recalled that ILO high-level tripartite technical assistance could be instrumental in helping governments to develop and implement solutions for the effective and sustained application of ratified Conventions, and it was regrettable that last year's recommendation for an ILO mission was not accepted by the Government. Her Government joined the other members in calling for the Government to invite an ILO observer mission that would have full freedom of movement and timely access to all information and relevant parties to assess the implementation of the Convention during the next cotton harvest.

The Government member of Canada stated that her Government welcomed the adoption of various legal provisions prohibiting forced labour and the engagement of children in hazardous work, but shared the concerns

raised by the Committee of Experts that forced child labour continued to be practised in the cotton industry. This situation, and its negative impacts on the health and safety and education of children, had been raised by international workers' and employers' organizations and commented on by a number of UN bodies. Her Government was encouraged by the measures for implementation of Conventions Nos 138 and 182, undertaken by the Government under the National Programme of Action approved in 2008, and the joint resolution adopted in 2009, but expected more detailed information on the practical results of these initiatives. Her Government therefore urged the Government of Uzbekistan to accept a high-level tripartite observer mission and to work with the ILO to strengthen enforcement of forced labour and child labour laws to fully meet its obligations under the Convention.

The Worker member of the United States recalled that the 2010 cotton harvest had involved the use of child labour on a massive scale: more than 2 million schoolchildren aged between 10 and 16 years. He recalled that, by the time the 2010 harvest had ended, two months of schooling, mainly in rural areas, were effectively lost. The mobilization of this involuntary labour originated from the top and was transmitted through governors to school administrators. The harvest mobilization was overseen by government officials and police, while parents who refused to send their children to work reportedly faced economic sanctions such as the removal of welfare subsidies or the cutting off of gas and electricity. According to some accounts, children who failed to meet quotas, ranging previously from 15–75 kilos per day based on age, were beaten or humiliated. Security was employed throughout the region to prevent eyewitnesses from reporting abuses, while children and parents were instructed to deny that they were picking cotton. Children were reported to suffer from exhaustion and malnutrition. The speaker questioned the Government's denial of the existence of state-sponsored forced child labour and its statement that national programmes, commissions and other measures proposed or previously established were serious efforts to combat child labour in the cotton industry. He noted the broad consensus among all social partners, including the employers and workers, and governments, which were supported by reports from international and inter-governmental organizations, universities and human rights organizations, that state sponsored forced child labour in the cotton industry continued on a massive scale. He called for an ILO high-level tripartite mission with unrestricted and unsupervised access during the harvest season and expressed the view that if this mission were rejected by the Government, other measures should be considered to bring about quickly and completely the end of forced child labour.

The Government member of Turkmenistan stated that his Government welcomed the adoption of the National Action Plan for the implementation of ILO Conventions. The National Action Plan on Convention No. 182 set out specific measures to prevent child labour, monitor compliance and raise awareness, and provided training for employment agencies, media, trade unions and local administrations. The Government consistently carried out nationwide programmes for the protection of social and economic rights of children. National monitoring mechanisms had been incorporated into the Government administration from the highest to local government levels. The Government's attention to child development was evidenced by the fact that 99 per cent of the population was literate. Uzbekistan had one of the strongest social systems, especially with respect to vulnerable families, large families and children in need. He therefore con-

cluded that the examination of this case should be discontinued.

The Government member of Singapore noted the concrete steps taken by the Government of Uzbekistan to eliminate child labour, including efforts made in strengthening the legislative framework and enhancing the monitoring mechanism to prevent illegal child labour, increasing the penalties for violations of labour legislation and compulsory labour of persons under 18 years of age, and implementing targeted programmes including educational activities to raise awareness on the rights of the child. The Government had demonstrated its commitment to tackle the problems and to cooperate with international agencies, such as translating and publishing educational material on the elimination of child labour, in partnership with ILO-IPEC; and developing and implementing a concept of development and improvement of national monitoring of children's rights in partnership with the UNICEF office in Uzbekistan, which contained the basic principles, goals, mechanisms and tools for monitoring children's rights, including the right to work. However, her Government was of the view that there was still room for improvement, and encouraged Uzbekistan to continue its efforts to strengthen the effective implementation and enforcement of the various provisions prohibiting forced labour and the engagement of children in hazardous work. She stressed that the social partners and stakeholders had an important role to play in addressing these challenges in a comprehensive manner, and supported their involvement to collectively formulate effective implementation plans. Her Government considered that the Government of Uzbekistan had taken proactive and resolute steps to address the challenges of the elimination of child labour and concluded by stating that the Committee should offer further assistance to the Government to fulfil its obligations under the Convention.

The Government member of Cuba drew attention to the National Plan of Action that the Government had introduced to implement Conventions Nos 138 and 182, which contained 37 measures covering four fundamental areas: improving legislation, monitoring and follow-up, raising awareness of the Conventions, and implementing international cooperation projects. She emphasized that the Government was making great efforts to prevent child labour, including holding seminars and awareness-raising campaigns aimed at employment agencies, workers' organizations and local authorities. Since 2008, there had been a telephone line for children and their relatives to report violations of their rights. She highlighted the constitutional prohibition of child labour, criminal legislation which laid down tough penalties for those who involved minors in illegal activities, and the list of prohibited occupations for children below 18 years of age. She stressed the Government's willingness to engage in dialogue and cooperate with all interested parties in order to take steps with a view to strengthening the system of preventing child labour.

The Government member of Belarus emphasized that the Government had taken practical measures for the eradication of the worst forms of child labour, such as the adoption of a National Plan of Action and a monitoring system, the inclusion of the prohibition of forced labour in the Constitution and the adoption of legal provisions penalizing persons who exacted the worst forms of child labour. All of these measures demonstrated the will of the Government to honour the obligations deriving from the ratification of the Convention and the Committee should make a positive assessment of them.

The Worker member of Germany stated that there was no doubt that children aged 11 to 17 years were taken out of school and were forced to spend several months in the cotton harvest under physical, economic and social pres-

sure. Experts and independent sources had provided reliable information that the parents did not have any possibility to escape the system of forced labour, and that the particular form of labour was dangerous for the children's health. The situation could not be feasible without the active role of the Government. While some progress had been made at the legislative level, the situation remained unchanged on the ground. Forced child labour persisted in clear violation of Conventions Nos 138 and 182. It was unacceptable that school children were losing the precious opportunity to have an education, and their health was being threatened. The ILO should be given full access to the children and parents concerned. He therefore fully supported the suggestion for a high-level tripartite observer mission during the harvest season.

The Government member of the Russian Federation stated that the Constitution of Uzbekistan contained two articles that expressly prohibited child labour, and that new legislation had been adopted that raised the minimum working age, prohibited trafficking in children and included other provisions consistent with the Convention. His Government welcomed both the tripartite declaration stating that child labour was unacceptable and criminal sanctions for contracting under-age workers. He said that the National Plan of Action, which was supported by employers' and workers' organizations, made provision for updating legislation, conducting awareness-raising campaigns and carrying out specific projects. The Government's actions should be welcomed, and cooperation between the ILO and the Government should be strengthened.

The Government member of the Bolivarian Republic of Venezuela stated that his Government welcomed the measures taken by the Government which had led to progress since discussions in the Committee the previous year. His Government also welcomed the fact that the Government of Uzbekistan had demonstrated its desire to work in cooperation with the Office. The Government should continue allocating 10 per cent of its gross domestic product to guaranteeing that the country's children could enjoy education and health, and there was no doubt that it would continue to enhance its activities to ensure implementation of the Convention. The Government was continuing to make progress in applying the Convention, which the Committee should emphasize in its conclusions.

The Government member of Pakistan stated that his Government welcomed the measures taken by the Government of Uzbekistan, which represented elements of progress and should be noted with interest. The Government had shown cooperation by adopting legislation and administrative measures towards eradicating the worst forms of child labour. If needed, technical assistance should be provided by the ILO to help the Government overcome this problem and comply with its international obligations.

The Government member of China highlighted the Government's positive attitude towards implementing Conventions Nos 138 and 182. He observed that proper measures were being taken, including the creation of labour systems and frameworks, and expressed support for the Government in its efforts to eradicate child labour from the country.

The Government representative thanked the Committee members for the positive assessment of the action taken by his Government to ensure the effective implementation of national legislation prohibiting compulsory labour and hazardous work for children. He indicated that the improvement of the legislative framework was a key element and that the Government would continue its efforts on matters such as the minimum age, compulsory education for 12 years or an adequate system of sanctions. He

also stressed that the inspection services would be reinforced and that the Government was considering several measures for the elimination of all forms of child labour, including human trafficking, drug addiction and prostitution. He further stated that a special law on social partnership would be adopted shortly which would contain specific measures to address the situation of child labour.

Another Government representative recalled that only three years after the Convention had been ratified, significant progress had been made as regards the protection of children from hazardous work. His Government recognized that legislative conformity in itself was not enough and that practical implementation and effective monitoring were also needed. He also admitted past delays in reporting but pointed out that all available information had now been communicated to the Conference Committee. He felt that there was some mistrust regarding the information provided by the Government and strongly opposed the view that his Government was not concerned about the problem of child labour. This could not be true in a country where 40 per cent of the population was under 18 years of age. The ratification of the Convention alone proved the Government's commitment to the protection of children and the enhancement of their personal and social development. He concluded by reaffirming that the fight against the worst forms of child labour remained high on the agenda of his Government, that collaboration with international organizations would continue and that building a constructive partnership was the best approach to address this issue.

The Employer members recalled that up to 2 million children worked in the cotton harvest each year, which made the situation acute because it involved children and their development during a crucial stage of their lives. They noted the positive closing statement made by the Government representative with respect to the harmonization of the national legislation with the Convention, the efforts to deal with all aspects of the worst forms of child labour, and the setting up of a system of monitoring. However, recalling that Committee members had frequently heard expressions of goodwill, only to find decades later that the issues were not resolved, the Employer members considered that the Government needed to be more transparent in these circumstances; this was why an observer mission had been proposed last year to assess the situation during the cotton harvest. They expressed support for all the steps proposed by the Worker members, including the need for timely reporting to the ILO, accepting an observer mission, accepting ILO technical assistance and collaborating with ILO-IPEC. Finally, the Employer members noted that this was a serious situation and asked that the conclusions of the Committee be included in a special paragraph of the Committee's report.

The Worker members emphasized that, as could be seen from the information supplied, the Government had realized the necessity of acting to combat child labour and had taken measures in the areas of education and protecting childhood, as well as increasing criminal liability for those who flouted the prohibition of child labour. However, the Government did not seem disposed to recognize the gravity of the situation of thousands of children engaged in dangerous work harvesting cotton. It must therefore demonstrate its political will in that regard, without delay, and provide evidence that legislation adopted was being applied effectively. The Government should also demonstrate that the effect given to legislation would be the subject of consultations with the social partners and, where appropriate, with relevant non-governmental organizations that they recognized. The Worker members considered that taking the following measures would provide proof of the Government's serious commitment: submitting reports containing recent and complete infor-

mation; accepting a high-level tripartite observer mission, which would visit the country during the cotton harvest and would have complete freedom of movement, as proposed by the Committee the previous year; and accepting technical assistance and partnership with ILO-IPEC. To conclude, the Worker members accepted the proposal made by the Employer members to include this case in a special paragraph of the Committee's report.

Conclusions

The Committee took note of the oral information provided by the Government representative and the discussion that followed.

The Committee noted that the report of the Committee of Experts referred to allegations from the International Organisation of Employers (IOE), the International Trade Union Confederation (ITUC), and a significant number of other international workers' organizations relating to the systematic and persistent use of forced child labour in the cotton fields of Uzbekistan for up to three months every year, as well as the substantial negative impact of this practice on the health and education of school-aged children obliged to participate in the cotton harvest. The Committee further noted the concerns expressed by the UN Human Rights Committee, the UN Committee for the Elimination of Discrimination Against Women, as well as information in two UNICEF publications with regard to this practice.

The Committee noted the information provided by the Government outlining the laws and policies put in place to combat the forced labour of, and hazardous work by, children. The Committee also noted the Government's statement that it had established a tripartite inter-ministerial working group with a view to developing specific programmes and actions aimed at fulfilling Uzbekistan's obligations under ILO Conventions, as well as to update measures taken within the framework of the National Action Plan for the application of Conventions Nos 138 and 182 to ensure the protection of children's rights. Furthermore, the Committee noted the detailed information provided by the Government on economic reforms undertaken in Uzbekistan, which had improved the level of employment, raised incomes for families and strengthened the banking and financial system. Moreover, the Committee noted the Government's statement that concrete measures were being taken by the labour inspectorate officials to prosecute persons for violations of labour legislation, and that a number of administrative and disciplinary proceedings had been undertaken and fines imposed. The Committee further noted the Government's statement denying the coercion of large numbers of children to participate in agricultural work, and that the use of compulsory labour was punishable with penal and administrative sanctions.

The Committee noted, once again, that, although legal provisions prohibited forced labour and the engagement of children in hazardous work, there was broad consensus among the United Nations bodies, the representative organizations of workers and employers and non-governmental organizations, regarding the continued practice of mobilizing school children for work during the cotton harvest. In this regard, this Committee was obliged to echo the deep concern expressed by these bodies, as well as several speakers in this Committee, about the systemic and persistent recourse to forced child labour in cotton production, involving an estimated 1 million children. The Committee emphasized the seriousness of such violations of the Convention. Moreover, the Committee noted with regret that, despite the Government's indications that concrete measures had been undertaken by the labour inspectorate regarding violations of labour legislation, no information was provided on the number of persons prosecuted for the mobilization of children in the cotton harvest, despite previous requests by this

Committee and the Committee of Experts for this information.

While noting the establishment of a tripartite inter-ministerial working group on 25 March 2011, the Committee observed that the Committee of Experts had already noted the establishment of an earlier interdepartmental working group on 7 June 2010, for on-the-ground monitoring to prevent the use of forced labour by school children during the cotton harvest. It noted with regret the absence of information from the Government on the concrete results of this monitoring, particularly information on the number of children, if any, detected by this interdepartmental working group (or any other national monitoring mechanism) engaged to work during the cotton harvest. In this regard, the Committee regretted to note that the significant progress that had been made regarding economic reform and growth had not been accompanied by corresponding progress with regard to combating the use of children for cotton harvesting.

The Committee expressed its serious concern at the insufficient political will and the lack of transparency of the Government to address the issue of forced child labour in cotton harvesting. It reminded the Government that the forced labour of, or hazardous work by, children, constituted the worst forms of child labour and urged the Government to take the necessary measures, as a matter of urgency, to ensure the effective implementation of national legislation prohibiting compulsory labour and hazardous work for children below the age of 18.

The Committee once again called on the Government to accept an ILO high-level tripartite observer mission that would have full freedom of movement and timely access to all situations and relevant parties, including in the cotton fields, in order to assess the implementation of the Convention. Observing that the Government had yet to respond positively to such a request, the Committee strongly urged the Government to receive such a mission in time to report back to the forthcoming session of the Committee of Experts. The Committee expressed the firm hope that, following this mission and the additional steps promised by the Government, it would be in a position to note tangible progress in the application of the Convention in the very near future.

The Committee also strongly encouraged the Government to avail itself of ILO technical assistance, and to commit to working with the ILO International Programme on the Elimination of Child Labour.

Finally, the Committee invited the Government to provide comprehensive information in its next report to the Committee of Experts on the manner in which the Convention was applied in practice, including, in particular, enhanced statistical data on the number of children working in agriculture, their age, gender, and information on the number and nature of contraventions reported and penalties applied.

The Committee decided to include its conclusions in a special paragraph of its report.

The Government representative expressed his gratitude for the constructive proposals and assessment of the situation in Uzbekistan during the discussion of the case. He regretted, however, that the conclusions did not reflect concrete proposals voiced by representatives of various member States. He further regretted that the discussion of this case revolved around the use of child labour in the cotton harvest, without reflecting the efforts of the Government to combat poverty, prostitution and drug abuse, and the absence in the country of forced child labour or cases of the use of children in armed conflicts. The conclusions should have reflected the multi-faceted nature of the issue. He confirmed the Government's intention to further cooperate with the ILO.

II. SUBMISSION TO THE COMPETENT AUTHORITIES OF THE CONVENTIONS AND RECOMMENDATIONS
ADOPTED BY THE INTERNATIONAL LABOUR CONFERENCE
(ARTICLE 19 OF THE CONSTITUTION)

Observations and information

(a) Failure to submit instruments to the competent authorities

A Government representative of Bahrain stated that all measures would be taken for the submission of the instruments to the responsible legislative authority. This would thereby help the Government to take all the necessary measures with respect to such instruments.

A Government representative of Cape Verde emphasized that the ratification of the international labour Conventions had an impact which went beyond the adaptation of legislation to the obligations arising from ratification. It required a strengthening of human, material and technical capacities, which in the majority of cases were translated in resorting to international technical assistance. Labour administration was not fully consolidated and required the support of the international community. The speaker also referred to the recent ratification of the Minimum Age Convention, 1973 (No. 138), and to the fact that the issue of ratifying more Conventions would be analysed within the framework of a revision of labour legislation. In conclusion, he reaffirmed his Government's commitment to submit, as quickly as possible, to the National Assembly the instruments adopted by the International Labour Conference between 1995 and 2010.

A Government representative of Cambodia stated that, owing to technical assistance provided by the ILO, the instruments adopted by the Conference had been translated and submitted to the Cabinet of the Council of Ministers for consideration and preparation for submission to the National Assembly.

A Government representative of the Congo had reiterated once again the will of his Government to compensate for the delay observed with respect to the obligation of submission. The Committee of Experts had noted the efforts deployed by the Government following a mission made by the Office in May 2010. From that date on, every three months, three instruments had been submitted to the competent authorities. In the second quarter of 2011, the Equality of Treatment (Social Security) Convention, 1962 (No. 118), the Termination of Employment Convention, 1982 (No. 158), and the Labour Statistics Convention, 1985 (No. 160) had been submitted.

A Government representative of Uzbekistan underlined the fact that, between 1995 and 2008, his country had not sent a delegation to participate in the work of the Conference. The interministerial group responsible for preparing and submitting information on the application of ratified Conventions was currently examining issues relating to Conventions that had not been ratified and to relevant Recommendations.

A Government representative of Papua New Guinea apologized for the long delay in the submission of the instruments for ratification purposes, since 2000, which he attributed to administrative and procedural difficulties, some of which had been clarified. Thanks to the advice provided by the Office in 2010, the procedural aspects of the submission of reports had been clarified, and therefore the Department of Labour and Industrial Relations had begun putting together reports on some of the urgent ratifications, including the Maritime Labour Convention, 2006, which was now before the Cabinet for endorsement prior to ratification.

A Government representative of Seychelles regretted her Government's failure to submit the instruments adopted

by the International Labour Conference during its sessions from 2001 to 2010, but indicated that following recent ILO trainings on international labour standards, the Employment Department was now better equipped to comply with its submission obligation. She indicated that the Department had engaged in consultative meetings with other ministerial institutions, and that these initial consultations demonstrated encouraging signs that the Government would submit the instruments to the competent authority, ratify some of the Conventions, and take guidance from the Recommendations. Recommended action would be brought to the attention of the Tripartite National Consultation Committee on Employment before endorsement by the competent authority, i.e. the Council of Ministers and the National Assembly.

The Committee took note of the information provided and of the explanations given by the Government representatives who had taken the floor.

The Committee took note of the specific difficulties mentioned by different speakers in complying with this constitutional obligation, as well as the promises to submit shortly to parliaments the instruments adopted by the Conference. Some speakers also referred to the assistance received by the Office in this regard.

The Committee pointed out that a particularly high number of governments had been invited to provide explanations on the important delay in meeting their constitutional obligation of submission. As have been done by the Committee of Experts, the Committee expressed great concern at the failure to respect the obligation to submit Conventions, Recommendations and Protocols to national competent authorities. Compliance with the obligation to submit meant the submission of the instruments adopted by the Conference to national parliaments and was a requirement of the highest importance in ensuring the effectiveness of the Organization's standards-related activities. The Committee recalled in this regard that the Office could provide technical assistance to contribute to compliance with this obligation.

The Committee expressed the firm hope that the 34 countries mentioned, namely Antigua and Barbuda, Bahrain, Bangladesh, Belize, Cambodia, Cape Verde, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Georgia, Guinea, Haiti, Ireland, Kiribati, Libyan Arab Jamahiriya, Mozambique, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Seychelles, Sierra Leone, Solomon Islands, Somalia, Sudan, Tajikistan, The former Yugoslav Republic of Macedonia, Turkmenistan, Uganda and Uzbekistan, would transmit in the near future information on the submission of Conventions, Recommendations and Protocols to the competent authorities. The Committee decided to mention all these cases in the corresponding paragraph of the General Report.

(b) Information received

Central African Republic. The Government submitted information indicating that the instruments adopted by the Conference between 1993 and 2007 were submitted, on 20 May 2009, to the National Assembly.

Chile. Since the meeting of the Committee of Experts, the ratification of Convention No. 187 was registered on 27 April 2011.

Ghana. Since the meeting of the Committee of Experts, the ratification of Convention No. 187 was registered on 27 April 2011.

III. REPORTS ON UNRATIFIED CONVENTIONS AND RECOMMENDATIONS (ARTICLE 19 OF THE CONSTITUTION)

(a) Failure to supply reports for the past five years on unratified Conventions and Recommendations

A Government representative of Luxembourg said that his Government would do everything necessary to ensure that the report reached the Committee of Experts as soon as possible.

A Government representative of Cambodia acknowledged that reports on unratified Conventions had not been submitted for the past five years because the newly appointed working group responsible for ILO affairs within the Ministry of Labour was not yet familiar with these matters, and requested technical assistance from the Office in this regard.

A Government representative of Malta expressed his Government's deepest apologies for such an occurrence and assured that all necessary steps would be taken so as to submit the reports due as soon as possible.

A Government representative of Uzbekistan stated that his Government had provided at the present session of the Conference information concerning 13 ratified Conventions. As regards non-ratified Conventions, according to a comparative study, the national legislation was in conformity with more than 100 international labour Conventions. In addition, more than 70 non-ratified Conventions were not applicable to Uzbekistan.

The Committee took note of the information provided.

The Committee stressed the importance it attached to the constitutional obligation to transmit reports on non-ratified Conventions and Recommendations. In effect, these reports

permitted a better evaluation of the situation in the context of General Surveys of the Committee of Experts. In this respect, the Committee recalled that the ILO could provide technical assistance to help in complying with this obligation.

The Committee insisted that all member States should fulfil their obligations in this respect and expressed the firm hope that the Governments of Cambodia, Cape Verde, Democratic Republic of the Congo, Equatorial Guinea, Guinea, Guinea-Bissau, Ireland, Libyan Arab Jamahiriya, Luxembourg, Malta, Saint Kitts and Nevis, Samoa, Sao Tome and Principe, Sierra Leone, Somalia, Tajikistan, Togo, Turkmenistan, Uzbekistan and Vanuatu, would comply with their future obligations under article 19 of the ILO Constitution. The Committee decided to mention these cases in the corresponding paragraph of the General Report.

(b) Information received

Since the meeting of the Committee of Experts, reports on unratified Conventions and Recommendations have subsequently been received from the following countries: Georgia, Kyrgyzstan, Russian Federation, The former Yugoslav Republic of Macedonia and Timor-Leste.

(c) Reports received on social security instruments

In addition to the reports listed in Appendix VI in the addendum to the Report of the Committee of Experts (Report III, Part 1B), reports have subsequently been received from the following countries: Cyprus, Singapore, Slovakia, Timor-Leste and Trinidad and Tobago.

Appendix I. Table of Reports received on ratified Conventions

(articles 22 and 35 of the Constitution)

Reports received as of 17 June 2011

The table published in the Report of the Committee of Experts, page 817, should be brought up to date in the following manner:

*Note: First reports are indicated in parentheses.
Paragraph numbers indicate a modification in the lists of countries mentioned in Part One (General Report) of the Report of the Committee of Experts.*

Algeria **18 reports requested** **(Paragraph 45)**

· All reports received: Conventions Nos. 13, 29, 32, 42, 81, 88, 105, 111, 119, 120, 127, 138, 144, 150, 155, 167, 181, 182

Angola **8 reports requested** **(Paragraph 45)**

· All reports received: Conventions Nos. 17, 29, 45, 81, 88, 105, 138, 182

Armenia **19 reports requested**

· All reports received: Conventions Nos. 29, 81, (87), (97), 98, 100, 105, 111, 122, 135, (138), (143), 144, 151, 154, (160), 174, 176, (182)

Bahamas **10 reports requested**

· 5 reports received: Conventions Nos. 12, 22, 29, 45, 81
· 5 reports not received: Conventions Nos. 88, 105, 138, 182, (185)

Barbados **15 reports requested** **(Paragraph 45)**

· 11 reports received: Conventions Nos. 22, 63, 74, 87, 98, 108, 111, 135, 138, 147, 182
· 4 reports not received: Conventions Nos. 29, 81, 105, 115

Botswana **9 reports requested** **(Paragraph 45)**

· All reports received: Conventions Nos. 19, 29, 87, 100, 105, 138, 151, 176, 182

Brazil **25 reports requested**

· 24 reports received: Conventions Nos. 29, 45, 81, 88, 94, 105, 115, 119, 120, 127, 136, 138, 139, 148, 155, 159, 161, 162, 167, 169, 170, 174, 176, 182
· 1 report not received: Convention No. 140

Brunei Darussalam **1 report requested**

· All reports received: Convention No. (182)

Bulgaria **38 reports requested**

· 37 reports received: Conventions Nos. 8, 13, 16, 22, 23, 29, 45, 53, 55, 56, 62, 68, 69, 71, 73, 81, 87, 98, 100, 105, 108, 111, 120, (122), 127, 138, 144, 146, 147, 163, 164, 166, 178, 179, 180, 181, 182
· 1 report not received: Convention No. (102)

Cambodia 11 reports requested

(Paragraph 45)

- 9 reports received: Conventions Nos. 13, 87, 98, 100, 105, 111, 122, 150, 182
- 2 reports not received: Conventions Nos. 29, 138

Central African Republic 14 reports requested

- All reports received: Conventions Nos. 13, 29, 62, 81, 88, 105, 119, 120, 122, 138, 142, 155, 158, 182

Congo 18 reports requested

(Paragraphs 36 and 45)

- 13 reports received: Conventions Nos. 14, 29, 81, 87, 89, 95, 98, 100, 111, 138, 144, 149, 150
- 5 reports not received: Conventions Nos. 13, 105, 119, 152, 182

Cyprus 11 reports requested

- All reports received: Conventions Nos. 29, 45, 81, 88, 105, 119, 138, 155, 159, 162, 182

Democratic Republic of the Congo 24 reports requested

(Paragraph 45)

- 19 reports received: Conventions Nos. 12, 19, 29, 62, 81, 87, 88, 89, 94, 98, 100, 102, 111, 117, 119, 121, 144, 158, 182
- 5 reports not received: Conventions Nos. 105, 120, 135, 138, 150

Denmark 20 reports requested

(Paragraph 45)

- All reports received: Conventions Nos. 27, 29, 81, 88, 105, 115, 119, 120, 129, 138, 139, 147, 148, 155, 159, 162, 167, 169, 180, 182

Ethiopia 13 reports requested

(Paragraph 45)

- All reports received: Conventions Nos. 2, 29, 88, 100, 105, 111, 138, 155, 156, 158, 159, 181, 182

Fiji 14 reports requested

(Paragraph 45)

- All reports received: Conventions Nos. 8, 29, 45, (81), 105, 138, (149), (155), 159, 169, (172), (178), 182, (184)

France 48 reports requested

- 47 reports received: Conventions Nos. 8, 13, 16, 22, 23, 27, 29, 53, 55, 56, 62, 68, 69, 71, 73, 74, 81, 88, 92, 96, 105, 106, 115, 120, 122, 127, 129, 133, 134, 136, 137, 138, 139, 145, 146, 147, 148, 149, 159, 163, 164, 166, 178, 179, 180, 182, (185)
- 1 report not received: Convention No. 97

France - French Southern and Antarctic Territories 18 reports requested

- All reports received: Conventions Nos. 8, 9, 16, 22, 23, 53, 58, 68, 69, 73, 74, 87, 92, 108, 133, 134, 146, 147

Greece 12 reports requested

- All reports received: Conventions Nos. 13, 29, 45, 62, 81, 88, 105, 115, 136, 138, 159, 182

Hungary 20 reports requested

(Paragraph 45)

- All reports received: Conventions Nos. 13, 24, 29, 81, 88, 105, 115, 127, 129, 136, 138, 139, 148, 155, 159, 161, 167, 181, 182, (185)

Islamic Republic of Iran 8 reports requested

- All reports received: Conventions Nos. 29, 100, 105, 108, 111, 122, (142), 182

Italy 22 reports requested

- All reports received: Conventions Nos. 2, 13, 29, 81, 105, 115, 119, 120, 122, 127, 129, 136, 138, 139, 143, 148, 159, 164, 167, 170, 181, 182

Kazakhstan 7 reports requested

- 4 reports received: Conventions Nos. 87, 98, 111, 144
- 3 reports not received: Conventions Nos. 100, 122, (167)

Lao People's Democratic Republic 4 reports requested

- 2 reports received: Conventions Nos. (100), (111)
- 2 reports not received: Conventions Nos. 4, 6

Luxembourg 50 reports requested

- 28 reports received: Conventions Nos. 2, 13, 81, 87, 88, 96, 98, 100, (115), (119), (120), (127), (129), (136), (139), (148), 150, 155, 159, (161), (162), (167), (170), (171), (174), (176), (183), (184)
- 22 reports not received: Conventions Nos. 8, 9, 16, 22, 23, 53, 55, 56, 68, 69, 73, 74, 92, 108, 111, 133, 146, 147, (149), 166, 178, 180

Malawi 13 reports requested

(Paragraph 45)

- All reports received: Conventions Nos. 29, 45, 87, 98, 100, 105, 111, 138, 144, 150, 158, 159, 182

Malta 31 reports requested

- All reports received: Conventions Nos. 2, 8, 13, 16, 22, 29, 32, 53, 62, 73, 74, 81, 87, 88, 96, 98, 100, 105, 108, 111, 119, 127, 129, 135, 136, 138, 147, 148, 159, 180, 182

Mongolia 8 reports requested

- 7 reports received: Conventions Nos. 87, 98, 100, 103, 122, 144, 155
- 1 report not received: Convention No. 111

Nigeria 25 reports requested

- 1 report received: Convention No. 87
- 24 reports not received: Conventions Nos. 8, 16, 19, 29, 32, 45, 81, 88, 94, 97, 98, 100, 105, 111, 123, 133, 134, 138, 144, 155, 178, 179, 182, (185)

Pakistan 17 reports requested

- All reports received: Conventions Nos. 11, 16, 22, 29, 45, 81, 87, 96, 98, 100, 105, 111, 138, 144, 159, 182, (185)

Panama 26 reports requested

- All reports received: Conventions Nos. 3, 8, 9, 16, 17, 22, 23, 30, 53, 55, 56, 68, 69, 71, 73, 74, 87, 88, 92, 98, 100, 108, 111, 122, 160, (167)

Papua New Guinea 14 reports requested

(Paragraph 45)

- All reports received: Conventions Nos. 2, 8, 22, 29, 45, 85, 87, 98, 100, 105, 111, 122, 138, 182

Slovakia 22 reports requested

(Paragraph 45)

- 13 reports received: Conventions Nos. 13, 87, 98, 100, 111, 115, 136, 144, 148, 155, 160, 182, 184
- 9 reports not received: Conventions Nos. 120, 122, 139, 159, 161, 163, 164, 167, 176

Slovenia

22 reports requested

- All reports received: Conventions Nos. 8, 9, 16, 22, 23, 53, 56, 69, 73, 74, 87, 91, 92, 97, 98, 100, 108, 111, 122, 143, 147, 180

Thailand

9 reports requested

- 8 reports received: Conventions Nos. 19, 29, 88, 100, 105, 122, 138, 182
- 1 report not received: Convention No. (159)

Tunisia

17 reports requested

(Paragraph 45)

- All reports received: Conventions Nos. 8, 16, 22, 23, 55, 73, 87, 88, 98, 100, 107, 108, 111, 118, 122, 127, 150

Turkey

34 reports requested

- All reports received: Conventions Nos. 29, 45, 53, 55, 68, 69, 73, 81, 87, 88, 92, 98, 100, 105, 108, 111, 115, 119, 122, 127, 133, 134, 135, 138, 144, 146, 151, 155, 158, 159, 161, 164, 166, 182

Uganda

25 reports requested

(Paragraph 36)

- 1 report received: Convention No. 162
- 24 reports not received: Conventions Nos. 11, 12, 19, 26, 29, 45, 81, 87, 94, 95, 98, 100, 105, 111, 122, 123, 124, 138, 143, 144, 154, 158, 159, 182

United Kingdom

23 reports requested

- All reports received: Conventions Nos. 8, 16, 22, 23, 56, 68, 69, 74, 87, 92, 98, 100, 108, 111, 122, 133, 144, 147, 150, 160, 178, 180, (187)

United Kingdom - Bermuda

10 reports requested

(Paragraph 45)

- All reports received: Conventions Nos. 16, 22, 23, 58, 82, 87, 98, 108, 133, 147

United Kingdom - Gibraltar

23 reports requested

- All reports received: Conventions Nos. 2, 8, 16, 22, 23, 29, 45, 58, 59, 81, 82, 87, 98, 100, 105, 108, 133, 135, 142, 147, 150, 151, 160

United Kingdom - St Helena

21 reports requested

(Paragraph 36)

- 17 reports received: Conventions Nos. 8, 10, 11, 12, 16, 17, 19, 29, 58, 59, 63, 82, 85, 87, 105, 150, 151
- 4 reports not received: Conventions Nos. 14, 98, 108, (182)

United States - Guam

6 reports requested

- All reports received: Conventions Nos. 53, 55, 58, 74, 144, 147

United States - Northern Mariana Islands

2 reports requested

- All reports received: Conventions Nos. 144, 147

Bolivarian Republic of Venezuela

14 reports requested

- All reports received: Conventions Nos. 22, 87, 98, 100, 102, 111, 118, 121, 122, 128, 130, 142, 144, 150

Grand Total

A total of 2,745 reports (article 22) were requested,
of which 2,122 reports (77.30 per cent) were received.

A total of 245 reports (article 35) were requested,
of which 194 reports (79.18 per cent) were received.

APPENDIX II. STATISTICAL TABLE OF REPORTS RECEIVED ON RATIFIED CONVENTIONS
AS OF 17 JUNE 2011
(ARTICLE 22 OF THE CONSTITUTION)

Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee of Experts		Reports received in time for the session of the Conference	
1932	447	-		406	90.8%	423	94.6%
1933	522	-		435	83.3%	453	86.7%
1934	601	-		508	84.5%	544	90.5%
1935	630	-		584	92.7%	620	98.4%
1936	662	-		577	87.2%	604	91.2%
1937	702	-		580	82.6%	634	90.3%
1938	748	-		616	82.4%	635	84.9%
1939	766	-		588	76.8%	-	
1944	583	-		251	43.1%	314	53.9%
1945	725	-		351	48.4%	523	72.2%
1946	731	-		370	50.6%	578	79.1%
1947	763	-		581	76.1%	666	87.3%
1948	799	-		521	65.2%	648	81.1%
1949	806	134	16.6%	666	82.6%	695	86.2%
1950	831	253	30.4%	597	71.8%	666	80.1%
1951	907	288	31.7%	507	77.7%	761	83.9%
1952	981	268	27.3%	743	75.7%	826	84.2%
1953	1026	212	20.6%	840	75.7%	917	89.3%
1954	1175	268	22.8%	1077	91.7%	1119	95.2%
1955	1234	283	22.9%	1063	86.1%	1170	94.8%
1956	1333	332	24.9%	1234	92.5%	1283	96.2%
1957	1418	210	14.7%	1295	91.3%	1349	95.1%
1958	1558	340	21.8%	1484	95.2%	1509	96.8%
<p style="text-align: center;">As a result of a decision by the Governing Body, detailed reports were requested as from 1959 until 1976 only on certain Conventions.</p>							
1959	995	200	20.4%	864	86.8%	902	90.6%
1960	1100	256	23.2%	838	76.1%	963	87.4%
1961	1362	243	18.1%	1090	80.0%	1142	83.8%
1962	1309	200	15.5%	1059	80.9%	1121	85.6%
1963	1624	280	17.2%	1314	80.9%	1430	88.0%
1964	1495	213	14.2%	1268	84.8%	1356	90.7%
1965	1700	282	16.6%	1444	84.9%	1527	89.8%
1966	1562	245	16.3%	1330	85.1%	1395	89.3%
1967	1883	323	17.4%	1551	84.5%	1643	89.6%
1968	1647	281	17.1%	1409	85.5%	1470	89.1%
1969	1821	249	13.4%	1501	82.4%	1601	87.9%
1970	1894	360	18.9%	1463	77.0%	1549	81.6%
1971	1992	237	11.8%	1504	75.5%	1707	85.6%
1972	2025	297	14.6%	1572	77.6%	1753	86.5%
1973	2048	300	14.6%	1521	74.3%	1691	82.5%
1974	2189	370	16.5%	1854	84.6%	1958	89.4%
1975	2034	301	14.8%	1663	81.7%	1764	86.7%
1976	2200	292	13.2%	1831	83.0%	1914	87.0%

Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee of Experts		Reports received in time for the session of the Conference	
As a result of a decision by the Governing Body (November 1976), detailed reports were requested as from 1977 until 1994, according to certain criteria, at yearly, two-yearly or four-yearly intervals.							
1977	1529	215	14.0%	1120	73.2%	1328	87.0%
1978	1701	251	14.7%	1289	75.7%	1391	81.7%
1979	1593	234	14.7%	1270	79.8%	1376	86.4%
1980	1581	168	10.6%	1302	82.2%	1437	90.8%
1981	1543	127	8.1%	1210	78.4%	1340	86.7%
1982	1695	332	19.4%	1382	81.4%	1493	88.0%
1983	1737	236	13.5%	1388	79.9%	1558	89.6%
1984	1669	189	11.3%	1286	77.0%	1412	84.6%
1985	1666	189	11.3%	1312	78.7%	1471	88.2%
1986	1752	207	11.8%	1388	79.2%	1529	87.3%
1987	1793	171	9.5%	1408	78.4%	1542	86.0%
1988	1636	149	9.0%	1230	75.9%	1384	84.4%
1989	1719	196	11.4%	1256	73.0%	1409	81.9%
1990	1958	192	9.8%	1409	71.9%	1639	83.7%
1991	2010	271	13.4%	1411	69.9%	1544	76.8%
1992	1824	313	17.1%	1194	65.4%	1384	75.8%
1993	1906	471	24.7%	1233	64.6%	1473	77.2%
1994	2290	370	16.1%	1573	68.7%	1879	82.0%
As a result of a decision by the Governing Body (November 1993), detailed reports on only five Conventions were exceptionally requested in 1995.							
1995	1252	479	38.2%	824	65.8%	988	78.9%
As a result of a decision by the Governing Body (November 1993), reports are henceforth requested, according to certain criteria, at yearly, two-yearly or five-yearly intervals.							
1996	1806	362	20.5%	1145	63.3%	1413	78.2%
1997	1927	553	28.7%	1211	62.8%	1438	74.6%
1998	2036	463	22.7%	1264	62.1%	1455	71.4%
1999	2288	520	22.7%	1406	61.4%	1641	71.7%
2000	2550	740	29.0%	1798	70.5%	1952	76.6%
2001	2313	598	25.9%	1513	65.4%	1672	72.2%
2002	2368	600	25.3%	1529	64.5%	1701	71.8%
2003	2344	568	24.2%	1544	65.9%	1701	72.6%
2004	2569	659	25.6%	1645	64.0%	1852	72.1%
2005	2638	696	26.4%	1820	69.0%	2065	78.3%
2006	2586	745	28.8%	1719	66.5%	1949	75.4%
2007	2478	845	34.1%	1611	65.0%	1812	73.2%
2008	2517	811	32.2%	1768	70.2%	1962	78.0%
2009	2733	682	24.9%	1853	67.8%	2120	77.6%
2010	2745	861	31.4%	1866	67.9%	2122	77.3%

**APPENDIX III. STATISTICAL INFORMATION SUPPLIED BY THE GOVERNMENT OF SAUDI ARABIA
ON THE APPLICATION OF THE LABOUR INSPECTION CONVENTION, 1947 (No. 81)**

Measures taken by inspectors, for each office 1430 H-1431H (2009–10)

Office	No infringement	Advice and guidance	Warning with a commitment	Written warning	Violations reported	Total	2008/2009 1429-1430 H	%
Riyadh	368	1 593	49	8	283	2 301	1 802	27
Al Kharj	192	47	134	12	5	390	384	1
Bareeda	617	2 929	202	44	79	3 871	3 088	25
Dammam	1 367	4 917	1 238	229	65	7 816	5 576	40
Rass Tanoura	77	779	0	0	8	864	884	-2
Al Jubail	298	1 411	12	161	185	2 067	901	129
Beqiq	1 639	90	8	12	7	1 756	1 229	42
Al Ehsaa	540	2 356	337	178	162	3 573	2 743	30
Jeddah	147	603	10	638	20	1 418	1 340	5
Al Madinah	95	2 542	520	831	140	4 128	2 622	57
Abha	0	3 228	105	476	306	4 115	3 523	16
Al Taif	8	1 001	46	9	34	1 098	505	117
Mecca	11	2 923	33	24	42	3 033	2 574	17
Yanbaa	22	2 167	27	259	1	2 476	1 449	70
Al Khobar	20	2 061	63	20	27	2 191	1 341	63
Tabuk	1 559	148	8	64	124	1 903	828	129
Hail	884	488	27	30	7	1 436	706	103
Najran	20	1 714	3	3	7	1 747	825	111
Hafr Al Batten	17	843	128	67	1	1 056	653	61
Al Baha	771	1 745	7	707	13	3 243	2 496	29
Baysh	1	1 222	41	0	6	1 270	837	51
Jizan	33	580	15	191	121	940	492	91
Al Khafji	1 390	6	0	0	0	1 396	1 093	27
Arar	436	84	145	8	6	679	352	92
Sakaka	35	320	13	106	18	492	145	239
Al Ras	322	815	16	335	1	1 489	670	122
Onaizah	240	1 195	245	78	1	1 759	785	124
Al Mujamaa	160	813	0	52	0	1 025	587	74
Al Douademi	84	534	55	186	5	864	732	18
Al Qurayyat	4	1 177	42	151	8	1 382	771	79
Shaqraa	260	495	3	59	0	817	561	45
Al Zalfi	289	226	0	0	0	515	522	-1
Al Ala	13	509	19	73	36	650	307	111
Wadi Al Dawasir	108	699	104	11	107	1 029	871	18
Al Qunfeza	201	1 309	90	37	26	1 663	1 032	61
Al Wajh	129	627	23	1	1	781	672	16
Tareef	36	428	17	23	7	511	361	41
Total	12 393	44 624	3 785	5 083	1 859	67 744	46 259	46

Comparative statistics

Years	Sums of fines
1429/2008	1 990 000
1430/2009	8 321 494
1431/2010	7 359 300

No.	Labour office	No. of inspectors	Comprehensive visit	Special visit	Follow-up visit	Specialized visit	Total	Year 1429/1430H	%
1.	Riyadh region	19	1 499	6 237	12	15	7 763	6 503	21
2.	Al Kharj governorate	2	775	178	33	4	990	839	17
3.	Al Quseym region	9	3 350	192	395	119	4 056	4 113	-1
4.	Al Sharqiyah region	24	3 068	7 448	614	46	11 176	8 195	36
5.	Rass Tanoura governorate	2	454	503	204	0	1 161	1 485	-27
6.	Al Jubail governorate	8	1 751	101	383	32	2 267	965	134
7.	Beqiq governorate	3	855	897	9	0	1 761	1 270	38
8.	Al Ehsaa governorate	8	1 797	1 860	423	0	4 080	3 450	18
9.	Jeddah governorate	18	4 583	2 261	58	0	6 902	4 413	56
10.	Al Madinah region	7	3 167	200	838	1	4 206	2 851	46
11.	Aseer region	9	3 368	30	586	136	4 120	4 066	1
12.	Al Taif governorate	4	440	685	23	0	1 148	540	112
13.	Mecca region	9	2 540	87	351	63	3 041	2 806	8
14.	Yanbaa governorate	8	2 081	49	383	1	2 514	1 770	42
15.	Al Khobar governorate	5	714	1 904	61	103	2 782	1 587	75
16.	Tabuk region	8	1 395	531	378	83	2 387	2 196	8
17.	Hail region	3	1 260	226	47	5	1 538	896	71
18.	Najran region	3	1 570	210	0	0	1 780	897	98
19.	Hafr El Batten governorate	3	1 118	0	0	0	1 118	884	26
20.	Al Baha region	7	1 764	736	750	0	3 250	2 592	25
21.	Baysh governorate	3	681	424	206	0	1 311	848	54
22.	Jizan region	4	827	103	116	69	1 115	486	129
23.	Al Khafgee governorate	4	490	915	0	0	1 405	1 162	20
24.	Northern frontier region	2	786	145	23	0	963	712	35
25.	Al Jouf region	2	378	0	114	0	492	292	68
26.	Al Rass governorate	3	913	24	562	0	1 499	727	106
27.	Onaizah region	3	1 421	3	341	45	1 810	904	100
28.	Al Mujamaa region	4	744	222	72	2	1 040	629	65
29.	Al Douademi governorate	2	353	0	334	0	687	761	-10
30.	Al Qurayyat governorate	4	1 077	127	378	0	1 582	980	61
31.	Shaqraa governorate	2	530	0	291	0	821	580	41
32.	Al Zalfi governorate	2	471	0	46	0	517	597	-15
33.	Al Ala governorate	2	479	12	177	2	670	481	39
34.	Wadi Al Dawasir governorate	3	899	12	235	0	1 146	1 062	7
35.	Al Qunfeza governorate	7	1 950	285	219	26	2 480	1 720	44
36.	Al Wajh governorate	2	466	143	291	0	900	769	17
37.	Tareef governorate	2	514	2	186	0	702	374	87

No.	Labour office	No. of inspectors	Comprehensive visit	Special visit	Follow-up visit	Specialized visit	Total	Year 1429/1430H	%
Women's units	Women's unit in the labour office in the Riyadh region		985	36	136	0	1 157	203	469
Idem	Women's unit in the labour office in the Sharqiyah region		325	14	419	9	767	477	60
Idem	Women's unit in Jeddah governorate		588	143	99	87	917	592	54
Idem	Women's unit in the Aseer region		20	0	7	0	27	0	17
Total		210	52 446	26 954	9 800	848	90 048	66 674	35

Year	Number of inspection visits	Number of inspectors
1425/1426 H (2005)	46 449	147
1426/1427 H (2006)	41 767	135
1427/1428 H (2007)	47 349	148
1428/1429 H (2008)	55 185	204
1429/1430 H (2009)	66 674	197
1430/1431 H (2010)	90 048	210

**APPENDIX IV. STATISTICAL TABLE SUPPLIED BY THE GOVERNMENT OF HONDURAS AS PART OF ITS WRITTEN
INFORMATION ON THE APPLICATION OF THE EMPLOYMENT POLICY CONVENTION, 1964 (No. 122)**

Trends in the principal labour market variables, by economic activity

Categories	EAP		Employed		Unemployment		Visible underemployment		Invisible under-employment	
	2009	2010	2009	2010	2009	2010	2009	2010	2009	2010
National total	3 236 860	3 387 717	3 135 564	3 253 980	101 296	133 737	134 092	249 509	1 127 936	1 061 702
Branch of activity										
Agriculture, forestry, hunting and fishing	1 167 996	1 231 932	1 161 821	1 221 866	6 175	10 066	40 301	90 931	538 074	499 166
Mining and quarries	8 200	7 051	8 136	6 820	64	231	325	642	3 357	2 742
Manufacturing	433 026	429 120	411 533	410 957	21 493	18 163	18 658	29 369	137 389	125 282
Electricity, gas and water	11 903	17 074	11 778	16 784	125	290	250	158	2 099	2 056
Construction	217 512	183 512	205 810	167 686	11 702	15 826	6 746	11 878	95 298	72 887
Wholesale, retail, hotels and catering	714 361	769 804	692 817	743 388	21 544	26 416	31 393	54 314	194 043	197 594
Transport, storage and communications	108 230	118 194	104 538	114 362	3 692	3 832	3 053	7 128	25 714	26 537
Financial institutions, insurance and property	100 761	111 901	95 443	106 976	5 318	4 925	2 034	6 293	18 323	16 068
Municipal, social and personal services	453 594	461 629	441 984	442 683	11 610	18 946	31 332	46 380	113 338	111 191
Do not know, no answer	2 078	31 557	1 704	22 458	373	9 099	–	2 416	300	8 180
Seeking work for the first time	19 200	25 943	–	–	19 200	25 943	–	–	–	–

Source: National Institute of Statistics (INE). Continuous Multi-purpose Household Survey, May 2009 and 2010.

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Bahamas

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Part Two: I A (c)

Bahrain

Part One: General report, para. 152
Part Two: II (a)

Bangladesh

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Belarus

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Belize

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Burkina Faso

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Burundi

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Cambodia

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Part Two: III (a)

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Chad

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Comoros

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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 recalled that the 310th Session of the Governing Body had welcomed the positive developments in Myanmar as well as the extension of the Supplementary Understanding trial period for a further 12 months. He explained that it had been extended during the visit of the Executive Director's mission in February 2011. He stressed that it was important to highlight that the ILO mission was the only foreign mission that the authorities had received during the period in which the new Parliament was in session, with a view to extending the Supplementary Understanding and to seeking advice on the draft legislation on workers' organizations. During this mission, the members had met the Minister of Labour, the Government Working Group for the Elimination of Forced Labour, the Government Working Group for Anti-Human Trafficking and the Government Human Rights Body. These discussions had brought the mutual understanding and cooperation between Myanmar and the ILO to another level. Receiving the mission reflected the political will and commitment of the Government to the cooperation with the ILO.

He referred, as one of the concrete measures to implement Convention No. 29, to the ongoing preparation of a draft legislation to amend the Village Act and the Towns Act of 1907 by a drafting committee headed by the Union Minister of Home Affairs. The draft law explicitly prohibited forced labour and included exceptions in the case of natural disasters. This draft law would be submitted to *Pyidaungsu Hluttaw* (Parliament). Supplementing orders, directives and procedures would be issued as necessary. He informed that the drafting of a law for the formation of workers' organizations was also under way in close cooperation with the ILO. He believed the draft law would be promulgated by the Parliament in the very near future. Turning to the Constitution of 2008, he indicated that since it had been approved by 92.48 per cent of the people's votes, it was impossible, at this juncture, to amend its provisions. However, the draft legislation would provide for provisions effectively outlawing forced labour practices, thereby bringing the legal framework in line with Convention No. 29.

His Government believed that advocacy played a very important role in eliminating forced labour in the country. In this regard, he stated that a total of ten regional workshops had been held to date since 2008. He stressed that they had been held not only in mainland Myanmar, but also in ethnic minority regions like Kachin, Karen, Shan and Chin States. Civil and military authorities and officials from relevant local government ministries had also taken part in these workshops. Since May 2010, a total of 35 training and awareness-raising activities for various stakeholders had been successfully held.

These activities had generated better awareness on the issue among the public and had resulted in an increase in the number of complaints. The Liaison Officer had indicated in his report that this trend should not be construed as an increase in the use of forced labour. In order to cope with the increased workload, it had been made clear to the Liaison Officer that he had the liberty to employ local staff.

As part of the proactive approach, the budget to cover labour costs in government projects had been allocated to all ministries. The allocated funds were spent for the purpose of minimizing the risk of unpaid labour in government projects.

He referred to the complaints on under-age recruitment had been dealt with, on a priority basis, by the Government Working Group and its respective committees. Acting on the complaints received through the ILO complaints mechanism, a total of 120 recruits had been allowed to resign from military service and 13 had been

released from prisons. As regards enforcement measures against under-age recruitment, five military officers and five other ranks had been dismissed and sentenced to prison terms. Disciplinary action had also been taken against 20 officers and 110 other ranks in the military. It was evident that action would be taken against any perpetrator, civilian or military on forced labour and under-age recruitment. He added that some complaints had been filed directly to the military authorities and they had been handled with the same priority and measures taken. The local military authorities had also settled 22 land disputes.

His Government believed that progress had been achieved on the observance of Convention No. 29, which had been made possible in close cooperation with the ILO, in particular the Liaison Officer. He highlighted that Myanmar never lost sight of the goal of eliminating any form of forced labour practice, even at a time of important political transition in the country. He indicated that the Government would strengthen its cooperation with the ILO to achieve this shared goal.

The Employer members noted the political changes since the last time this Committee examined the case. They hoped that the absence of a military-controlled government and the new parliament, which included representatives of ethnic parties and parties not aligned to the previous Government, would lead to an environment in which the Government could finally put an end to the scourge of forced labour. Since last year, small positive steps had been undertaken consisting of the release of Aung San Suu Kyi, the opening up of the censorship rules, the Presidential advisory committees on economic, legal and general policy and the acceptance of the principle of finance and planning for public works. Fundamentally, however, the situation remained unchanged given that the Government still had not implemented the recommendations of the 1998 Commission of Inquiry. It was particularly disappointing that the recent change in government had not resulted in perceptible change that would have suggested that the tactics of stall and delay of the prior Government belonged to the past. The Employer members had expected a longer statement by the Government of Myanmar providing more concrete information, in particular on the legislative amendment.

Unconditional, proactive, political will need to be demonstrated through concrete actions, the timing and urgency of which was as important as the actions themselves. In order to demonstrate that the elimination of forced labour was an attainable reality, the Employer members urged that the Government: (1) approve visas for additional ILO staff; (2) allow the ILO to help it address forced labour in the military; and (3) open a broader discussion and plan of action with the ILO on worker rights. While welcoming the activities of the ILO Liaison Office, the workload had increased and the Office was understaffed due to the rise in the number of complaints. Yet, the Government continued to resist approving visas to enhance the capacity of the Liaison Office. Substantial problems with respect to the elimination of forced labour both in law and practice persisted. There were ongoing concerns relating to the intimidation, harassment and imprisonment of complainants. The military recruitment of minors was presumptively forced labour and had to be included under the Liaison Officer's mandate and the complaints mechanism. The most recent submissions of the International Trade Union Confederation (ITUC) and the Federation of Trade Unions-Kawthoolei (FTUK) containing 94 Order letters from military and other authorities requisitioning compulsory and uncompensated compulsory labour from January 2009 to June 2010 as well as last year's submission to the Committee of Experts appeared to constitute conclusive evidence of the continued

systematic imposition of forced labour by military and civil authorities throughout the country.

Through its Working Group for the Elimination of Forced Labour, the Government of Myanmar continued to respond in a reasonably timely manner to complaints that had been lodged under the Supplementary Understanding. The Working Group had responded positively to proposals to broaden the scope of training and awareness-raising activities. The Government reported that the Working Group had completed 80 per cent of the amendments to the Village Act and Towns Act in order to bring it into conformity with Convention No. 29. However, the Employer members asked the Government to clarify their statement which seemed to indicate that there was a conflict between these amendments and the new Constitution. He also asked when the legislative amendments would become effective. The Employer members underlined the importance of a joint Working Group meeting with the Government finance and planning ministries to discuss budgeting and financial allocation. Sound macroeconomic policies and budgeting was needed to ensure sufficient funds to pay wages. The Employer members asked the Government as to the date of this meeting and whether the ILO Liaison Officer could provide input on the draft agenda for the meeting.

The Employer members remained concerned with the difficulties to get satisfactory conclusions regarding complaints that alleged forced labour by the military, as well as with the continued alleged harassment of complainants, particularly farmers, facilitators, their legal counsels and relatives. While welcoming the publication of a simply worded brochure to explain the law, the Supplementary Understanding and the procedure to file a complaint in one language, the Employer members asked when this brochure would be available in all languages. There still appeared to be a total absence of prosecutions against military officers in connection with forced labour, which suggested a lack of real commitment to eliminate forced labour. Although 20 persons imprisoned for activities which were related to procedures under the Supplementary Understanding had been released, four persons remained in prison and two lawyers who were active supporters of the Supplementary Understanding procedures lost their legal licenses after being released from prison.

The progress so far was limited. Fundamentally, the Employer members still observed a lack of fundamental civil liberties, 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. A climate of fear and intimidation of citizens persisted. These were the root causes of forced labour, but also for trafficking and recruitment of minors in the military, child labour, child soldiers, discrimination and the absence of freedom of association. The Employer members recalled the three areas identified by the Committee of Experts in this year and last year's observation in which measures should be taken by the Government to implement the recommendations of the Commission of Inquiry. The number of complaints was still low indicating that citizens may not have adequate access nor feel free to file complaints. The Employer members argued that forced labour in Myanmar had to be addressed holistically. Therefore, the Government Working Group should also receive complaints of trafficking in humans for forced labour and not refer those cases to the Ministry of Home Affairs, as had been done so far.

The new Constitution contained specific articles on freedom of association, freedom of expression and the right to organize, but the article banning the use of forced labour contained qualifications which raised questions of its conformity with Convention No. 29. The ILO tripartite constituency unanimously had called on the Government of Myanmar to apply the provisions of Convention No. 29

both in law and in practice and to put an end to the intolerable climate of impunity. The Employer members urged the Government once and for all to provide full and detailed information to the Committee as a clear and unequivocal sign of willingness to cooperate genuinely with the supervisory bodies. Transparency and collaboration with the Liaison Officer and the Committee of Experts was essential to addressing the issues at stake. The Supplementary Understanding in no way relieved the Government of its obligations to abolish forced labour. They urged the Government to make substantial tangible improvements in its national legislation and to provide sufficient funds so that paid labour replace forced labour both in civil and military administration to demonstrate the unambiguous willingness of the Government against forced labour.

The Worker members expressed their regret that, although there had been a number of political changes in the country in November 2010, nothing had altered in Burma/Myanmar as far as the forced labour situation was concerned. In its annual report, the ITUC had stated that there were more instances of forced labour than ever in virtually all the country's states and divisions. The forced labour was directly linked to the army (portering, construction and compulsory enlistment of children) or, more generally, to agriculture, construction, road maintenance and other infrastructural work. The reports from the Federation of Trade Unions of Burma (FTUB) and the FTUK added that, to avoid possible complaints, some military personnel signed their forced labour orders under a false name or simply refused to sign. The increase in the number of complaints concerning forced labour, which had also been noted by the ILO Liaison Officer, often coincided with the confiscation of agricultural land. Some crops were actually imposed on the growers, and the profit from the higher land rental charges went to the military, other commercial interests or big private enterprises. The number of complainants who were still in prison was unacceptable.

The Worker members stressed that the United Nations Special Rapporteur on the situation of human rights in Myanmar had stated that the political, military and judicial authorities at every level were implicated in the violation of human rights, including the imposition of forced labour. The growing number of displaced persons and migrants in Thailand, Malaysia and other countries was further proof of the extent of forced labour. As to the follow-up to the comments of the Committee of Experts, the Worker members noted that, although the Village Act and the Towns Act were supposedly being revised, there was no change in the most recent Constitution, article 359 of which authorized "labour imposed by the State in the interests of the people, in accordance with the law". Moreover, although the extent of forced labour by the civil authorities was said to have declined to a certain extent, its use by the military throughout the country was still a matter of concern. Furthermore, although a simple leaflet had been prepared explaining the law as it related to forced labour and the possibility of appealing against it, it had not been translated into all the local languages. Finally, there was still no budget allocation for replacing forced labour, and known instances of its imposition were still not punished but treated instead as mere administrative or disciplinary concerns. To sum up, they deplored the fact that the Government had not yet implemented the recommendations adopted by the Commission of Inquiry 13 years ago, and they therefore felt that it was time to revive the ILO's initiatives and activities under the resolution that was adopted in 2000.

The Government member of Hungary, speaking on behalf of the Governments of Member States of the European Union (EU) attending the Conference, as well as the Candidate Countries (Turkey, Croatia, The former Yugoslav Republic of Macedonia, Montenegro and Iceland),

potential Candidate Countries (Albania, Bosnia and Herzegovina, and Serbia), Ukraine and the Republic of Moldova, expressed deep concern about the critical situation of human rights in Burma/Myanmar and regretted that the elections in 2010 had not been free or fair and that the authorities were yet to demonstrate substantive evidence of positive change. She indicated that the EU was nevertheless willing to respond to progress in Burma/Myanmar. In this connection, she welcomed the prolongation of the Supplementary Understanding in February 2011. She also acknowledged the efforts made by the Government, particularly in the field of awareness raising, cooperation in the functioning of the complaints mechanism and in the release of under-age recruits from the military. She, however, indicated that despite these positive developments, the recommendations of the Commission of Inquiry were not yet fully implemented, and that the use of forced labour remained widespread. She expressed the hope that as the review of the Village Act and the Towns Act was in progress, these acts would be amended or repealed as soon as possible in order to bring the legislation into full conformity with the Convention. She also urged the Government to amend section 359 of Chapter VIII of the Constitution, which exempted from the prohibition of forced labour "duties assigned by the Union in accordance with the law in the interest of the public".

As regards forced and compulsory labour which continued to be exacted from local villagers by military and civil authorities throughout the country, she urged the Government to continue and expand its awareness-raising activities to ensure the prohibition of forced labour is widely known and applied in practice, and to ensure the strict enforcement of penalties for the exaction of forced labour under the Penal Code against civil and military authorities. In relation to the commitment expressed by the Government to establish a democratic government, she urged the Government to release unconditionally all those detained for their political convictions, to demonstrate respect for human rights and fundamental freedoms, and to establish an inclusive dialogue with all opposition and ethnic groups, including Aung San Suu Kyi and the National League for Democracy.

Turning to the UN mechanisms, she urged the Government to comply, as a matter of priority, with Resolution 16/24 of the UN Human Rights Council to establish an independent investigation into reported serious human rights violations, including the use of forced labour. Reiterating that involving children in armed conflicts is one of the worst forms of child labour, she encouraged the Government to cooperate with the UN on the protection of children from recruitment and use by armed forces, and on the full rehabilitation and reintegration of children affected by armed conflicts. Particular concern was also raised about the ongoing conflicts in ethnic areas, including Shan and Karen States and, in this connection, she urged the authorities to exercise constraint and look to a political solution and national reconciliation. She regretted that despite the request by Mr Vijay Nambiar, the UN Secretary-General's Special Adviser to Myanmar, the Special Rapporteur had not been permitted to visit the country and, therefore, called on the Government to provide an opportunity for the Special Rapporteur at the earliest possible date to make a first-hand assessment of the performance of the new administration.

To resolve the serious and long-standing problem of forced labour, she indicated that the EU urged the Government to take all the long overdue steps to achieve compliance with the Convention. She expressed the appreciation for the tireless work of the Liaison Officer in assisting the authorities concerned to implement fully Convention No. 29, and encouraged them to further strengthen their cooperation with the Liaison Officer.

The Worker member of Sweden presented a case of land confiscation and forced labour. She explained that since December 2009, a number of companies with ties to the military regime confiscated the farmland of the local farmers of Sis-sa Yan village of the Kanma township. The farmers sent petitions to the authorities to look into the case but received no reply. On the contrary, they were attacked and detained by officials from the military-owned companies and local authorities. The workers from the companies that confiscated the farmland started to build a motorway through the farmland of Sis-sa Yan village as well as offices for a planned factory. The representatives of the farmers then lodged a complaint to the Kanma criminal court but it was rejected. Several of the farmers who had lodged complaints were illegally detained and prevented from seeing their families or getting access to medical treatment. They were also charged by the authorities for fabricated crimes. The court in fact handed down heavy sentences of ten to 12 years of jail to five of the farmers.

The Government member of New Zealand speaking also on behalf of the Government of Australia, paid tribute to the continued dedication of the ILO Liaison Officer and his team in promoting the observance of Convention No. 29 by the Government of Myanmar. The increased activity under the complaints mechanism was a positive trend and indicated that the proactive awareness-raising approach taken by the Liaison Officer was working and demonstrated the growing confidence of the people of Myanmar in exercising their rights. The speaker noted the recent encouraging statements made by the Government of Myanmar as regards the need for good governance and accountability in national policies and the Government's commitment to the elimination of forced labour. Practical steps undertaken included the renewal of the Supplementary Understanding earlier this year, as well as the agreement to broaden the scope of awareness-raising activities, including the publication of a brochure on citizens' rights under the Supplementary Understanding in both the Myanmar and Shan languages. While positive, these encouraging steps highlighted the need for sustained, proactive action by the Government of Myanmar, in partnership with the ILO Liaison Office, to address and to eliminate forced labour. Incremental progress however did not suffice and forced labour by the military remained a persistent problem. It was key to address the weakness of macroeconomic governance and problems caused by the application of the economic self-sufficiency policy by the military which were the root causes of forced labour. She urged the Government to seek the technical assistance of the ILO in improving its policy frameworks and to ensure direct communication on military forced labour issues between the Government Working Group, the ILO and relevant authorities. In order for the Liaison Office to fulfil its mandate, appropriate resourcing was imperative and the Government was called on to facilitate the visa required for a new staff member to start working immediately. True and meaningful progress on the issue of forced labour could only be made if the very grave issue of incarceration and reprisal for association with the complaints mechanism was addressed. She welcomed the unconditional release of Aung San Suu Kyi in November 2010, but called on the Government to immediately release all political prisoners, including those incarcerated for their association with the ILO complaints mechanism.

The Worker member of the Philippines stated that various forms of human rights violations, including forced labour and extortion, had been widely practiced since early January 2011 by the military troops and the Border Guard Force in Karen State with a view to forcing the villagers to transport rations and military supplies necessary to set up more military positions and to launch military offensives in the hill region to control the whole area. Currently, the people of Toungoo district and Kler Lwee

Htu were victims of forced labour because the area was close to the Nay Pyi Daw capital. He cited examples of cases of forced labour exacted by the military and the Border Guard Force in villages such as Shwe O, Mae Pary Kee, Shan Zee Bo, Tan Ta Bin, Tha Pyi Nyut and Klor Mee Der in January 2011. He stated that forced labour continued in most states of the country and that only the recognition of freedom of association, the liberation of labour activists and other prisoners of conscience and the change of Constitution could lead to effective democracy and to the eradication of forced labour in the country. He called on the Government to adopt immediate measures to stop forced labour and other human rights crimes, and also on other governments, employers and international institutions to adopt strict policies for ensuring the promotion of democracy, rule of law and social justice in the country. He finally called on the ILO to strengthen its activities in collaboration with other organizations in this endeavour.

The Government member of the United States commended the unwavering commitment and excellent work of the ILO, in particular the Liaison Officer and his team, who often faced difficult circumstances in carrying out their critical mandate. They had proven time and again the value of the ILO's presence in Burma, and she hoped that the Liaison Office would soon be sufficiently strengthened to respond to its ever increasing workload. She noted several changes in Burma since last year, and in particular the fact that the Supplementary Understanding had been extended for an additional year; the number of complaints lodged under this Supplementary Understanding had continued to increase; significant awareness-raising and training activities had been undertaken, including progress in translating the information brochure on forced labour into local languages; and draft legislation was apparently being prepared. While her Government welcomed these developments, it encouraged the Government to continue and increase its efforts in these areas. Notwithstanding these positive steps, she also insisted on the fact that forced labour was still prevalent in Burma and that the Government had not yet implemented the recommendations of the Commission of Inquiry. Recalling the clear and unequivocal recommendations of the Commission of Inquiry, she noted that much remained to be done on an urgent basis. The Government had an obligation to eliminate completely and permanently the use of forced labour by developing and enforcing strong laws and regulations and by effectively promoting awareness of fundamental worker rights among the entire population. The Government should therefore avail itself of the ILO's technical assistance to achieve the necessary results. She noted that the ILO could provide important advice to the Government with regard to budgeting adequate means for the replacement of forced or unpaid labour. Finally, she reiterated the long-standing commitment of her Government to stand steadfastly with the Burmese people who aspire for a peaceful, prosperous and democratic nation that respects human rights and the rule of law. She hoped that recent developments would result in a genuine, open and inclusive dialogue leading to a lasting solution to the problem of forced labour.

An observer representing the Federation of Trade Unions of Burma (FTUB) explained that while providing training in Burma on basic trade union rights and democratic principles, he had met numerous people who had been forced to work as military porters, carrying ammunition and food. On 30 May 2011, ten people were conscripted as military porters by the Light Infantry Battalion No. 563 in Three Pagodas Pass near the Thai-Burma border. The FTUK reported that in May 2011, over 4,000 people were forced into labour for the Border Guard Force, the junta's Karen proxy army. These were not one-time instances, but formed part of a persistent pattern of violations. According to the ILO, 630 cases of child soldiers were re-

ported in 2010 and 157 victims of under-age recruitment were returned home. Despite ILO efforts, child soldier conscription still continued and political will at the highest level was needed to change the practice on the ground. The release of children had encouraged the families of conscripted children to reach out to the ILO, although fear of retaliation remained. Increased land confiscation by the military, either for new garrisons or business ventures, made people lose their income and caused confrontations. Regardless of the declarations of a successful representative election and changes in the political landscape, the actual situation on the ground remained the same. The speaker had personally witnessed that no elections had been held in 155 villages of Karen state and the people were denied the right to vote. Many areas in Mon state, Shan state (ten townships), Kachin state (63 village tracts) and Kayah state were denied the right to vote. The junta itself had declared that the recent elections did not cover the whole country. Although some might welcome the referendum, the elections, the Constitution and the new Government, the denial of citizens, prisoners, monks and Aung San Suu Kyi of their right to vote and to be elected should be considered by the world as a violation of international electoral standards. Forced labour continued to take place in the areas where no elections were held and more efforts from the ILO Liaison Office were needed in these areas. The ILO should discuss with other UN agencies that participated in the 19 training sessions to help the ILO, thus widening the scope of its activities. The recommendations made by the Commission of Inquiry had not been implemented, in particular the following measures: issuing specific and concrete instructions to the civilian and military authorities; ensuring that the prohibition of forced labour is given wide publicity; providing for the budgeting of adequate means for the replacement of forced or unpaid labour; and ensuring the enforcement of the prohibition of forced labour. Although positive, the Supplementary Understanding was not sufficient to meet the recommendations of the Commission of Inquiry. The junta should not be allowed to hide behind this Understanding, but should implement the recommendations of the Commission of Inquiry or face the consequences at the Governing Body meeting in November 2011.

The Government member of Japan expressed his Government's appreciation for the ILO's work to improve the situation of forced labour through its active engagement on the ground, as a result of which some positive developments had been seen. His Government welcomed the resolve of the Government of Myanmar to further advance the elimination of forced labour in cooperation with the ILO under the Supplementary Understanding, as well as its commitment to amend the provisions of the Village Act and the Towns Act of 1907 to achieve compliance with Convention No. 29, the draft of which was expected to be submitted to Parliament before the end of the year. The Government was urged to accept ILO technical assistance on this matter. His Government welcomed that the distribution of simply worded brochures explaining the complaints mechanism had been effective, and that the Government had recently agreed that the brochures should be translated into other local languages. He noted the view of the Commission of Inquiry that a significant cause of the use of forced labour lay in the weakness of macroeconomic governance and policy application, particularly with respect to budgeting and corresponding financial allocations. He expressed the hope in this regard that the Government and the ILO would hold close consultations, including joint discussions with appropriate finance and planning ministries as suggested. While progress could be observed with regard to under-age recruitment into the armed forces, his Government was concerned about the continued use of forced labour by the military and persons who continued to be detained due to their association with the complaints mechanism. He

urged the Government to take serious measures to ensure that persons were in no way disadvantaged based on this association. Finally, he indicated that as awareness of the complaints mechanism grew, an increasing number of complaints were being received. In this regard, he urged the Government to respond swiftly and positively to the requests of the ILO to meet the increasing workload of the Liaison Office, such as the issuance of visas for additional international staff.

The Worker member of Italy called on the Office to work on the recommendation of the Commission of Inquiry that the Government of Burma should make the necessary budget allocations so that workers are freely contracted and adequately remunerated. This crucial recommendation could be fulfilled if the Burmese government had the political will to avoid misuse of foreign direct investment; to resolve the problem of tax extortion, lack of accountability, corruption and illicit capital export as denounced by the United Nations Development Programme; and to shift public resources from the defence sector to public works. In this regard, she denounced several initiatives to build military-related installations and import military equipment and recalled that, in November 2010, the United Nations Security Council had denounced shipments of nuclear technology and military equipment from North Korea to Burma.

She called for the recently confirmed European Union restrictive measures towards Burma to be accompanied by adequate monitoring procedures. Denouncing several recent business-related initiatives by European companies and pension funds, she called on the European Union and the relevant governments as well as companies to implement the new United Nations Guiding Principles on Business and Human Rights. She also called on companies investing in Burma to comply with the Guidelines for Multinational Enterprises and with the Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas adopted by the Organization of Economic Co-operation and Development (OECD). There should be no relaxation of economic sanctions until there is a genuine improvement in human rights and progress towards democratic change. The speaker called on the ILO Director-General for renewed action for a consistent implementation of the 2000 ILC resolution. She added that, in view of the persistence of the use of forced labour in the country, there was still the need for the ILO to implement the decision to prepare a request for an advisory opinion of the International Court of Justice on the violation of Convention No. 29.

The Government member of Singapore welcomed the renewal of the Supplementary Understanding between the Government of Myanmar and the ILO for another year, as well as the concrete steps taken by the Government towards raising awareness of the complaints mechanism on forced labour, introducing the Labour Organizations Act, and drafting a law to bring the Village Act and the Towns Act in line with the Convention as recommended by the Commission of Inquiry. The draft legislation was understood to be near completion and to be subsequently sent to Parliament for consideration. With reference to the recent report of the ILO Liaison Officer in Myanmar, the speaker further highlighted the efforts made by the Government as regards training and awareness-raising activities under the 2002 Understanding, for instance workshops held throughout the country including in several ethnic areas, the publication and wide distribution of the ILO's brochure to explain the law, the Supplementary Understanding and the complaints mechanism, and the Government's intention to translate the brochure into Shan language. He also welcomed the efforts made in the area of under-age recruitment of soldiers, such as the continued education of military personnel on the relevant law by the Ministry of Defence with ILO and UNICEF technical assistance, the discharge and release to their families

of 174 persons recruited under age and the prison sentences imposed against military personnel (two officers and five of other ranks) for forced labour practices. Despite visible progress in respect of the use of forced labour by civilian authorities, there still appeared to be room for improvement on the use of forced labour by the military, in particular as regards the difficulty of reaching satisfactory conclusions on the relevant complaints. The speaker hoped that the Government would make stronger and sustained efforts to address the issue and encouraged the Government and the international community to continue in their constructive engagement for improving the lives of the people of Myanmar.

The Worker member of the Republic of Korea commented on the impact of energy development projects on forced labour. She indicated that there had been a noteworthy increase in foreign investment in the country's energy sector. Korean trade unions, as well as human rights groups, had been following the situation as regards the Shwe Gas Project, a gas pipeline construction project in which foreign companies were involved as members of a consortium. She expressed disappointment at the fact that a complaint lodged in 2009 by trade unions and non-governmental organizations on the basis of violation – on several counts – of the OECD's Guidelines for Multinational Enterprises by Korean enterprises had been dropped by Korean authorities without any serious investigation. Despite allegations of serious human rights and environment abuses, the request for suspension of the project was ignored and the project was now in its construction stage with continuation of forced labour and other forms of human rights abuses. She expressed concern at the fact that forced labour was directly connected even to corporate social responsibility projects conducted by companies involved in the energy development projects. She noted that the Burmese Army continued to rely on forced labour in connection with the Shwe Gas project, which demonstrated that the 2000 ILC resolution had not been fully implemented. She called on ILO member States and all constituents to fulfil their obligations under the resolution.

The Government member of Norway expressed deep concern about the human rights situation in Myanmar and, while noting the release of 47 political prisoners on 17 May 2011, requested the Government to release the remaining political prisoners. He welcomed the prolongation of the Supplementary Understanding, the cooperation between the ILO and the Government as regards the functioning of the complaints mechanism and the release of under-age recruits from the military, as well as the recently held training session for senior Government officials in the Chin state and the translation of the ILO forced labour brochure into Shan language. The speaker encouraged the Government to apply existing laws against forced labour and under-age recruitment, to introduce economic management and financial budgeting so as to prevent the use of forced labour and to proactively support the ILO in its efforts to eradicate forced labour. Noting the Government's willingness to discuss better employment policies for the protection of workers' rights, the speaker encouraged the ILO to take steps to provide capacity building in selected areas aimed at improving workers' rights in Myanmar, and, in addition, to intensify work together with the Government on the Freedom of Association Act and to provide assistance so as to ensure that any future Labour Union Act meets the requirements of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

The Worker member of Japan noted that forced labour was a long standing and widespread problem in Burma, with prison inmates used by the army as porters or human minesweepers, victimization of ethnic minority groups and recruitment of child soldiers through trafficking and kidnapping. She recalled that the 2000 ILC resolution

recommended to all member States to review their relations with the Government of Burma so as to ensure that the continued use of forced labour would not give it any advantage. However, this resolution had not been implemented properly. According to the report of the Burmese National Planning and Economic Development Ministry, the accumulated pledged amount of foreign direct investment by end-November 2010 had doubled – from 16 to 32 billion US dollars – in a six-month period. Most of this increase was attributed to investments in the oil and gas sector, with natural gas exports accounting for as much as 40 per cent of the country's export income. Given that this type of economic activities helped the Burmese Government to maintain forced labour and oppression of the Burmese people, she urged the representatives of governments and employers of countries investing in or trading with Burma to review their relations with this country in order to help eradicate forced labour in accordance with the 2000 ILC resolution. Finally, she indicated that without a democratization process, there would be no real driving force for the elimination of forced labour. In this regard, she considered the formation of a "civilian" government to be no great stride towards democracy but indicated that an essential step would be the immediate release of the numerous political prisoners, including labour activists.

The Government member of the Russian Federation shared the conviction that the eradication of all forms of forced labour throughout the world was an absolute priority and welcomed the cooperation between the ILO and the Government of Myanmar in that field. In that regard, the renewal for another year of the Supplementary Understanding on the occasion of the visit of the ILO High-level Mission was a positive step. The examination by the Committee on the Application of Standards of compliance by Myanmar with Convention No. 29 was taking place only shortly after the holding of elections last October, which had resulted in a new Parliament. In that context, draft reforms of the labour legislation were being prepared. Those initiatives should be welcomed, particularly as changes relating to forced labour were envisaged. His Government hoped that the Government of Myanmar would continue the progress towards democracy.

Emphasis should also be placed on the efforts made and the enormous amount of work undertaken by the ILO Liaison Officer, particularly for the forwarding of complaints of forced labour to the competent authorities in Myanmar (especially the Ministry of Defence), which were reported to have resulted in those responsible being penalized. The initiatives to raise awareness of the complaints procedure among the population and to disseminate information brochures on forced labour were also useful and encouraging. It was to be hoped that the difficulties relating to the strengthening of the personnel in the ILO Liaison Office in Myanmar would be resolved rapidly. Finally, the Government expressed the conviction that the Government of Myanmar would continue to take the necessary measures to achieve the elimination of situations of forced labour. In that respect, the reinforcement of cooperation between the Government of Myanmar and the ILO was undoubtedly the most appropriate means of achieving that objective.

The Worker member of Indonesia drew the Committee's attention to the continued practices of forced labour and violations of human rights in Myanmar and highlighted the growing number of undocumented migrant workers fleeing Myanmar for safety reasons and working in Thailand, Malaysia, India and others for low wages and in bad working conditions. This phenomenon had triggered social conflict, xenophobic practices, increasing exploitation and deepening poverty in the receiving countries and in the Asian region. The speaker urged the Government to supply information about the concrete efforts undertaken

to meet the recommendation of the Commission of Inquiry to punish the perpetrators of forced labour.

Bearing in mind its interest in taking over the presidency of the Association of Southeast Asian Nations (ASEAN), the Government of Myanmar had not yet sufficiently proven that it was serious about the elimination of forced labour and transition to democracy. The ASEAN Member States should openly discuss Burma's democracy and human rights problems and stop considering those matters as a Burmese domestic affair but rather regard them as a regional commitment. Rewarding Burma with the ASEAN presidency despite sham elections, numerous political prisoners, continuing forced labour practices, and lack of democracy and freedom of association, would be an embarrassment for the region. The speaker encouraged the ILO to work closely with the ASEAN Human Rights Committee using its mechanisms to speed up elimination of forced labour and monitor practices of multinational corporations originating from ASEAN and violating ILO Conventions.

The Government member of Thailand indicated that forced labour was a challenge of global concern and that it was therefore imperative for the international community to support Myanmar's cooperative efforts in achieving the elimination of forced labour, particularly in view of the recent significant political developments. He felt encouraged by the ongoing cooperation between the Government of Myanmar and the ILO, hoping that the extension of the trial period of the Supplementary Understanding and the recent visit of an ILO High-level Mission to Myanmar would provide the impetus for further progress. The speaker urged the Myanmar authorities to continue pursuing the positive steps and to redouble their efforts towards achieving the recommendations of the Commission of Inquiry. There had been positive developments since the Governing Body in March 2011, such as the revision of the Village Act and the Towns Act adopted in 1907, which was now complete up to 80 per cent and should be submitted to Parliament by the end of 2011, and the drafting of legislation on workers' organizations. He emphasized that ILO technical assistance in this process would be crucial and hoped to see additional resources allocated to the ILO Liaison Office in Myanmar.

The increased number of complaints received through the mechanism established by the Supplementary Understanding – which received a positive response from the Adjutant General's Office in respect of under-age recruitment into the military – reflected the effectiveness of the awareness-raising workshops. The speaker also welcomed the decision of the Government Working Group to publish in local languages a brochure explaining the law, the Supplementary Understanding and the complaint procedure and to distribute it widely across the country. He expressed the hope that the continuous progress would lend credibility and add momentum to the process of democratization and national reconciliation. The political landscape in Myanmar and the cooperative international environment augured well for the elimination of forced labour. He pledged the support of Thailand in addressing this serious issue.

The Government member of Cuba reaffirmed her support for the principles set out in Convention No. 29 and welcomed the report which reflected the recent activities carried out by the Office and the Government of Myanmar and the progress made in the elimination of forced labour. The intervention by the Government representative of Myanmar reflected the most recent efforts made by his Government for the application of the Convention, with particular emphasis on the current process to bring national legislation into conformity with Convention No. 29. Recognizing that the results achieved were the product of international cooperation, she encouraged the continuation of technical cooperation, open and unconditional dialogue and analysis of the national situation and condi-

tions, as the only way of contributing to the achievement of the objectives set out in the Convention.

The Worker member of the United States reiterated the concerns expressed in previous sittings and strongly condemned that according to credible reports the brutal and dehumanizing practice of forced labour, including of children, continued unabated in Burma. The Government had once again failed to bring relevant legislation in line with the Convention and to impose strictly available criminal penalties for the exaction of forced labour, which evidenced a clear absence of will. While noting the publication and dissemination by the Government of the ILO brochure on forced labour and its intention to translate it, this measure was inadequate to address the requirement by the Governing Body for an authoritative statement by the senior leadership against the continued use of forced labour. Moreover, although the number of submitted complaints had recently increased and in some cases child soldiers had been freed as a result of the complaints process, complainants continued to be harassed or jailed for utilizing this mechanism to denounce acts of forced labour, and lawyers representing victims were disbarred. Given that work towards the receipt and resolution of complaints would never be fully effective if there was the real possibility of retaliation, he called on the Government once again to immediately release all trade unionists jailed because of their involvement in the complaints process as well as to reinstate the relevant professional licenses.

In view of the increasing workload and low staffing levels of the ILO Liaison Office in Yangon, the Government's intransigence severely limited the Office's effectiveness. The speaker urged the Government to issue the necessary visas to expand the personnel, which was needed for specific areas with widespread practices of forced labour, including monitoring the impact of oil and gas pipeline and dam construction work on forced labour and verifying that no forced labour was used in mines and international projects. Furthermore, ILO member States should direct their embassies to closely coordinate activities with and fully support the work of the ILO Liaison Office. Continued deepened coordination with other UN agencies in Burma was also necessary to ensure that their work is complementary. Recalling the profound responsibility of ILO member States, in particular governments, under the ILO Constitution and recommendations of various supervisory bodies, to work towards the elimination of the scourge of forced labour, the speaker urged the Committee to redouble its efforts henceforth.

The Government member of Canada, given the small signs of progress and the repeated calls on the Government of Myanmar to take serious action, urged the authorities to live up to their commitment to end forced labour, both in the civilian and the military spheres, and to fully implement the recommendations of the Commission of Inquiry. She called for the release of former child soldiers jailed for desertion or serving sentences arising from their participation in the complaints mechanism established by the Supplementary Understanding. In view of the fact that the ILO Liaison Officer was still being refused an entry visa for an additional international civil servant, she stressed that ensuring that the Liaison Office was equipped to carry out its critical functions was a rudimentary indication of the Government's commitment to the eradication of forced labour. While agreement in principle had finally been reached to translate the brochure into Shan language, reluctance remained to produce the brochure in other languages although this would again be a simple but important indication of the Government's commitment. The positive and efficient approach taken by the Government in responding to complaints concerning under-age recruitment should be extended to all types of forced labour. The Government should also enforce the law and ensure that all perpetrators were prosecuted under

the Criminal Code. Finally, she expressed the hope that the long awaited revision of the Village Act and the Towns Act of 1907 would be completed in the near future and strongly encouraged a positive response to the proposal for a joint Working Group/ILO meeting with the Finance and Planning Ministries and a joint Working Group/ILO meeting with the Ministry of Defence and senior military personnel.

The Government member of India expressed satisfaction at the progress made by the Government of Myanmar towards the observance of the Convention, as well as at the ongoing cooperation between the ILO and the Government in this regard, as illustrated by the constructive dialogue between the ILO High-level Mission to Myanmar and the Government in February 2011. The speaker further welcomed the extension of the Supplementary Understanding for another year as of 26 February 2011, the joint awareness workshops conducted by the ILO Liaison Office and the Labour Department, the publication of a brochure on the relevant law and the Supplementary Understanding, the continued functioning of the complaints mechanism and the steps taken to bring the 1907 Village Act and Towns Act in line with the Convention. While recalling that his Government had been and continued to be opposed to the practice of forced labour, he encouraged the ongoing dialogue and cooperation between the ILO and the Government of Myanmar and commended the ILO Director-General and his team for their efforts to assist Myanmar in tackling the problem of forced labour.

The Worker member of South Africa, recalling the history of apartheid and racial discrimination in his own country, emphasized that world solidarity, international trade sanctions and isolation were powerful tools in the fight for the respect for human rights. The recommendations put forward by the Commission of Inquiry had neither been met by the Burmese junta nor by the new civil authoritarian regime. One of the Commission's recommendations was the budgeting of public works. Highlighting the contradiction between the Government's argument that Burma is a poor country and the statement of the opposition party about the amount of revenues from exportation of gas, he deplored the fact that these revenues were not used to eliminate forced labour, child conscription or land confiscation. The non-implementation of the ILO recommendations was due to the lack of political will, and the reality of the situation had not changed after the elections. The Burmese people were still subjected to forced labour, land confiscation and arbitrary taxation which impacted on their basic human rights. He reiterated the importance to concentrate the work of the ILO on these issues, asking for wider cooperation of other international institutions present in Burma in order to build a country without forced labour where democracy and the rule of law would be the pillars for social development.

The Government member of China noted that many speakers had recognized that cooperation between the ILO and the Government of Myanmar was effective. Further progress had been achieved. The Supplementary Understanding had been extended for a year and draft laws were being prepared to bring the legislation into conformity with Convention No. 29. Numerous awareness-raising activities had also been carried out and an information brochure on the complaints procedure had been disseminated throughout the country. He recalled his Government's constant position that forced labour was a violation of fundamental rights and needed to be eliminated. Appropriate technical assistance should be provided and cooperation between the ILO and the Government of Myanmar should be continued.

The Government member of Switzerland endorsed the statement made on behalf of the Member States of the European Union.

The Government representative thanked the Committee for the discussion and interest in the various measures taken or envisaged by the new Government of Myanmar. Some speakers had been referring to the country by the incorrect name of Burma, whereas the proper official name was the Republic of the Union of Myanmar, or in short Myanmar. He requested that in future deliberations of the Committee, all delegates address the country correctly as Myanmar, since this name had been recognized throughout the UN system. The speaker further rejected statements affirming that persons associated to the Supplementary Understanding mechanism had become political prisoners and that labour activists were detained. Those arrests were solely based on the violation of existing laws and not on freedom of association or the Supplementary Understanding mechanism. Moreover, on 16 May 2011, the President had granted an amnesty covering approximately 14,000 prisoners. As regards the interventions alleging a situation of impunity in Myanmar, he stated that any perpetrators of forced labour, whether civilian or military, would be dealt with, as nobody is above the law. In terms of the mentioned incidents in border areas, while conceding that there might have been some minor quarrels and scuffles, the speaker refuted those interventions as politically motivated and based on false information. Finally, although the Government of Myanmar moved towards democracy, this could not be achieved instantly and transition might take a certain time. He therefore called upon the international community to be patient and pledged that his Government would do its best.

The Employer members indicated that they were very disappointed by the closing remarks of the Government. They were expecting a positive attitude, one that would give a blueprint on how the Government planned to move forward. Because of the history of the country, they expressed their scepticism about the Government's statement that people were incarcerated for violating the law and not for other reasons. As regards the issue of impunity, they recalled that it appeared that the military was above the law. They saw a fundamental legal challenge in the Government's indication that the Village Act and the Towns Act were revised at 80 per cent but that nothing could be done about the Constitution and wondered if the amendments to these acts would have any effect in either law or practice. The situation was the same as in previous years and the Employer members recommended that the starting point for the conclusions of the Committee this year be the conclusions reached at last year's session as there was no indication of significant and meaningful change on the ground in Myanmar.

The Worker members said that it was both urgent and timely to relaunch ILO action on the basis of the 2000 ILC resolution. The Government needed to implement in full and without delay the three recommendations made by the Commission of Inquiry and, in the first place, to take the necessary measures to revise the Constitution so as to bring it into conformity with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and Convention No. 29. It also immediately needed to take the practical measures called for by the Commission of Inquiry and, firstly, to stop bringing to court, penalizing and imprisoning complainants, facilitators and others following the lodging of complaints and to allocate the gas and oil revenues to remunerating work performed freely, instead of having recourse to forced labour. Finally, trade unionists and political detainees needed to be released immediately.

The Worker members indicated that they expected that employers would refrain from having recourse to forced labour and from investing in the country for as long as it remained a military or semi-military dictatorship. Employers also needed to comply with the OECD Guidelines for Multinational Enterprises and with human rights, as

defined by the United Nations. Moreover, governments must not let up on the application of sanctions and needed to offer their support for a United Nations commission of inquiry into crimes against humanity. It was also necessary for the diplomatic community in the country to provide its support and expertise to the ILO Liaison Officer and for all United Nations institutions to cooperate more closely to extend their activities throughout the country.

The Worker members added that they expected the Office to focus not only on the Supplementary Understanding and the complaints mechanism, but also to take the necessary action for the elimination of forced labour: the strengthening of the human and financial resources of the Liaison Office so that it could cover all the regions of the country; the follow-up of the issue of freedom of association by a Liaison Officer; and the monitoring of forced labour in current major projects (mining, major dams, etc.). If there was insufficient progress, the Governing Body should be able to seek an opinion from the International Court of Justice on the violation of Convention No. 29. Finally, the Worker members also expected the Office to once again request information from governments and employers on the initiatives that they had taken within the framework of the 2000 ILC resolution.

Conclusions

The Committee noted the observations of the Committee of Experts on the application of Convention No. 29 by the Government of Myanmar, as well as 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, in February 2011, for a further 12 months to 25 February 2012.

The Committee also noted the discussions and decisions of the Governing Body of November 2010 and March 2011. It further took due note of the statement of the Government representative and the discussion that followed. In particular, the Government referred to the ongoing revision of the Village Act and the Towns Act and indicated that the draft law explicitly prohibits forced labour and includes reservations in the case of natural disasters. He also referred to ongoing awareness-raising activities, including in ethnic minority regions, and to the allocation of funds for the purpose of alleviating the chances of unpaid labour on the part of the Government. As regards complaints of under-age recruitment, he stated that children had been released, disciplinary action taken against military personnel and some officers dismissed and sentenced to prison terms. He stated that it was evident that action would be taken against any perpetrator, civilian or military, on forced labour and under-age recruitment.

The Committee welcomed the release from house arrest of Daw Aung San Suu Kyi that it had been calling for over many years. It again called for the immediate release of other political prisoners and labour activists.

The Committee referred to the political restructuring that had taken place since the last meeting and noted the initial policy priority statements of the newly elected President on good government and good governance. The Committee firmly expects that these objectives will be transposed into substantive positive actions and proactive and preventive measures for the eradication of all forms of forced labour and the advancement of workers' rights.

Despite the above, the Committee regretted to note that there had been no substantive progress achieved towards complying with the 1998 recommendations of the Commission of Inquiry, namely to:

- (1) bring the legislative texts in line with the Forced Labour Convention, 1930 (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 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.¹ It expressed the firm expectation that the Government move 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) submit the draft proposals for amendment of the Village and Towns Acts to the ILO for comment and advice aimed at ensuring their full conformity with Convention No. 29, and ensure their early adoption into law and application in practice;
- (2) take steps to ensure that the constitutional and legislative framework effectively prohibit the exaction of forced labour in all its forms;
- (3) take all necessary measures to prevent, suppress and punish the full range of forced labour practices, including the recruitment of children into armed forces, forced conscription into fire brigade and militia reservist units, portering, construction, maintenance and servicing of military camps, agricultural work, 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 under the Penal Code and that sufficiently dissuasive sanctions are applied;
- (5) carry out, without delay, proposed consultations between the ILO and the finance and planning ministries towards ensuring that necessary budget allocations are made so that workers are freely contracted and adequately remunerated;
- (6) provide for meaningful consultations between the ILO and the Ministry of Defence and senior army representatives to address both the policy and behavioural practices driving the use of forced labour by the military;
- (7) immediately cease all harassment, retaliation and imprisonment of individuals who use, are associated with or facilitate the use of the complaints mechanism;
- (8) release immediately complainants and other persons associated with the use of the complaints mechanism who are currently detained and reinstate any consequentially revoked professional licences;
- (9) intensify awareness-raising activities throughout the country including in association with major infrastructure projects and in training of police and military personnel;
- (10) facilitate, without delay, the production and wide distribution of the brochure in the remaining local languages; and
- (11) actively pursue agreement of a meaningful joint action plan with the United Nations Country Task Force on Monitoring and Reporting in respect of children in circumstances of armed conflict, of which the ILO is a member, addressing amongst other things under-age recruitment.

As called for in the 2000 ILC resolution of the International Labour Conference, the Committee counted on the collaboration of all agencies in the United Nations system in the efforts for the effective elimination of forced labour in Myanmar. It similarly called on all investors in Myanmar to ensure that their activity in the country is not used to perpetuate or extend the use of forced labour but rather makes a positive contribution to its complete eradication.

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, as well as any other additional action necessary for the complete elimination of forced labour. In particular, the Committee firmly expected that the Government would give full assurances without delay for the granting of entry visas for additional international professional staff.

The Committee called on the Government to review with the ILO Liaison Officer the references to forced labour orders made during its discussion, as well as the orders and similar documents which have been submitted to the Committee of Experts and requested that the progress made in this regard be reported to the Governing Body at its November session. It encouraged the Government to make use of the ILO Office to put in place a mechanism for the immediate review and investigation of these allegations.

The Committee urged the Government to provide detailed information on the steps taken on all the abovementioned matters to the Committee of Experts for its examination this year and expects to be in a position to take note of significant developments at the next session of the Conference.

¹ <http://www.ilo.org/public/english/standards/relm/ilc/ilc88/resolutions.htm#I>,

<http://www.ilo.org/public/english/standards/relm/ilc/ilc95/pdf/pr-3-2.pdf>.

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)

Follow-up to the recommendations made by the Commission of Inquiry (complaint made under article 26 of the Constitution of the ILO)

Historical background

In its earlier comments, the Committee has discussed in detail the history of this extremely serious case, which has involved the Government's gross, long-standing and persistent non-observance of the Convention, as well as the failure by 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. The continued failure by the Government to comply with these recommendations and the observations of the Committee of Experts, as well as other matters arising from the discussion in the other bodies of the ILO, led to the unprecedented exercise of article 33 of the Constitution by the Governing Body at its 277th Session in March 2000, followed by the adoption of a resolution by the Conference at its June 2000 session.

The Committee recalls that the Commission of Inquiry, in its conclusions on the case, pointed out that the Convention was violated in national law and in practice in a widespread and systematic manner. In its recommendations (paragraph 539(a) of the report of the Commission of Inquiry of 2 July 1998), the Commission urged the Government to take the necessary steps to ensure:

- (1) that the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Convention;
- (2) that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military; and
- (3) that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced, which required thorough investigation, prosecution and adequate punishment of those found guilty.

The Commission of Inquiry emphasized that, besides amending the legislation, concrete action needed to be taken immediately to bring an end to the exaction of forced labour in practice, to be accomplished through public acts of the Executive promulgated and made known to all levels of the military and to the whole population. In its earlier comments, the Committee of Experts has identified four areas in which "concrete action" should be taken by the Government to fulfil the recommendations of the Commission of Inquiry. In particular, the Committee indicated the following measures:

- issuing specific and concrete instructions to the civilian and military authorities;
- ensuring that the prohibition of forced labour is given wide publicity;
- providing for the budgeting of adequate means for the replacement of forced or unpaid labour; and
- ensuring the enforcement of the prohibition of forced labour.

Developments since the Committee's previous observation

There have been a number of discussions and conclusions by ILO bodies, as well as further documentation received by the ILO, which has been considered by the Committee. In particular, the Committee notes the following information:

- the report of the ILO Liaison Officer submitted to the Conference Committee on the Application of Standards during the 99th Session of the International Labour Conference in June 2010, as well as the discussions and conclusions of that Committee (ILC, 99th Session, *Provisional Record* No. 16, Part Three(A) and document D.5.D);
- the documents submitted to the Governing Body at its 307th and 309th Sessions (March and November 2010), as well as the discussions and conclusions of the Governing Body during those sessions;
- the communication made by the International Trade Union Confederation (ITUC) received in August 2010 together with the detailed appendices of more than 1,400 pages;
- the communication made by the Federation of Trade Unions Kawthoolei (FTUK) received in September 2010 with appendices; and
- the reports of the Government of Myanmar received on 16 December 2009, 4 January, 4 February, 12 and 18 March, 6 April, 19 May, 19 August, 8 September and 6 October 2010.

The Supplementary Understanding of 26 February 2007

– Extension of the complaints mechanism

In its earlier comments, the Committee discussed the significance of the Supplementary Understanding (SU) of 26 February 2007 between the Government and the ILO, which supplemented the earlier Understanding of 19 March 2002 concerning the appointment of an ILO Liaison Officer in Myanmar. As the Committee previously noted, the SU sets out a complaints mechanism, which has as its object “to formally offer the possibility to victims of forced labour to channel their complaints through the services of the Liaison Officer to the competent authorities with a view to seeking remedies available under the relevant legislation and in accordance with the Convention”. The Committee notes that the trial period of the SU was extended for the third time, on 19 January 2010, for a further 12 months from 26 February 2010 until 25 February 2011 (ILC, 99th Session, *Provisional Record* No. 16, Part Three, document D.5.F). The Committee further discusses the information on the functioning of the SU below, in the context of its comments on the other documentation, discussions and conclusions regarding this case.

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 99th Session of the Conference in June 2010. The Conference Committee acknowledged some limited steps on the part of the Government, such as: the further extension of the SU 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 SU, including newspaper articles in the national language; and certain improvements in dealing with under-age recruitment by the military. The Conference Committee was, however, of the view that those steps remained totally inadequate. It noted that none of the three specific and clear recommendations of the Commission of Inquiry had been implemented and strongly urged the Government to: fully implement without delay these recommendations and, in particular, to take the necessary steps to bring the relevant legislative texts into line with the Convention; to 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; to strictly ensure that perpetrators of forced labour, whether civil or military, are prosecuted and punished under the Penal Code; to release immediately complainants and other persons associated with the use of the complaints mechanism who are currently detained, etc. The Conference Committee also called for 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.

Discussions in the Governing Body

The Governing Body continued its discussions of this case during its 307th and 309th Sessions in March and November 2010 (GB.307/6, GB.309/6). The Committee notes that, following the discussion in November 2010, the Governing Body reconfirmed all of its previous conclusions and those of the International Labour Conference and called upon the Government and the Office to work proactively towards their realization. In the light of the commitment made by the Permanent Representative of the Government, the Governing Body called on the new Parliament to proceed without delay to bring legislation into line with the Convention. While noting the increased number of the complaints received under the SU complaints mechanism, the Governing Body considered it essential that the movement towards an environment free from harassment or fear of retribution be sustained, and called upon the Government to cooperate with the Liaison Officer on cases raised at the Officer's own initiative. Notwithstanding the reported progress in increased awareness of both government personnel and the community at large of their rights and responsibilities under the law, further committed action is required to end all forms of forced labour, including under-age recruitment into the military and human trafficking, as well as the strict application of the Penal Code to all perpetrators, in order to bring an end to the impunity. The Governing Body also called for the continuation and intensification of awareness-raising activities undertaken jointly and severally by the Government and the ILO Liaison Officer encompassing government personnel, the military and civil society. Finally, the Governing Body welcomed the release of Daw Aung San Suu Kyi and urged that other persons still in detention, including labour activists and persons associated with the submission of complaints under the SU, would be similarly given their liberty as soon as possible.

Communication received from workers' organizations

The Committee notes the comments made by the ITUC in its communication received in August 2010. Appended to this communication were 51 documents, amounting to more

than 1,400 pages, containing extensive and detailed documentation referring to the persistence of widespread forced labour practices by civil and military authorities in almost all of the country's states and divisions. In many cases, the documentation refers to specific dates, locations, circumstances, specific civil bodies, military units and individual officials. Specific incidents referred to in the ITUC documentation involve allegations of a wide variety of types of work and services requisitioned by authorities, including work directly related to the military (portering, construction and forced recruitment of children), as well as work of a more general nature, including work in agriculture, construction and maintenance of roads and other infrastructure work. The ITUC documentation includes, inter alia, reports submitted to it by the Federation of Trade Unions of Burma (FTUB) and its affiliate, the FTUK, which contain allegations that victims of forced labour who were encouraged by these organizations to report to the ILO, have been prosecuted for it and subsequently jailed. The ITUC documentation also includes translated copies of numerous written orders ("Order documents" or "Order letters") apparently from military and other authorities to village authorities in Karen State, Chin State and some other states and divisions, containing a range of demands, entailing in most cases a requisition for compulsory (and uncompensated) labour. Thus, the report submitted by the FTUK, which was also directly communicated to the ILO in a communication received in September 2010 referred to above, includes translated copies of 94 Order documents issued by military authorities to village heads in Karen State between January 2009 and June 2010. The tasks and services demanded by these documents involved, inter alia, portering for the military, bridge repair, collection of raw materials, production and delivery of thatch shingles and bamboo poles, attendance at meetings, provision of money, food and other supplies, provision of information on individuals and households, etc. The report states that the above orders illustrate the persistent exaction of forced labour by the military in the rural Karen State, which significantly contributes to poverty, livelihoods vulnerability, food insecurity and displacement of large numbers of villagers. Copies of the above communications by the ITUC and the FTUK with annexes were transmitted to the Government, in September 2010, for such comments as it may wish to make on the matters raised therein.

The Government's reports

The Committee notes the Government's reports, referred to in paragraph 4 above, which include replies to the Committee's previous observation. It notes, in particular, the Government's indications concerning the Government's continued cooperation with the various functions of the ILO Liaison Officer, including monitoring and investigating the forced labour situation and the operation of the SU complaints mechanism, as well as the Government's efforts in the field of the awareness-raising and training activities on forced labour, including the joint ILO–Ministry of Labour (MOL) presentation made at the Deputy Township Judges' training course in Yangon in March 2010 and the distribution of booklets on the SU and informative, simply worded brochures on forced labour. The Committee also notes the Government's indications concerning measures taken to prevent recruitment of under-age children and to release newly recruited under age soldiers from September 2009 up to August 2010. As regards the amendment of the legislation, the Government indicates that the Ministry of Home Affairs has been coordinating with the concerned departments in reviewing the Village Act and Towns Act. However, no action has been taken or contemplated to amend section 359 of the Constitution. The Committee also notes that the Government has not yet supplied its comments on the numerous specific allegations contained in the communications from the ITUC and the FTUK referred to above, as well as in the communication by the ITUC received in September 2009. ***The Committee urges the Government to respond in detail in its next report to the numerous specific allegations of continued, widespread imposition of forced or compulsory labour by military and civil authorities throughout the country, which are documented in the above communications from the ITUC and the FTUK, making particular reference to***

the “Order documents”, which constitute conclusive evidence of the systematic imposition of forced labour by the military.

Assessment of the situation

Assessment of the information available on the situation of forced labour in Myanmar in 2010 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

The Committee previously noted the Government’s statement in its report received on 27 August 2009 that the Village Act and the Towns Act “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 Towns Act 1907, and the Village Act 1907) as supplemented by the Order of 27 October 2000. The Committee observed that the latter orders had 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 Government’s indication in its report received on 19 August 2010, that the Ministry of Home Affairs has been coordinating with the concerned departments in reviewing these Acts, the Committee expresses the firm hope that the long overdue steps to amend or repeal them will soon be taken and that legislation will be brought into conformity with the Convention. The Committee asks the Government to provide, in its next report, information on the progress made in this regard.***

In its earlier comments, the Committee referred to section 359 of the Constitution (Chapter VIII – Citizenship, fundamental rights and duties of citizens), which excepts from the prohibition of forced labour “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 Government’s statement in its report received on 19 August 2010, that “it is completely impossible to amend the Constitution ... as it was ratified by the referendum held in May 2008 with 92.48 per cent affirmative votes”. ***The Committee urges the Government once again to take the necessary measures with a view to amending section 359 of Chapter VIII of the Constitution, in order to bring it into conformity with the Convention.***

(ii) Measures to stop the exaction of forced or compulsory labour in practice

Information available on current practice. In paragraph 8 of this observation, the Committee referred in detail to the communications received from the ITUC and the FTUK, which contain well-documented allegations that forced and compulsory labour continued to be exacted from local villagers in 2010 by military and civil authorities in almost all of the country’s states and divisions. The information in the numerous appendices refers to specific dates, locations and circumstances of the occurrences, as well as 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, and has taken a wide variety of forms and involved a variety of tasks.

The Committee notes from the report of the ILO Liaison Officer to the Conference Committee in June 2010 (ILC, 99th Session, *Provisional Record*, No. 16, Part Three, document D.5.C) that, while the SU complaints mechanism continues to function and the awareness-raising activities continue to take place, complaints alleging the use of forced labour by both military and civil authorities continue to be received (paragraphs 5 and 6). The ILO Liaison Officer also refers to numerous requests to the authorities to release identified victims of under-age military recruitment and states that the work related to under-age recruitment under the SU supports the activity of the UN Country Task Force on Monitoring and Reporting on Children Affected by Armed Conflict under Security Council Resolution 1612 (paragraphs 8 and 12). According to the report, a number of complaints of human trafficking for forced labour have been received; three such cases have been referred to the ILO anti-trafficking projects based outside the country and have resulted in the release of 56 persons from a forced labour situation in neighbouring countries. The ILO Liaison Officer further states that “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”, which is most likely due to the extensive awareness-raising activities and the heightened awareness of local authority personnel (paragraphs 7 and 11). However, according to the Governing Body document submitted to its 307th Session in March 2010, “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” (GB.307/6, paragraph 5).

Issuing specific and concrete instructions to the civilian and military authorities. In its earlier comments, the Committee 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 previously noted the Government’s general statement in its report received on 1 June 2009 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”. However, the Committee notes that no new information has been provided by the Government in its subsequent reports on this important issue. Given the continued dearth of information regarding this issue, the Committee remains unable to ascertain that clear instructions have been effectively conveyed to all civil authorities and military units, and that bona fide effect has been given to such instructions. 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 for steps taken to ensure that such instructions are fully publicized and effectively supervised. ***Considering that measures to issue instructions to civilian and military authorities on the prohibitions of forced and compulsory labour are vital and need to be intensified, the Committee expresses the firm hope that the Government will provide, in its next report, information on the measures taken in this regard, including translated copies of the instructions which have been issued reconfirming the prohibition of forced labour.***

Ensuring that the prohibition of forced labour is given wide publicity. In relation to ensuring that the prohibition of forced labour is given wide publicity, the Committee notes from the report of the ILO Liaison Officer referred to above, from the documents submitted to the Governing Body and to the Conference Committee, as well as from the Government’s reports, that a number of awareness-raising activities concerning the forced labour situation, the legal prohibitions of forced labour and existing avenues of recourse for victims were carried out in 2010. These included, inter alia, three joint ILO–MOL awareness-raising seminars at state/division level for civil and military personnel held in

Rhakine State, Magway Division and Bago Division; two joint ILO–MOL presentations on the law and practice on forced labour to a refresher training course for township judges and deputy judges; and three training seminars/presentations for members of the armed forces, the police and the prison service on the law and practice concerning under-age recruitment into the military. During the meeting of the ILO mission with the Minister of Labour (January 2010), the Government agreed to the publication of a simply worded brochure, in Myanmar language, explaining the law pertaining to forced labour, including under-age recruitment, and the procedures available to victims for lodging a complaint (GB.307/6, paragraph 9). The Governing Body, while calling for the continuation and intensification of awareness-raising activities during its November 2010 session, called on the Government to continue to actively support the wide distribution of the agreed brochure and its translation into all local languages (GB.309/6, paragraph 4). ***The Committee reiterates its view that such activities are critical in helping to ensure that the prohibition of forced labour is widely known and applied in practice, and should continue and be expanded.***

The Committee notes from the Governing Body document submitted to its 309th Session in November 2010 (GB.309/6), that the number of complaints received under the SU complaints mechanism continued to increase: over the period 1 June to 21 October 2010, 160 complaints have been received, as compared to 65 complaints received during the corresponding period in 2009 and 25 for the same period in 2008 (paragraph 18). As at 21 October 2010, a total of 503 complaints have been received under the SU mechanism; 288 cases (assessed to be within the ILO mandate) have been submitted to the Government Working Group for investigation, of which 132 have been resolved with varying degrees of satisfaction; 127 forced and/or under-age recruits have been released/discharged from the military in association with complaints under the SU mechanism (paragraphs 14 and 15). The Committee reiterates its view that the complaints mechanism under the SU in itself provided an opportunity to the authorities to demonstrate that continued recourse to the practice is illegal and would be punished as a penal offence, as required by the Convention. ***The Committee therefore hopes that the Government will intensify and expand the scale and scope of its efforts to give wide publicity to and raise public awareness about the prohibition of forced labour, including the use of the SU complaints mechanism as an important modality of awareness raising; that it will undertake awareness-raising activities in a more coherent and systematic way; and that it will provide, in its next report, information on measures taken or contemplated in this regard. The Committee further hopes that the Government will provide information on the impact of awareness-raising activities on the enforcement of criminal penalties against perpetrators of forced labour and on the imposition in actual practice of forced or compulsory labour, particularly by the military.***

Making adequate budgetary provisions for the replacement of forced or unpaid labour. In its earlier comments, the Committee observed that budgeting of adequate means for the replacement of forced labour, which tends also to be unpaid, is necessary if recourse to the practice is to end. The Committee recalls in this regard that, in its recommendations, the Commission of Inquiry stated that “action must not be limited to the issue of wage payment; it must ensure that nobody is compelled to work against his or her will. Nonetheless, the budgeting of adequate means to hire free wage labour for the public activities which are today based on forced and unpaid labour is also required”. The Committee has noted the Government’s repeated indication in its reports, including the report received on 19 August 2010, that the budget allotments including the expense of labour costs for all ministries have been allocated to implement their projects. ***Noting that no other information has been provided by the Government on this important issue, the Committee requests the Government once again to provide, in its next report, detailed and precise information on the measures taken to budget adequate means for the replacement of forced or unpaid labour.***

(iii) *Ensuring the enforcement of the prohibition of forced labour*

The Committee previously noted 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. It also noted 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 2000–05 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. The Committee notes from the Governing Body document submitted to its 309th Session in November 2010 (GB.309/6) that, in respect of cases concerning forced labour exacted by the military, the ILO has received no information concerning the prosecution of any perpetrator under the above provision of the Penal Code. The ILO has been advised that, in four instances, disciplinary action has been taken under military procedures in response to complaints submitted under the SU mechanism, and that in some instances the solution to the complaint has resulted in the issuance of orders requiring behavioural change (paragraph 11). As regards cases concerning forced labour exacted by civilian authorities, prosecution of perpetrators under the Penal Code in response to complaints submitted has been reported only in respect of Case No. 1, which has been already noted by the Committee in its earlier comments and resulted in the prosecution of two civilian officials, who were punished with penalties of imprisonment. In other instances, the solution has involved administrative penalties, including dismissal or transfer, with the majority of cases being resolved by addressing the situation of the complainants without punitive action being taken against the perpetrators (paragraph 12). As regards cases of forced and/or under-age recruitment, a punitive and disciplinary process has increasingly been applied and military perpetrators have been referred to summary trial under military regulations, which resulted in imprisonment in three instances; other penalties which appear to be regularly administered included the loss of seniority, pensionable rights or several days’ pay, as well as the issuance of various levels of formal reprimand (paragraph 13).

The Committee notes with *regret* that no new information has been provided by the Government in its 2010 reports about any prosecutions against perpetrators of forced labour being pursued under section 374 of the Penal Code. ***The Committee points out once again that the illegal exaction of forced labour must be punished as a penal offence, rather than treated as an administrative issue, and expresses the firm hope that appropriate measures will be taken in the near future in order to ensure that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour are strictly enforced, in conformity with Article 25 of the Convention. It asks the Government to provide, in its next report, information on the progress made in this regard.***

Concluding remarks

The Committee fully endorses the conclusions concerning Myanmar made by the Conference Committee and the Governing Body, as well as the general evaluation of the forced labour situation by the ILO Liaison Officer. The Committee observes that, in spite of the efforts made, particularly in the field of awareness raising, cooperation in the functioning of the SU complaints mechanism and in the release of under-age recruits from the military, the Government has not yet implemented the recommendations of the Commission of Inquiry: it has failed to amend or repeal the Towns Act and the Village Act; it has failed to ensure that, in actual practice, forced labour is no longer imposed by the authorities, in particular by the military; and it has failed to ensure that penalties for the exaction of forced labour under the Penal Code have been strictly enforced against civil and military authorities. The Committee continues to believe that the only way that

genuine and lasting progress in the elimination of forced labour can be made is for the Myanmar authorities to demonstrate unambiguously their commitment to achieving that goal. *The Committee urges the Government once again to demonstrate its commitment to rectify the violations of the Convention identified by the Commission of Inquiry, by implementing the concrete practical requests addressed by the Committee to the Government, and that all the long overdue steps will be taken to achieve compliance with the Convention, both in law and in practice, so that the most serious and long-standing problem of forced labour will be finally resolved.*

C. Report of the Liaison Officer to the special sitting on Myanmar (Convention No. 29) of the Committee on the Application of Standards

I. Introduction

1. The ILO Liaison Officer in Myanmar operates under the authority of a 2002 Understanding and a subsequent Supplementary Understanding (SU) agreed in 2007 between the Government 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 appointed to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29) (see Annex A attached).
2. The 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 covers human trafficking for forced labour, forced military recruitment and the recruitment of minors into the military. The trial period of the SU was extended for a fourth time in February 2011 for a further 12 months.
3. The Governing Body has regularly reviewed developments, including any progress made, at each of its March and November meetings under a specific agenda item on the subject. Parts D and E contain the reports of the Liaison Officer to the Governing Body in November 2010 and March 2011, together with the conclusions reached following each of those discussions.
4. This report provides a summary of activities since the report to the Committee on the Application of Standards in 2010 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 99th Session of the International Labour Conference in 2010 (please see Part C) and highlights developments which can be considered steps forward, as well as long-standing 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. Since the last report to the Committee, Myanmar has undergone political change in accordance with the Constitution adopted in 2008. National multiparty elections have taken place, with representatives being elected in a newly established parliamentary system consisting of an upper house (the Amyotha Hluttaw), a lower house (the Pyithu Hluttaw) and 14 state/regional parliaments. The previous military-controlled Government, the State Peace and Development Council (SPDC), no longer exists. Under the Constitution, 25 per cent of the members of all parliaments shall be military appointees. The political party established by the previous Government holds the majority of the elected seats in all parliaments, and a considerable number of the elected members of parliament, including ministers and the new President, as Head of State, are former military personnel prominent in the previous Government. However, representatives of parties not aligned with the previous Government and representatives of ethnic parties have been elected and have taken up their seats. It is noted that a number of technical professionals have been appointed as ministers and to newly established policy advisory bodies.

6. In his parliamentary and public statements, the new President has declared the new situation to be a new era for Myanmar. He has spoken strongly on the need for government policy in the market economy to reflect the needs of the people and has expressed his commitment to strengthening the economy for the development of the country and the people. He has stressed the need for good government and good governance, inter alia, through accountability and the elimination of corruption. A new Presidential Advisory Body, comprising a number of respected independent persons with extensive internal and external experience, has been established to provide economic, social, legal and political policy support.
7. While there has been criticism of the Constitution, as well as allegations of irregularities in the electoral process, there is no doubt that the political landscape has changed. The Government describes the political model as “discipline-flourishing democracy”, a term which reflects the continued emphasis on national unity and national security in the face of persisting internal political and ethnic conflict. Whatever the real or potential extent and value of the changes brought in under the new system, it may be noted that a number of governments have reviewed their policies towards Myanmar in the light of these changes, with an observable tendency toward increased dialogue and cautious optimism.
8. Daw Aung San Suu Kyi was released from house arrest shortly after the November 2010 elections. Her National League for Democracy (NLD) party did not participate in the elections. In the meeting during the February 2011 mission to Myanmar of Mr Guy Ryder, ILO Executive Director, Daw Aung San Suu Kyi confirmed her belief that it was important to retain the ILO presence in Myanmar, which should undertake work in support of workers’ rights while maintaining a firm principled position in dealings with the Government.
9. The Government Working Group for the Elimination of Forced Labour (the Working Group), chaired by the new Deputy Minister of Labour and consisting of senior representatives from a range of relevant ministries, the Supreme Court, the Office of the Attorney-General and with a representative of the Adjutant-General’s Office in a participating observer capacity, has been retained in the new situation. The first meeting with the Working Group under the new Government was held on 5 May 2010. The Deputy Minister reconfirmed his Government’s commitment to the elimination of forced labour and expressed the wish that cooperation between the Government and the ILO could be further enhanced with a view to meeting that objective, fulfilling the recommendations of the Commission of Inquiry and achieving full compliance with Convention No. 29.
10. An increasing number of complaints under the SU mechanism continue to be received. This, it is believed, does not reflect an increase in the use of forced labour. Rather, it is seen as a sign of greater awareness among the public of their right under the law to complain and their increased confidence in seeking redress through the use of the complaints mechanism.
11. The Working Group and the Adjutant-General’s Office continue to respond in a reasonably timely manner to most complaints that have been lodged under the SU and, after assessment by the Liaison Officer, transmitted to the Government.
12. The Working Group has responded positively to proposals to broaden the scope of training and awareness-raising activities under the 2002 Understanding. While joint awareness-raising activity at regional and township levels continues to be a useful tool, discussions are under way with the appropriate bodies to initiate joint Ministry of Labour (MOL)/ILO presentations to police in-service training courses, as well as to contractor, subcontractor and local authority personnel associated with major infrastructure projects and to the public affected by such projects.

13. The Ministry of Defence, supported by UNICEF and with an ILO technical contribution, continues to be involved in the delivery of training to military personnel in respect of the law on under-age recruitment.
14. Notwithstanding these activities, complaints continue to be received alleging the use of forced labour by both military and civilian authorities. There is no evidence of systematic use of forced labour in the private sector: those complaints that are received against private enterprises are mostly related to restrictive employment terms and poor working conditions.
15. Non-verifiable evidence continues to suggest that the use of forced labour by the civilian authorities has been reduced, at least in some parts of the country. A proposal is currently under consideration to include questions designed to verify this trend in a proposed labour force survey.
16. As identified by the Commission of Inquiry, a significant cause of the use of forced labour is the weakness of macroeconomic governance and policy application, particularly in respect of budgeting and corresponding financial allocations. A proposal has been made for a joint Working Group/ILO meeting with the appropriate government finance and planning ministries to discuss this matter.
17. The generally efficient and positive responses from the Adjutant-General's Office in respect of under-age recruitment and associated complaints is in contrast to the continuing difficulty in reaching satisfactory conclusions regarding complaints that allege the use of forced labour by the military. This relates to their operational activities (use of civilian porters and sentry guards, forced recruitment of reservist militia, etc.), the application of the economic self-sufficiency policy and their commercial activity in various industries. No response has yet been received to a proposal for a joint Working Group/ILO meeting with Ministry of Defence and senior military personnel to address these issues.
18. The simply worded brochure in the Myanmar language explaining the law, the SU and the procedure for filing a complaint agreed to in May 2010 has been published and continues to be widely distributed. This is felt to explain in large part the considerable increase in complaints received over the past 12 months. At the 5 May 2011 Working Group meeting, it was agreed in principle that the brochure should be produced in other local languages to further enhance its value, and that the first stage would be the production of a bilingual brochure in the Myanmar and Shan languages.
19. A considerable number of forced labour complaints have been lodged by farmers in Magway Region. These cases refer to the actions of the military in support of their commercial projects and self-sufficiency policy. The cases have proven very difficult to resolve, with relations at local level progressively worsening, in some instances reaching the point of volatile confrontation. Notwithstanding the existence of unresolved complaints and the no reprisals provisions of the SU, the military, supported by members of the local authorities, have over the past two years continued to take action against complainant farmers, facilitators and their relatives for their association with the complaints. At the Working Group meeting of 5 May 2011, the long-standing proposal that a joint MOL/ILO mission to Magway be undertaken was accepted. This mission will work with the local authorities and complainants to find lasting solutions to the various outstanding complaints. The Working Group indicated that they were undertaking preparatory work for the joint mission. The Liaison Officer has requested that this preparatory activity should not result in pre-emptive remedial action being imposed, recommending instead that the mission be undertaken in a timely manner and that in the interim period complainant farmers be allowed to maintain their livelihoods.

20. The Government has reconfirmed its commitment to amend the provisions of the Village Act 1907 and the Towns Act 1907 to bring them into conformity with Convention No. 29. The Working Group has indicated that the drafting of the new provisions, as of 5 May 2011, was 80 per cent complete and that the draft legislation would be introduced into Parliament at its next sitting, which is expected to be before the end of 2011. ILO technical assistance to support this process has been offered.
21. The full-time professional staff in Yangon consists of the Liaison Officer, his deputy and one national programme officer. More complaints have been received in the last 12 months than were received in the first three years of the SU operation combined. This increased caseload must be managed in parallel with other demands such as undertaking assessment missions, awareness-raising seminars, facilitator network training, and working with other UN agencies, international non-governmental organizations (INGOs) and non-governmental organizations (NGOs) on various aspects of forced labour. The Government of Germany provided funding which ended as at 31 December 2010 for, among other things, an additional international professional to further support SU activities, particularly in respect of child soldiers, a community liaison officer (national) to support training activities and associated support staff. Some valuable additional activities have been undertaken using these funds. In the absence of government agreement to issue the required entry visa for the international professional officer, the services of a suitably qualified consultant already resident in the country have been utilized. The European Commission and the Government of Sweden have generously agreed to continue this funding for 2011 and 2012. A licence for the importation of an additional vehicle has been approved; however, an indication that a new visa application would be favourably considered by the new Government is still awaited.
22. The Government has indicated its willingness to enter into discussions towards resuming best-practice project activities as envisaged by the previously discussed, but not implemented, “plan of action”, similar to the project undertaken in response to Cyclone Nargis.
23. A response is awaited to an ILO proposal that joint Working Group/ILO briefings of ministers and officials in state/regional parliaments with labour responsibilities be undertaken.
24. In February 2011, Mr Guy Ryder, ILO Executive Director, accompanied by Ms Karen Curtis, Deputy Director of the International Labour Standards Department, and Mr Drazen Petrovic, Principal Legal Officer, undertook a mission to Myanmar during which meetings were held with the Government Working Group for the Elimination of Forced Labour, the Government Anti-Human Trafficking Working Group and the Government Human Rights Body. The SU trial period was extended for a further 12 months from 26 February 2011. The Government sought input from the mission on a draft of the proposed legislation on workers’ organizations which the Minister of Labour indicated would be introduced into Parliament, most likely at its second sitting.

III. Action under the Understanding and the Supplementary Understanding

25. Since 20 May 2010, the following activities have been undertaken.

(a) *Training and awareness raising*

- Two joint ILO/MOL awareness-raising seminars at state level have been undertaken for state/district/township/village local authority personnel and representatives of military units in Bago-East Region and Chin State.
- Twenty-nine ILO training workshops/presentations have been held for 1,030 United Nations, INGO, local NGO and community-based organization staff on legislation in respect of forced labour, including under-age recruitment, and the practical operation of the SU complaints mechanism.
- Two Country Task Force for Monitoring and Reporting training seminars/presentations have been conducted 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.
- Two presentations have been made to the UNICEF partners Reintegration and Rehabilitation Network.

(b) *Operational field missions*

- Two field missions for complaint assessment.
- Twelve case follow-up/information verification missions.

(c) *Government consultations*

In addition to meetings held in association with the ILO mission visit there have been three meetings with the full Government Working Group for the Elimination of Forced Labour on the operation of the SU.

IV. *Statistics on complaints*

26. Since the coming into effect of the SU in February 2007, a total of 711 complaints have been received by the Liaison Officer. Of these, 161 were outside the ILO mandate in Myanmar; five of them concerned freedom of association issues and could not be pursued under the SU.
27. Of the 550 cases accepted as being within the ILO mandate, 202 have been assessed, submitted to the Working Group, investigated by the Government and subsequently closed, to varying degrees of satisfaction. A further 193 cases remain open, either awaiting information on the results of government investigations or still the subject of follow-up negotiations. Another 120 cases are currently either under assessment or require further information prior to submission. Thirty-five cases have not been submitted, either because there is insufficient information to substantiate the allegations or owing to the reluctance of the complainants themselves to proceed.
28. A total of 174 persons recruited under age have been discharged and/or released into the care of their families. The representative of the Adjutant-General's Office reports that in response to these complaints, 20 officers and 110 other ranks have been disciplined, including the imprisonment of two officers and five other ranks.

29. Complaints continue to be received alleging various degrees of harassment to complainants, facilitators and their legal counsel, particularly in respect of cases involving the military. Since February 2007, 20 persons imprisoned for their association with the complaints mechanism have been released. Four persons (Su Su Nway, Min Aung, Zaw Htay and Nyan Myint) who had been imprisoned because of their association with the complaints mechanism, or heavily sentenced for unrelated alleged breaches of the law in a situation in which they have clearly had an association with the SU mechanism, remain in prison. Two lawyers (Pho Phyu and Aye Myint), who are active supporters of the SU procedures, have lost their legal licences after being released 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 SU complaints procedure and that the cancellation of the lawyers' licences reflects their breach of the legal practitioners' code of conduct.

Annex A

Commission of Inquiry recommendations

(4) *Recommendations*

539. In view of the Government's flagrant and persistent failure to comply with the Convention, the Commission urges the Government to take the necessary steps to ensure:
- (a) that the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Forced Labour Convention, 1930 (No. 29) as already requested by the Committee of Experts on the Application of Conventions and Recommendations and promised by the Government for over 30 years, and again announced in the Government's observations on the complaint. This should be done without further delay and completed at the very latest by 1 May 1999;
 - (b) that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military. This is all the more important since the powers to impose compulsory labour appear to be taken for granted, without any reference to the Village Act or Towns Act. Thus, besides amending the legislation, concrete action needs to be taken immediately for each and every of the many fields of forced labour examined in Chapters 12 and 13 above to stop the present practice. This must not be done by secret directives, which are against the rule of law and have been ineffective, but through public acts of the Executive promulgated and made known to all levels of the military and to the whole population. Also, action must not be limited to the issue of wage payment; it must ensure that nobody is compelled to work against his or her will. Nonetheless, the budgeting of adequate means to hire free wage labour for the public activities which are today based on forced and unpaid labour is also required;
 - (c) 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, in conformity with Article 25 of the Convention. This requires thorough investigation, prosecution and adequate punishment of those found guilty. As pointed out in 1994 by the Governing Body committee set up to consider the representation made by the ICFTU under article 24 of the ILO Constitution, alleging non-observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), the penal prosecution of those resorting to coercion appeared all the more important since the blurring of the borderline between compulsory and voluntary labour, recurrent throughout the Government's statements to the committee, was all the more likely to occur in actual recruitment by local or military officials. The power to impose compulsory labour will not cease to be taken for granted unless those used to exercising it are actually brought to face criminal responsibility.
540. The recommendations made by the Commission require action to be taken by the Government of Myanmar without delay. The task of the Commission of Inquiry is completed by the signature of its report, but it is desirable that the International Labour Organization should be kept informed of the progress made in giving effect to the recommendations of the Commission. The Commission therefore recommends that the Government of Myanmar should indicate regularly in its reports under article 22 of the Constitution of the International Labour Organization concerning the measures taken by it to give effect to the provisions of the Forced Labour Convention, 1930 (No. 29), the action taken during the period under review to give effect to the recommendations contained in the present report. In addition, the Government may wish to include in its reports information on the state of national law and practice with regard to compulsory military service.

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, 99th Session, June 2010)

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.

**E. Document before the Governing Body
at its 309th Session (November 2010)
and Governing Body conclusions**

INTERNATIONAL LABOUR OFFICE



Governing Body

309th Session, Geneva, November 2010

GB.309/6

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)**

Overview

Issue covered

This report fulfils the obligation stemming from the resolution on the widespread use of forced labour in Myanmar adopted by the 87th Session (1999) of the International Labour Conference that there be a standing Governing Body Agenda item on this subject. The paper addresses activities undertaken and progress made since the last report.

Policy implications

See above.

Financial implications

None.

Action required

Submitted for debate and guidance. The Governing Body may care to draw its own conclusions from that debate.

References to other Governing Body documents and ILO instruments

Governing Body members may find reference to document GB.307/6, "Conclusions concerning Myanmar", and to *Provisional Record* No. 16, Part III of the 99th Session (2010) of the International Labour Conference, useful in their consideration of this report.

Introduction

1. Activity since the last report has taken place against the backdrop of the General Election, which is scheduled for 7 November 2010. Whilst this has obviously raised a number of sensitivities, it has not unduly disrupted the operation of the complaints mechanism as set out in the Supplementary Understanding between the Government of Myanmar and the ILO or any of the associated activities.
2. This paper is presented in three parts with a view to assisting the Governing Body in its deliberations. Part I recapitulates developments related to the recommendations of the Commission of Inquiry, established in 1997 to examine the complaint concerning the non-observance by Myanmar of the Forced Labour Convention, 1930 (No. 29); Part II provides statistics and commentary on the operation of the Supplementary Understanding complaints mechanism; and Part III addresses other matters directly or indirectly related to the mandate of the ILO Liaison Officer in Myanmar.

Part I. Developments related to the recommendations of the Commission of Inquiry

Recommendation 1: “That the relevant legislative texts be brought into line with the Forced Labour Convention 1930 (No. 29)”

3. The Towns Act and Villages Act of 1907 have not been repealed or amended because of, inter alia, the absence of a Parliament. Following discussions with an ILO mission, the Government of Myanmar issued, in May 1999, Order No. 1/99 and, in October 2000, Supplementary Order No. 1/99. These Orders stipulated that notwithstanding the provisions of the Towns and Villages Acts, work or services should not be requisitioned by civilian or military authorities and that breaches of this were offences under the Penal Code. A number of exceptions related to emergencies were specified. To date, Order No. 1/99 and Supplementary Order No. 1/99 have remained the reference point for the Government in its instructions and other activities.
4. The supervisory bodies of the ILO have considered that, although these Orders were a possible step towards meeting the recommendations of the Commission of Inquiry, by themselves they did not constitute an adequate response.
5. The Government has recently indicated that legislation which encapsulates both Order No. 1/99 and Supplementary Order No. 1/99, and repeals or amends the Towns and Villages Acts, is being drafted as the Constitution adopted by referendum in 2008 contains a section on forced labour. The supervisory bodies have stressed the need for the Constitution and subsequent legislation to be in conformity with the Forced Labour Convention, No. 29. According to the Government, legislation is scheduled to be introduced in the Parliament after the elections of November 2010.

Recommendation 2: “That in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military”

6. Responsibility for complying with Convention No. 29 rests with the Government including, inter alia, through the full implementation of the Commission of Inquiry’s recommendations. The mandate of the ILO Liaison Officer based in Myanmar is to assist the Government of Myanmar, on its request, in its efforts to ensure the prompt and effective elimination of forced labour.
7. This assistance is materialized, not only by educational and awareness-raising activities relevant to the above objective, but also through the operation of a complaints mechanism based on the Supplementary Understanding concluded on 26 February 2007, intended to give full credibility to both the Government’s and the ILO’s commitment to the eradication of forced labour. The trial period of this Supplementary Understanding has been extended in 2008, 2009 and 2010, each time for one year.
8. Part II of this report provides an update on progress in the operation of the Supplementary Understanding.

Recommendation 3: “That the penalties which may be imposed under Section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced, in conformity with Article 25 of the Convention”

9. Forced labour largely falls within three broad categories in Myanmar: (1) forced labour extracted by the military, such as portering, sentry duty and labour to support commercial activity; (2) forced labour extracted by the civilian authorities, for instance public works such as infrastructure repair, maintenance and construction; and (3) forced and/or under-age recruitment into the military.
10. Complaints under the Supplementary Understanding have been received in respect of each of these categories.
11. In respect of cases received under the category of forced labour extracted by the military, the ILO has received no information concerning the prosecution of any perpetrator under the Penal Code. In four instances the ILO has been advised that disciplinary action has been taken under military procedures in response to complaints submitted under the Supplementary Understanding. In some instances the solution to the complaint has resulted in the issuance of orders requiring behavioural change. One example is the requirement to use military personnel as railway security sentries, as opposed to using civilians on a 24 hour/7 days a week rotational roster system. In other instances the solution has involved the reissuing of instructions reconfirming Order No. 1/99 and Supplementary Order No. 1/99 in parallel with awareness-raising and training activities and, in yet other instances, the response has been an effective denial of the claim.
12. In respect of cases received under the category of forced labour extracted by civilian authorities, prosecution of perpetrators under the Penal Code in response to complaints submitted has been reported only in respect of Case No. 1. In that instance three persons were prosecuted under the Penal Code, resulting in one acquittal and the imprisonment of two persons. In other instances the solution has involved an administrative penalty, including dismissal or transfer, with the majority of cases being resolved by addressing the

situation of the complainant(s) without punitive action being taken against the perpetrator(s).

13. In respect of cases received under the category of forced and/or under-age recruitment, a punitive and disciplinary process has increasingly been applied. Currently, the Adjutant General's Office, working with Regimental Commanders and other senior personnel, routinely refer military perpetrators of forced and/or under-age recruitment to summary trial under military regulations. There have been no reported cases of the use of the Penal Code but three instances of military personnel being imprisoned for their part in under-age recruitment cases have been recorded. Other penalties, such as the loss of seniority, loss of pensionable rights, loss of seven, 14 or 28 days pay, and the issuance of various levels of formal reprimand, appear to be regularly administered. There have been no reported prosecutions of civilian intermediaries in the recruitment process.

Part II. Operational update of the complaints mechanism

14. As at 21 October 2010, a total of 503 complaints have been received under the Supplementary Understanding. Of these, 81 complaints were assessed as not being within the ILO mandate, 24 were assessed as receivable but were not submitted owing to the complainants' concern at possible retribution. In a further six cases the under-age recruit was released/discharged while the case was under ILO assessment and investigation. Altogether, 288 cases have been submitted to the Government Working Group for investigation, of which 132 have been resolved with varying degrees of satisfaction. Some 104 cases are currently either in assessment or cannot be submitted until further information is obtained.
15. To date, 127 forced and/or under-age recruits have been released/discharged from the military in association with complaints under the Supplementary Understanding. Government responses in these cases, subject to the Liaison Officer's ability to substantiate the facts of the case and produce proof-of-age evidence, are normally positive and relatively efficient. The principle that an under-age recruit who runs away cannot be considered a deserter has been agreed upon, and a number of such victims have been released from prison accordingly – regrettably this, at this stage, is in response to Supplementary Understanding complaints only, with no understanding as yet being reached that the age on recruitment of an alleged deserter should be formally verified prior to the arrest. Whilst the principle that the reaching of 18 years of age does not legitimize an under-age recruitment has been agreed, the ILO has been consistently refused access to verify the wishes of under-age recruits who are now of majority age and who allegedly have voluntarily chosen to continue their military career.
16. As previously reported, there is some anecdotal evidence that the incidence of forced labour extracted by civilian authorities appears to be reducing. The number of such complaints received is slowly coming back to the levels experienced immediately prior to the publicized arrest of persons associated with the lodging of complaints. This would suggest that there is a return of confidence to complain, which could be explained by the publicity surrounding the release of the persons who have been imprisoned and the continued distribution of the jointly agreed Ministry of Labour/ILO brochure.
17. There continues to be no evidence by way of complaints received of the systematic use of forced labour in the private sector. A small number of complaints concerning trafficking for forced labour continue to be received.

18. The number of complaints received continued to increase – over the period 1 June to 21 October 2010, 160 complaints were received. This compares to 65 received in the corresponding period for 2009, 25 for the same period in 2008 and 31 in 2007. Each complaint received must be individually assessed as to whether it falls within the forced labour mandate, any additional evidence required to substantiate the complaint must be obtained, and after submission there is considerable correspondence undertaken before the process can be concluded. This, together with the other responsibilities of the Liaison Officer and his staff in such areas as awareness raising and training is putting the process under considerable stress, as is evidenced by the number of cases currently in assessment.
19. To relieve this pressure, and with the support of funding from the Government of Germany, an additional local translator/interpreter, a local community liaison officer, a part-time local case worker and a locally employed international programme officer have been engaged until the end of the year. Their work is predominantly related to activities concerning children in armed conflict and under-age recruitment. Negotiations are currently under way towards obtaining the necessary funding to continue these roles in 2011–12.
20. The Supplementary Understanding contains the provision that residents of Myanmar have the right to lodge a complaint without fear of any form of judicial or retaliatory action. There have been no reports of harassment or reprisals against persons associated with under-age recruitment complainants. Similarly, in most instances of forced labour complaints lodged against government personnel (military or civilian), no harassment or reprisals are reported.
21. There are however two major areas where this has not been the case. The first relates to those facilitators for complaints under the Supplementary Understanding who are considered by the Government as being political activists. These persons tend to be arrested, prosecuted and imprisoned on charges seemingly unrelated to their complaints facilitation activities under the Supplementary Understanding. It is however believed that the association of these persons with the ILO is, in part, responsible for their incarceration and is a significant factor in determining the severity of the sentence. Daw Su Su Nway, U Min Aung and U Zaw Htay have all been previously active voluntary facilitators and they remain in prison serving lengthy sentences.
22. The second such area is geographical. Complainants from a relatively small area within the Thayet District of Magwe region, encompassing Natmauk and Aunglan townships, have experienced serious harassment in association with their forced labour complaints. Some 16 forced labour complaints, involving hundreds of complainants, have been received from this area since the Supplementary Understanding was agreed. Six remain open and unresolved even though they have now been in process for in excess of one year. Notwithstanding continuing negotiation, two of the 14 complainants imprisoned in association with these complaints remain in prison. Other complainants continue to be barred access to their traditional land, which creates obvious livelihood problems. No specific reason can be identified as to why this particular area is problematic; there may be a number of contributing factors. These could include the fact that two local authority personnel from this area have received prison sentences and six have been dismissed in response to complaints, or the fact that the area has a high military presence, both operational and commercial. However, the situation is compounded by the communities' apparent heightened awareness of their rights and preparedness to exercise those rights, in contrast to other areas. The Central Government Working Group for the elimination of forced labour continues to address these issues. However, there appears to be reluctance on the part of the local authorities in the area to reach lasting solutions.

23. The Liaison Officer considers that it would be important that he be granted full access to the court files in such cases in order to satisfy himself that the charges and subsequent prison sentences are indeed unrelated to the lodging of a complaint and do not comprise any retaliatory action in respect of the defendants regarding their involvement with the implementation of the Supplementary Understanding.
24. All requests to visit these persons in prison have been declined.

Part III. Other related activities/issues

25. From 7 to 9 September 2010, a series of awareness-raising/training activities was undertaken in cooperation with TOTAL Oil, the Ministry of Labour and Myanmar Oil and Gas Enterprises in Kanbauk township, Tanintharyi region. These activities encompassed a training-for-trainers seminar for TOTAL social and community development staff, a seminar on the management of community projects for community representatives from 26 villages, and an awareness-raising seminar for local authority representatives.
26. On 13 and 14 September 2010, a joint Ministry of Labour/ILO awareness-raising mission was undertaken to Kyaukyi and Tantabin townships in East Bago region. Two sessions were held with over 100 participants, including senior local authority personnel and senior representatives of the local police force, the judiciary and the local army regiments.
27. On 24 June 2010, a full training-for-trainers' presentation on the complaints mechanism with emphasis on under-age recruitment was made to 40 officers and staff of the Mandalay Military Recruitment Centre.
28. Between June and October 2010, three one-day workshops on forced labour were held for the staff of local non-governmental organizations. In total some 125 persons participated from all regions of the country.
29. During the same period, a two-day workshop for some 40 field staff of the United Nations Development Programme and a half-day workshop for 15 UN-HABITAT staff were held. Presentations were also made to 50 members of the Myanmar Humanitarian Country Team, the Myanmar NGO Gender Group and the Bogale township protection meeting.
30. The Liaison Officer and his staff continue to be active members of the Country Task Force for Monitoring and Reporting in respect of Security Council Resolution 1612, concerning children in armed conflict – the primary initial objective being the reaching of agreement on a joint action plan with the Government armed forces.
31. Similarly, as part of the UN Country Team Human Rights Sub-group, the Liaison Officer continues to provide support, within the limits of the current mandate, to the Myanmar Human Rights Universal Periodic Review process.

Geneva, 3 November 2010

Submitted for debate and guidance

309th Session of the Governing Body of the International Labour Office

(November 2010)

SIXTH ITEM ON THE AGENDA

GB.309/6

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 adopts the following conclusions:

1. The Governing Body welcomes the release of Daw Aung San Suu Kyi and urges that other persons still in detention, including labour activists and persons associated with the making of, or supporting the submission of, complaints under the Supplementary Understanding, will similarly be given their liberty as soon as possible. In particular it reiterates its previous call for the release of U Zaw Htay, U Htay Aung, U Nyan Myint, Daw 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.
2. In light of the commitment made by the Permanent Representative of the Government, the Governing Body calls on the new Parliament to proceed without delay to bring legislation into line with the Forced Labour Convention, 1930 (No. 29), starting with the repeal of the relevant provisions of the Villages and Towns Acts as called for by the Commission of Inquiry.
3. Notwithstanding the reported progress in increased awareness of both Government personnel and the community at large of their rights and responsibilities under the law, much remains to be done to eliminate the use of forced labour. Further committed action is required to end all forms of forced labour, including under-age recruitment into the military and human trafficking. Bringing an end to the impunity which allows forced labour to continue requires the strict application of the Penal Code to all perpetrators.
4. The Governing Body calls for the continuation and intensification of awareness-raising activities undertaken jointly and severally by the Government and the ILO Liaison Officer encompassing Government personnel, the military and civil society. It again calls on the Government to continue to actively support the wide distribution of the agreed brochure and its translation into all local languages.
5. The Governing Body notes the increased number of forced labour complaints received but considers it essential that the movement towards an environment free from harassment or fear of retribution be sustained. In this context the Government is requested to grant the Liaison Officer access to court files and detainees for the purpose of verifying the absence of judicial retribution.
6. The Governing Body calls upon the Government to cooperate with the Liaison Officer on cases raised at the Officer's own initiative.
7. The Governing Body notes that the Liaison Officer has engaged additional temporary resources to assist in meeting the demands of the increasing workload. However, that

does not meet the need that the Governing Body has consistently identified for the strengthening of capacity to deal with complaints and associated activities. Therefore the Governing Body calls on the Government to ensure the conditions and facilities necessary for the effective and timely receipt and processing of complaints throughout the country.

8. The Governing Body recalls and reconfirms all of its previous conclusions and those of the International Labour Conference and calls upon the Government and the Office to work proactively towards their realization.

**F. Document before the Governing Body
at its 310th Session (March 2011)
and Governing Body conclusions**

INTERNATIONAL LABOUR OFFICE



Governing Body

310th Session, Geneva, March 2011

GB.310/5

FOR DEBATE AND GUIDANCE

FIFTH ITEM ON THE AGENDA

**Developments concerning the question
of the observance by the Government
of Myanmar of the Forced Labour
Convention, 1930 (No. 29)**

Overview

Issue covered

This report fulfils the obligation stemming from the resolution on the widespread use of forced labour in Myanmar adopted by the 87th Session (1999) of the International Labour Conference that there be a standing Governing Body agenda item on this subject. The paper addresses the activities undertaken and progress made since the last report. It reports on the high-level mission undertaken on 22–25 February 2011 during which, amongst other matters, the trial period of the Supplementary Understanding complaints mechanism was extended for a further 12 months until 25 February 2012.

Policy implications

There are no new policy implications.

Financial implications

None.

Decision required

Submitted for debate and guidance. The Governing Body may wish to draw its own conclusions from the debate.

References to other documents

Governing Body members may find reference to document GB.309/6 and to the conclusions concerning Myanmar (Decisions of the 309th Session) useful in their consideration of this report.

Introduction

1. Activity since the last report has taken place against the backdrop of the general election which was held on 7 November 2010 and the subsequent transition, which is still continuing at the time of writing. During this period, the complaints mechanism provided for in the Supplementary Understanding between the Government of Myanmar and the ILO has continued to operate. Furthermore, the high-level mission led by Mr Guy Ryder, Executive Director, Standards and Fundamental Principles and Rights at Work, visited Myanmar from 22 to 25 February 2011.
2. This paper is presented in three parts with a view to assisting the Governing Body in its deliberations. Part I provides statistics and commentary on the operation of the Supplementary Understanding complaints mechanism since the last report;¹ Part II provides some general and comparative statistics on the operation of the Supplementary Understanding complaints mechanism for the period between 25 February 2007 (when it first came into force) and 21 February 2011; and Part III reports on the high-level mission.
3. All activities are undertaken in pursuit of, and progress is measured against, the recommendations of the 1998 Commission of Inquiry which examined the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), namely: “that the relevant legislative texts [...] be brought into line with the Forced Labour Convention, 1930 (No. 29)”; “that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military”; 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, in conformity with Article 25 of the Convention”.

Part I. Operation of the Supplementary Understanding complaints mechanism since the last report²

4. During the period from 21 October 2010 to 21 February 2011, a total of 127 new complaints were received, bringing the total number of complaints received since the inception of the complaints mechanism to 630. The number of complaints received has continued to grow, as indicated in Part II below. It is believed that this increase reflects the growing awareness among residents of Myanmar of their rights under the law, greater knowledge of the complaints mechanism and improved confidence in making use of it. This can be put down largely to the intensified awareness-raising activities undertaken, including the continued widespread distribution of the simply worded brochure explaining the mechanism, since agreement on its production was reached in May 2010.
5. Although no joint Ministry of Labour/ILO awareness-raising activities were undertaken during this period, 16 ILO workshops were held with 596 participants, comprising individuals and representatives of NGOs and of community-based organizations (CBOs). An additional ten training sessions/presentations were conducted involving a further 384 participants from United Nations agencies, international NGOs and donor groups.
6. The continuing growth in the number of complaints received has put considerable additional strain on the capacity of the Liaison Officer to service them efficiently. As at 21 February 2011, some 159 cases were at different levels of processing/negotiation

¹ GB.309/6.

² *ibid.*

following their submission to the Government for resolution, with 110 more cases still in the assessment and preparation phase prior to submission.

7. Complaints alleging under-age recruitment into the armed forces continue to account for some 60 per cent of the complaints received. Other complaints related to different categories of forced labour, including the exaction of forced labour by the civilian authorities and by the military, prison labour, forced labour related to the right to land use/occupancy, trafficking for forced labour and forced labour associated with both formal and informal sector commercial activities.
8. Government responses to complaints concerning under-age recruitment continue in general to be managed in an efficient and positive manner, with victims who are proven to have been recruited under age being discharged to the care of their families. However, complaints concerning other types of forced labour do not appear to be given the same level of priority, with considerable delays being experienced before any response is received. In the case of complaints concerning the armed forces, the responses that are received usually make reference to voluntary community work or to citizens' duties, or do not accept the complaint as genuine.
9. There has been an increase in complaints of forced labour associated with the occupancy and use of land. All agricultural land is owned by the Government. Recent complaints have shown a trend for forced cropping and increased fees, with the penalty for refusal to comply being loss of the use of the land. In the complaints received, the beneficiaries of these practices are the operational military, defence-owned commercial interests and large private corporations, with such arrangements being facilitated by local government authorities. The authorities concerned maintain that these activities are carried out in accordance with the law.
10. In line with the conclusions adopted by the Governing Body at its 309th Session (November 2010),³ two complaints raised at the initiative of the Liaison Officer have been lodged. Responses to these are awaited.
11. In response to a case of under-age recruitment, the Government has indicated that, in addition to discharging the victim and disciplining the military perpetrator, charges have been laid under the Criminal Code against a civilian who was allegedly complicit in the recruitment. This is the first such notification of prosecution to the ILO Liaison Officer and information on its outcome is awaited. Military personnel who are deemed to be responsible for the recruitment of children covered by a complaint under the Supplementary Understanding complaints mechanism are now routinely disciplined. It is understood that, pursuant to a number of complaints of trafficking for forced labour, the perpetrators have been identified and prosecuted under the Criminal Code. During the period under review, there have been no prosecutions of those alleged in complaints to have exacted other categories of forced labour.
12. In the majority of cases, no harassment or retaliation is reported in respect of either complainants or persons facilitating the submission of complaints. However, since the last report, the Liaison Officer has been obliged to raise with the Government a case of the alleged destruction/retention of harvests in retaliation for the lodging in November 2010 of a complaint concerning forced labour. In another long-standing case, most of the farmers removed from their land for refusing to undertake forced labour have been allowed to return to it, with the exception of ten farmers, who are apparently deemed by the local authorities to have been the instigators of a complaint. In addition, the licences of two

³ Conclusions concerning Myanmar (Decisions of the 309th Session).

lawyers associated with complaints under the Supplementary Understanding have not been reinstated following their revocation by the Bar Council, notwithstanding numerous submissions from the Liaison Officer. Daw Su Su Nway, U Min Aung and U Zaw Htay, who were active voluntary facilitators, and complainants U Htay Aung and U Nyan Myint, remain in prison.

Part II. Statistics on the Supplementary Understanding complaints mechanism for the period between 25 February 2007 and 21 February 2011

13. As at 21 February 2010, a total of 630 complaints had been received under the Supplementary Understanding complaints mechanism: 62 in 2007 (from 26 February), 65 in 2008, 116 in 2009, 333 in 2010 and 54 in 2011 (between 1 January and 21 February).
14. Of these, a total of 354 have been assessed as receivable and submitted to the Government Working Group for action, of which 197 have been resolved with varying degrees of satisfaction. Some 159 cases are at different levels of processing/negotiation following their submission to the Government for resolution, while 110 cases are still in the process of assessment and preparation prior to submission. In total, 157 victims of under-age recruitment have been discharged and returned to their families.
15. Of the 333 complaints received in 2010, 194 related to under-age recruitment, nine to human trafficking for forced labour and 43 to other forms of forced labour. Nine complaints could not be submitted to the Government due either to insufficient evidence or the reluctance of the complainants to be identified. Following assessment, 74 complaints were not considered to be within the ILO mandate under the Supplementary Understanding and were therefore closed without submission to the Government.
16. During 2010, a total of 70 victims of under-age recruitment identified in complaints under the Supplementary Understanding complaints mechanism were discharged from the military. During the same period, two joint Ministry of Labour/ILO awareness-raising sessions were held with 165 participants from state, regional, district and township civilian administrations and the military, and four presentations were made to Government organized training sessions for military recruiters and judges and to an interdepartmental training course on international law and standards. In addition, 19 training sessions were held with some 672 participants from United Nations agencies and international NGOs and 32 workshops were organized by the ILO for 1,328 NGO and CBO personnel.

Part III. Report on the ILO high-level mission (22–25 February 2011)

17. The high-level mission led by Mr Guy Ryder (Executive Director, Standards and Fundamental Principles and Rights at Work), accompanied by Ms Karen Curtis (Deputy Director, International Labour Standards Department) and Mr Drazen Petrovic (Principal Legal Officer, Office of the Legal Adviser), took place from 22 to 25 February 2011. The mission received the full cooperation of the Government of Myanmar in the organization and conduct of its programme.
18. During the course of the mission, it was agreed that the trial period of the Supplementary Understanding would be extended without change of content for a further 12 months. A copy of the signed extension agreement for the period 26 February 2011 to 25 February 2012, dated 23 February 2010, is attached as Appendix I.

19. The Minister of Labour, in welcoming the mission, expressed the Government's continued commitment to the policy of the eradication of the use of forced labour and expressed the belief that this commitment would be continued and potentially strengthened under the newly elected Government when it took office. He also indicated that it was the intention of the Government to introduce into Parliament a Labour Organizations Law in conformity with both the Constitution of Myanmar and the provisions of ILO Convention No. 87, as well as the necessary revisions to the Village and Towns Acts of 1907 to ensure conformity with the Constitution of Myanmar and ILO Convention No. 29. He indicated that all of these draft bills were nearing completion and expressed the belief that they could be introduced into Parliament at either its second or third session.
20. During the discussion of the situation of persons currently in detention, the mission was advised that the Government was giving serious consideration to the conclusions of all Governing Body and International Labour Conference deliberations. In this regard, the Minister said that all persons currently in detention named in ILO conclusions had been convicted of criminal offences unrelated to the ILO and its activities. Their release was therefore subject to either normal judicial appeal proceedings, or possibly by way of an amnesty that might be considered by the Government. Developments could be expected before the 100th Session of the International Labour Conference in 2011.
21. In its meeting with the Government Working Group for the Eradication of Forced Labour (WG), the mission reviewed the operation of the Supplementary Understanding in detail. The WG is composed of senior representatives from the Ministries of Labour, Foreign Affairs, Home Affairs and from the Attorney-General's Office, the General Administration Department and the Supreme Court. Also present were representatives of the Adjutant General's Office and the Corrections Department. The Chairman of the WG, the Deputy Minister of Labour, again confirmed the Government's political will to address the forced labour problem, as confirmed by the signing of a further extension to the Supplementary Understanding.
22. The discussion addressed the three recommendations of the Commission of Inquiry, namely legislative conformity with Convention No. 29, elimination of the practice of forced labour and enforcement of the law with appropriate punishment of the perpetrators.
23. In respect of legislative conformity with Convention No. 29, the WG reconfirmed the Minister's indications in respect of the intended new laws and the amendment of existing laws. More detailed discussion took place in respect of the proposed Labour Organizations Law, which is reported in more detail under item 6 of the Agenda of the Governing Body.⁴
24. The representatives of the Government said that, while the information brochure was recognized as a valuable tool which could be distributed in greater numbers, it was not possible for it to be produced in any other than the official language provided for in the Constitution. The mission raised concerns at the possible misunderstandings that could result from the inevitable production of unauthorized translations by other parties.
25. The ILO proposal for a joint Ministry of Labour/ILO awareness-raising seminar in Chin State was agreed to and further proposals were noted for such activities in conjunction with major infrastructure projects, such as the Northern Myanmar/China pipeline, and with ceasefire groups.

⁴ GB.310/6.

26. The issue of the use of prison labour for the portering of military supplies in conflict zones was discussed. The mission indicated that this unacceptable practice should be discontinued. The representative of the Corrections Department indicated that the review of the 1894 Jail Manual, which regulates the use of prison labour, was 75 per cent complete and on completion would be submitted to Parliament for adoption. He indicated that the amendment would be in line with international standards and, as such, would meet ILO concerns. The mission expressed the wish that the ILO should receive confidentially the draft texts of the revised Jail Manual and of the Village and Towns Acts amendments.

27. In response to the request by the Governing Body that the Government grant the Liaison Officer access to court files and to detainees for the purpose of verifying the reasons behind the conviction of named persons, the Government indicated that the Liaison Officer or a member of his staff has the right to attend and observe any relevant court hearing. Furthermore, if the Liaison Officer obtained the authority of the accused person on trial he would be granted access to that person's full court record. It was indicated that the right of access to persons in prison is governed by the Jail Manual and that this issue remains unclear.

28. With regard to the six pending cases concerning forced labour in Aunglan and Natmauk townships, Magwe Region, the mission reconfirmed the previous proposal that these matters be the subject of a joint Ministry of Labour/ILO task force investigation with a view to finding lasting solutions. This proposal was noted and the WG indicated that it was expected that these matters would be concluded satisfactorily in the near future.

29. The mission recognized the positive progress already achieved in a number of areas but stressed that a greater effort was required to achieve the common objective of the eradication of forced labour. It was emphasized that the law should be respected by all sectors of the Government and society, with no exceptions. All, including the military, carry that responsibility and should be held to account for failure to meet it.

30. The mission reconfirmed the firm expectation that the provisions of the Supplementary Understanding, which guarantee that no harassment or judicial retribution be directed against complainants or persons supporting the lodging of a complaint, would be honoured in all cases.

31. The WG noted without comment the mission's request for agreement on the issuance of entry visas which may be sought to enhance the efficient operation of the Supplementary Understanding complaints mechanism.

32. An informative exchange took place between the mission and the Government Committee for the Prevention of Human Trafficking. It was agreed that complaints in that area received under the Supplementary Understanding should be documented and submitted for appropriate action to the police transnational crime unit. It was further agreed that coordination between the Liaison Officer and ILO projects on human trafficking in receiving countries, with corresponding liaison between the respective national police departments, would be beneficial. The Committee for the Prevention of Human Trafficking noted the ILO's offer to support the forthcoming review of its five-year plan in respect of those areas lying within its mandate and that of the ILO, namely trafficking for forced labour and under-age recruitment.

33. It was recalled that, as part of the Human Rights Council Universal Periodic Review (UPR), a number of recommendations have been made by member States concerning matters pertaining to ILO mandated activities in Myanmar. The Myanmar UPR will not be finalized until June 2011. At a meeting with the Government Human Rights Body, it was agreed that both parties could usefully work together to follow up the recommendations of

the UPR process that were finally supported by the Government. Specific reference was made to issues concerning freedom of association, the elimination of forced labour, under-age recruitment and the reaching of final agreement on a joint action plan between the Government of Myanmar and the United Nations Country Task Force on Monitoring and Reporting in the context of the Security Council resolution on children in armed conflict (resolution 1612). The mission confirmed the availability of ILO technical assistance in these areas. The mission reported that problems concerning the ownership, use and management of land had been raised repeatedly as a major human rights issue.

34. During a meeting with the mission, the Union of Myanmar Federation of Chambers of Commerce and Industry expressed support for the eradication of forced labour, in which it said that its members were not implicated. It also expressed support for the proposed Labour Organizations Law.
35. A very active exchange was held with a group of voluntary complaint facilitators on the practicalities of the operation of the Supplementary Understanding. During the discussion, the alleged systematic nationwide use of forced labour in connection with the right of land use/occupancy was raised as a matter of serious concern. The need to ensure the safety of complainants and of persons supporting the lodging of complaints was also raised as a key condition for the successful operation of the Supplementary Understanding complaints mechanism. The participants expressed strong belief in the value of the ILO's presence in Myanmar and their support for the continued operation of the Supplementary Understanding complaints mechanism. They hoped that the ILO's presence would be strengthened and urged the ILO to take the necessary measures to ensure the protection of all concerned.
36. The mission was able to meet and hold a valuable discussion with Daw Aung San Suu Kyi. She emphasized the critical importance of social justice in the development of Myanmar and its people, and expressed strong support for the continued presence of the ILO in the country and for its mandate on forced labour. She sought the strengthening of ILO activities in Myanmar in support of workers' rights, and particularly to meet the challenges of the proposed law on freedom of association, as and when that might materialize. She voiced concern at breaches of the Supplementary Understanding complaints mechanism in respect of the safety and security of complainants and others supporting the complaints process. She expressed the hope that the ILO would continue to take a firm position both in that regard and in upholding its long-held principled position in its relationship with the Government of Myanmar.

Geneva, 10 March 2011

Submitted for debate and guidance

Appendix

An Agreement for Extension of the Supplementary Understanding and its Minutes of the Meeting dated 26 February 2007, for an additional one year trial period from 26 February 2011 to 25 February 2012

This Agreement is hereby concluded between the Government of the Republic of the Union of Myanmar and the International Labour Organization represented by the undersigned authorized representatives.

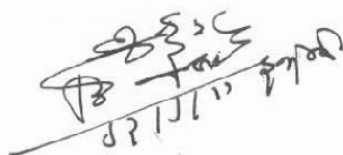
Noting clause 10 of the "Supplementary Understanding" (hereinafter SU), the "Minutes of the Meeting" dated 26 February 2007 being an integral part of the SU (hereinafter Minutes of the Meeting),

Noting the three preceding Extensions of the SU and its Minutes of the Meeting, of 26 February 2008, 26 February 2009 and 26 February 2010,

It is herewith agreed as follows:

1. Both parties agree to extend, on the same trial basis, the SU and the Minutes of the Meeting, for one year with the extension period commencing on 26 February 2011, to the day one year thereafter being 25 February 2012.
2. The spirit and letters of the SU and the Minutes of the Meeting remain *in toto* unchanged.
3. The SU and the Minutes of the Meeting shall continuously remain in legal effect upon signing by the authorized representatives of the parties mentioned below.
4. This agreement will be submitted to the forthcoming session of the Governing Body of the International Labour Office.

This Agreement is done at Nay Pyi Taw, the Republic of the Union of Myanmar on the 23rd day of February 2011.



(U Tin Htun Aung)
Deputy Minister
Ministry of Labour
Government of Myanmar



(Mr. Guy Ryder)
Executive Director
International Labour Office

23-2-2011

310th Session of the Governing Body of the International Labour Office

(March 2011)

FIFTH ITEM ON THE AGENDA

GB.310/5

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 the light of the debate, it adopted the following conclusions:

1. The Governing Body welcomes some positive developments in Myanmar as well as the extension of the Supplementary Understanding trial period for a further 12 months, and urges a revitalized programme of activities towards fully implementing the recommendations of the Commission of Inquiry.
2. The Governing Body notes the increase in the number of cases dealt with under the terms of the Supplementary Understanding. This highlights the need for the Government to adopt a more proactive stance in dealing with the overall causes of forced labour and for it to cooperate in ensuring that the ILO Liaison Office is adequately strengthened to respond to its increasing workload, including through timely positive responses to visa and licensing applications.
3. The Governing Body notes the Government's indication that draft legislation aimed at achieving legislative conformity with Convention No. 29 is in the process of preparation. It invites the Government to take advantage of the technical assistance of the ILO with a view to the rapid amendment of the Village and Towns Acts 1907, the review of the Jail Manual, and the introduction of proposed new labour legislation prohibiting the use of forced labour in all its forms.
4. The Governing Body strongly supports educational and awareness-raising activities as a means for changing behavioural patterns in respect of forced labour and to this end calls for the continuation of such activities particularly amongst the civilian and military authorities, for the continuation of initiatives for enhanced community awareness including ILO workshop activity, and for the publication and wide distribution of the information brochure on forced labour in local languages in addition to the official national language. Specific targeted awareness raising and training of persons associated with or affected by major construction projects, including oil/gas pipelines, would also be of particular importance.
5. While taking note of the information provided on activities undertaken, the Governing Body re-emphasizes the need for national laws to be consistently applied. The practices of the army and defence institutions in respect of forced cropping and the forcible use of villagers or prison labour for portering of military supplies, sentry duty and construction work in conflict zones, must be stopped. The Government is urged to take all measures to combat the culture of impunity, including through the strict application of the Penal Code to all those who use forced labour, even when such acts are committed by the military.

6. The successful elimination of the use of forced labour depends critically on the confidence of persons to complain of breaches of the law in the knowledge that they can do so without fear of harassment or retaliation.
7. The Governing Body, whilst noting the early release of U Htay Aung, reaffirms its previous call for the release of U Zaw Htay, U Nyan Myint, Daw 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, and of other persons still in detention, including labour activists and persons associated with the making of, or supporting the submission of, complaints under the Supplementary Understanding. Furthermore, the Governing Body calls for the Government to facilitate the free access of the Liaison Officer to visit persons so detained and to effect the reinstatement of the advocacy licences of U Aye Myint and Ko Pho Phyu.
8. The Governing Body notes that a number of long-standing complaints in the Magwe Region remain unresolved and, as a result, the issues and relationships in this area are becoming more complex and entrenched, with the potential to disrupt the overall positive operation of the Supplementary Understanding. The Government is urged to work with the ILO Liaison Officer towards finding early and lasting solutions to these cases.
9. The Governing Body recalls and reconfirms all of its previous conclusions and those of the International Labour Conference, and calls upon the Government and the Office to work proactively towards their realization.

REPORT OF THE COMMITTEE ON THE
APPLICATION OF STANDARDS

SUBMISSION, DISCUSSION AND APPROVAL



Twenty-second sitting

Thursday, 16 June 2011, 2.30 p.m.

Presidents: Mr Lima Godoy and Mr Hossu

REPORT OF THE COMMITTEE ON THE APPLICATION OF STANDARDS: SUBMISSION, DISCUSSION AND APPROVAL

Original French: The PRESIDENT

We shall now examine the report of the Committee on the Application of Standards, which is contained in *Provisional Record* No. 18, parts one, two and three.

I invite the Officers of the Committee to take their places on the rostrum: the Chairperson, Mr Paixão Pardo; the Employer Vice-Chairperson, Mr Potter; the Worker Vice-Chairperson, Mr Cortebeeck; and the Reporter, Mr Horn.

I am going to give the floor first of all to the Reporter, Mr Horn, to present this report.

Mr HORN (Government, Namibia; Reporter, Committee on the Application of Standards)

The Committee is a standing body of the Conference empowered under article 7 of the 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 the States fulfil the reporting obligations as provided for under the ILO Constitution.

The Committee provides a unique forum at the international level. It gathers actors in the real economy drawn from all the regions of the world who have sat alongside one another during times of economic booms and busts.

For the last couple of years, the Committee's working methods have been examined by a tripartite working group. This ongoing examination has brought about major changes. It has developed tripartite ownership with respect to the government of its Committee. Positive changes which proved to be successful last year have been pursued as illustrated by the automatic registration of individual cases and measures proposed concerning time management.

The report before the plenary is divided into three parts corresponding to the principal questions dealt with by the Committee. The first part covers the Committee's discussion of general questions relating to standards and the General Survey of the Committee of Experts, which this year is concerned with social security instruments. The second part consists of the discussions on the 25 individual cases examined by the Committee and its related conclusions. The third part concerns the Committee's special sitting on the question of the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29).

I will now recall salient features of the Committee's discussions in respect of each of these questions.

With regard to the general questions, it was recalled that the operative approach of the Committee's work is oversight achieved by means of discussion, which is also the ILO's hallmark. The fruitful dialogue between the Committee and the Committee of Experts is key in this respect. The Committee works closely with, and to a large extent on the basis of, the report of the Committee of Experts. Furthermore, it is established practice for both Committees to have direct exchanges on issues of common interest.

This year the Committee had the pleasure of welcoming the new Chairperson of the Committee of Experts, who attended the first week of its session as an observer with the opportunity to address the Committee. The discussion placed emphasis on the question of the interaction between the two Committees and how this interaction could be further strengthened. It was reaffirmed in this regard that the preliminary legal examination of reports by an independent body, prior to the tripartite examination by the Committee on the Application of Standards, is essential to any serious effort of supervision.

One issue of common interest which has been broadly emphasized by the Committee is the fulfilment of reporting obligations by member States. The work of both Committees hinges primarily on the information contained in the reports submitted by governments. This year again the Committee noted that, although the strengthened follow-up put in place by the Committees had achieved some positive results, serious difficulties remained. Further progress is still necessary and indeed crucial for the effectiveness of the ILO supervisory system. The Committee reiterated its call to the Office to intensify its technical assistance to member States to enable them to fulfil the reporting obligations which are constitutionally mandated.

One of the highlights of the first part of the Committee's work was its examination of the Committee of Experts' General Survey concerning social security instruments. For the second year in a row, the Conference Committee and the Committee of Experts had a fundamental responsibility. Through the General Survey and the related discussions, they were to guide the future standards-related actions of the ILO in a field that is vital for obtaining decent work for all.

The Conference Committee decided to take up, at an early stage of its work, the General Survey con-

cerning social security instruments to ensure timely coordination with the Committee for the Recurrent Discussion on Social Protection and to provide meaningful contributions to the overall ILO Plan of Action. The outcome of the Committee discussion was transmitted to the Committee for the Recurrent Discussion on Social Protection and completed with oral presentations by the Officers of the Committee on the Application of Standards.

The outcome encompasses a set of considerations put forward by the Committee regarding standards-related activities, including ILO technical assistance, and also regarding the sound governance of social security systems. Particular emphasis was placed on up-to-date ILO standards on social security providing a comprehensive legal framework that needs ramped-up ILO technical assistance and advice, on the need to provide information on the implementation of the instruments, and on the need to devote special efforts to capacity building and the training of the social partners, as well as the strengthening of social dialogue.

The Committee expressed its support for a Social Protection Floor, provided that a time-bound progressive approach is adopted, combining the adequacy and sustainability of social security systems. The outcome also highlighted the need for coordination in the areas of social security and employment policies.

With respect to its core work concerning the individual cases, the Committee pursued its efforts to achieving a balance in cases listed between different regions.

This year the breakdown of cases were as follows: Africa: four cases; Arab States: one case; America: seven cases, of which Latin America had five and North America had two; Asia and the Pacific: seven cases; and Europe: seven cases.

As in previous years, the majority of the cases selected concerned the application of the fundamental Conventions, and 14 cases related more particularly to freedom of association and collective bargaining. The Committee had to discuss one case in the absence of any Government representative, when the country was duly credited and registered at the Conference. This concerned the application by the Democratic Republic of the Congo of Convention No. 29.

The Committee's conclusion on all these cases constitutes an authoritative and effective compass to guide member States in sustaining their commitments under the Conventions that they have ratified.

Once again the Committee has placed priority on ILO technical cooperation and assistance to help member States in implementing international labour standards.

The Committee decided to include a special paragraph with respect to the following cases: the application by Guatemala, Myanmar and Swaziland of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); the application by Uzbekistan of the Worst Forms of Child Labour Convention, 1999 (No. 182); and the application of the Democratic Republic of the Congo of the Forced Labour Convention, 1930 (No. 29).

Finally, 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), was held in conformity with the resolution adopted by the Conference in

2000. 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. As called for in the resolution, the Committee counted on the collaboration of all agencies in the United Nations system for the effective elimination of forced labour in Myanmar. It similarly called on all investors in Myanmar to ensure that their activity in the country is not used to perpetuate or extend the use of forced labour but rather makes a positive contribution to its complete eradication.

The Committee also called for the strengthening of the capacities 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, as well as any other additional action necessary for the complete elimination of forced labour.

The results achieved highlight in particular the Conference Committee's remarkable capacity, through dialogue, to discharge its core mandates and at the same time to be responsive to contemporary challenges. It makes a lasting contribution which enables the ILO to discharge effectively its core responsibilities.

It has been an enriching experience to participate in the Committee's work and I would like to thank the Chairperson, Mr Sérgio Paixão Pardo, along with the Employer and Worker Vice-Chairpersons, Mr Edward Potter and Mr Luc Cortebeeck, for their competence, efficiency and spirit of cooperation, which has enabled the Committee to carry out its work.

Finally, I would like to recommend that the Conference adopt the report of the Committee of the Application of Standards.

Mr SYDER (Employer, United Kingdom; speaking on behalf of Mr Potter, Employer Vice-Chairperson)

On behalf of the Employers' group, it is my honour to commend the report of the Committee on the Application of Standards to this plenary today. You have it before you and I confirm that it has been well described by the Reporter.

Our group's report will again be divided into two parts this year: first, we will give our views on certain elements of the Committee's work; and second, we will look to the future, given our reflections arising from the 100th Session of the ILC and the 85th anniversary of the Committee.

I would like to start by highlighting that ultimate responsibility for the supervision of ILO standards lies with the ILO's tripartite constituency, in other words, our Conference Committee on the Application of Standards. article 23, paragraph 1, of the ILO Constitution stipulates clearly that summaries of the reports communicated by member States under articles 19 and 22 shall be submitted to the tripartite Conference for examination and assessment.

Over time, the number of ratified Conventions and ILO member States, and hence the amount of supervisory work to be done, has increased. Necessary administrative adaptations have been made. As the Conference itself was unable to do this work on its own, the Committee of Experts was established which, with the support of the Office, is mandated to make legal assessments of compliance with standards-related obligations in order to enable the Con-

ference, through its Committee on the Application of Standards, to deliver its supervisory work.

These adaptations, however, do not alter the core requirement that it is the Conference and the ILO's tripartite constituency who are mandated to ensure the effective delivery of standards supervision. This responsibility cannot be delegated. This core principle is undermined by the Office and the Committee of Experts, without the express approval of the Conference, is undertaking increasing amounts of standards supervision.

As the Employers' group highlighted last year, we strongly feel that the time has come to put governance back on track and to reaffirm tripartite governance in ILO standards supervision. ILO standards supervision has to be at the service of the ILO's tripartite constituents; its results should take into account their needs, including the needs of the Employers.

The Employers propose that a comprehensive discussion on necessary governance readjustments be held in the ILO Governing Body.

We called once again this year during the general discussion, as a first step, for a new format of the report of the Committee of Experts, which should be a document that reflects, apart from the Experts' assessment, tripartite views and needs. This would involve providing the opportunity for the tripartite constituents to set out, in a special section of the report, their views on standards supervision-related issues, for instance on the application and interpretation of particular Conventions. A report with this new format would, without question, strengthen the credibility and the acceptance of tripartite ILO standards supervision. We continue to support ILO standards supervision and are committed to keeping it relevant and effective and this was the main message we conveyed during the general discussion in the first week of our Committee.

With regard to the General Survey on social security, the Employers' group has strong concerns at a very fundamental level. The Committee is not, and should never be, a policy committee. There is nothing in the Declaration on Social Justice for a Fair Globalization or the recurrent review process that requires the Committee or the experts to address policy. We fundamentally believe that the purpose of the General Survey is to help the tripartite constituents better understand the legal meaning of the provisions of a given instrument, how to be in compliance, or what steps need to be taken to be in compliance with ILO standards. The General Survey should also identify obstacles to ratification and possible ways to overcome any obstacles of ratification. This year's General Survey regrettably has limited value in that respect and the Employers' group regrets the overlap with the report submitted to the recurrent discussion.

The increasing policy orientation of the General Survey jeopardizes the technical value of the analysis and thus changes the purpose of the constitutional obligations under article 19.

The experts are first and foremost the neutral fact-finders to facilitate the work of the Committee. We, and not the Committee for the Recurrent Discussion, are the experts' client. If this is the approach that future General Surveys will take, instead of the classic format, then the Employers' group sees no relevant purpose to the mandate of the Committee of this kind of General Survey. It risks doing serious damage to the Committee. We are aware that Gen-

eral Surveys are prepared with reference to questionnaires approved by the Governing Body and, in this regard, we request the Governing Body to approve questionnaires that faithfully follow the text of the Conventions that are to be covered by a General Survey. That would contribute to a better understanding of the provisions of the instruments covered. We also call on the Office, which prepares the draft questionnaires, to contribute in this regard by putting together questionnaires that faithfully follow the text of Conventions without adding new elements.

In this regard, we call for the General Survey for 2012 not to follow the footsteps of the one this year, especially because the recurrent item discussion is going to be on fundamental principles and rights at work – the centrepiece of the ILO's normative architecture.

It is a unique opportunity for the ILO's supervisory mechanism to take stock of law and practice on fundamental Conventions. I repeat, the Committee on the Application of Standards is not a policy committee. Its scope is definitively set out in article 7 of the Standing Orders of the Conference. In our view, it is not for the experts to enter into ILO standards policy and, for example, to propose new standards that in their view, better meet current needs. That is solely the prerogative of the ILO tripartite bodies, that is, the Conference and the ILO Governing Body.

The adoption of the list of cases was particularly difficult this year. Each member of the Committee had different priorities. I highlight that a case should not be discussed without there being a specific observation in the experts' report. This year, there was no observation on Colombia's application of Convention No. 87 and therefore the Committee could not discuss the case. The Employers viewed the proposal to discuss Colombia's application of Convention No. 81 simply as a pretext to discuss, in reality, Convention No. 87.

We are of the view that Colombia is a country that has taken huge strides to do what the ILO, its missions and the supervisory bodies have asked of it. No country is ever perfect. But it is an abuse of the supervisory system to insist continuously on the discussion of the case. A similar logic applies to the case of Japan with respect to the application of Convention No. 29.

We appreciated the discussion, in particular, of three out of the 25 cases discussed, which have great significance for the Employers. In the case of Uzbekistan's application of Convention No. 182, the Committee expressed its serious concern at the insufficient political will and the lack of transparency of the Government to address the issue of forced child labour in cotton harvesting. It called once again on the Government to accept an ILO high-level tripartite observer mission that would have full freedom of movement and timely access to all situations and relevant parties including in the cotton fields, in order to assess the implementation of the Convention.

In the case of Uruguay's application of Convention No. 98, concerning the non-compliance of the 2009 Act on Collective Bargaining (No. 18,566) with Convention No. 98, the Committee trusted that, with the objective of bringing the legislation fully into conformity with the Convention, the necessary measures would be taken without delay to prepare a bill that reflected the comments of the

supervisory bodies, including the Recommendation of the Committee on Freedom of Association with regard to Case No. 2699. Furthermore, progress in this regard is expected to be reported to the ILO mission that will visit the country at the end of August this year.

The case of Serbia's application of Convention No. 87 concerns the restrictions placed on the right of employers to establish and join an organization of their own choosing and the Government's interference with the administration of activities and programmes of the most representative employers' organization. The Committee urged the Government to ask for ILO technical assistance with a view to bringing the legislation and practice into full conformity with the Convention without any delay.

In selecting the cases on the list this year, we used the long-standing objective criteria for selection of cases established in Document D.1. on working methods.

The selection of 25 cases out of 800 observations is, each year, a very sensitive exercise and a delicate process. Indeed it means that the Committee is only able to address 3 per cent of the Experts' observations on average, not counting the hundreds of direct requests made by the Experts.

This year we reached the limit of the current system, as the list was agreed on the Tuesday of the second week of the Conference, which delayed the work of the Committee. We cannot repeat this scenario next year. Some improvements are now required. The work is too important and the time and resources put in place are too large to be jeopardized by the lack of a list. It is the responsibility of the Committee to maximize its work in order to do it in the most effective way. We have suggested that it could be appropriate to set a time limit for finalizing the list. For example, the final list must be finalized by noon on Friday of the first week of the Conference, with the scheduling of the cases to be heard confirmed shortly thereafter. If not, then the Committee's work should be limited to the agreed and double footnoted cases to be confirmed to the Governments by 3 p.m. on the first Friday of the Conference. To facilitate this process, the preliminary long list of cases should be limited to 40 cases.

We would like to see more cases relating to the application of technical Conventions and the fundamental Conventions related to forced labour, discrimination and child labour. This year, 80 per cent of the cases on the list related to fundamental workers' rights, to the exclusion of other important technical ILO standards, such as those relating to the protection of wages and to hours of work. The need for regional balance within the list should be maintained.

Also, a number of the individual cases examined dealt with various aspects of the disputed right to strike. As is well known, the Employers have continuously and strongly objected to the Experts' interpretations on a right to strike, and the fact that there is no legal basis whatsoever in Convention No. 87. We have put forward in detail the legally correct arguments for many years, in particular in the context of the 1983 and 1994 General Surveys on Convention No. 87, as well as in many discussions on individual cases, in plenary and in the *International Labour Review* Volume No. 144 (2005), No. 3, pages 253–289. Regretfully, the Experts continuously ignore our representations. This needs to be rectified without further delay.

Finally, we support the continued use of the time limits for representations. This works extremely well.

The Employers' group is steadfast in its support for ILO standards supervision. We reconfirm our commitment to strengthening standards supervision. I quote Nelson Mandela when he was President of the African National Congress in 1994: "We cannot develop at the expense of social justice. We cannot compete without a floor of basic human standards. If this is true inside our own society, it is true for the world as a whole."

With our eye on present needs and the needs of future generations, it is imperative that standards supervision is relevant and practical, and outcomes focused.

Responsibility for ILO standards supervision ultimately rests with the ILO's tripartite constituency, that is to say, the International Labour Conference. To support ILO standards supervision, we need to regularly assess the strengths, the weaknesses, the opportunities and the threats to standards supervision. Questions should continue to be asked. We must continue to show the leadership to tackle hard questions, as we have an overriding duty to ensure standards supervision remains effective and relevant at international and national level.

This may mean that we do not always agree. Tripartism, which is integral to democracy, is an essential ingredient to creating a global consensus on the meaning, scope and implementation of ILO standards. Apart from the annual session of the Conference in June, the stark fact is that the Conference tripartite constituents and the Governing Body continue to have very little awareness of the day-to-day standards supervisory process. This has to change, because again we have a duty to ensure standards supervision remains effective and relevant at international and national level. The day-to-day supervisory process needs to be more visible. For standards supervision to have credibility in the real world of work, ACT/EMP and ACTRAV must be fully engaged with the International Labour Standards Department in the supervision of standards.

The Employers' group is firmly of the view that in these difficult economic times, the future of standards supervision must be sustainable. This means that we need to take a hard look at how we work, and identify ways to work smarter. We must embrace greater use of technology; otherwise we will be increasingly out of step with the globalized world. If the technology is not available to all, steps should be taken to rectify that. If education is required to use the technology, then again steps should be taken to rectify that. Most delegates have some form of mobile telephone or computer device with them at the Conference, so why are mountains of paper still being created on a daily basis? Give delegates the choice of receiving electronic documents. A sustainable ILO, which is supportive of the green economy, cannot expect our current and future generations to tolerate such waste. Frankly, the cost is better used elsewhere and resources should be used in a more effective way to support the work of the Committee.

In summary, restoring tripartite governance in standards supervision, referring to objective criteria in the establishment of the list of cases, and focusing on outcomes and sustainability should be the key elements of our future.

In closing, please allow me to thank the Office for its superb support in the development of our work. Special praise is due, once more, to Cleopatra Doumbia-Henry and her excellent team. We must never forget that it was the Office's initiative to convene an ongoing working party several years ago on the working methods of the Committee. We are all on a journey to improve working methods; we are a case of much progress.

Once again, our Chairperson, Sérgio Paixão Pardo, deserves special thanks for the firm but fair parliamentary running of the meetings this year. Quite simply, he is excellent.

We thank the Reporter, Christiaan Horn, for keeping us all on balance.

Please allow me, on behalf of Ed Potter, to thank the Employers' group and especially my colleagues, Thomas Prinz, Sonia Regenbogen, Roberto Suárez, Juan Mailhos, Peter Anderson and Alberto Echavarría, for the help they gave Ed in preparing and presenting the cases. I would like to express our immense gratitude and admiration for the support given by María Paz Anzorreguy and Maud Megevand of the International Organization of Employers and Chimgee Sachir, Christian Hess and Alessandra Assenza of the Bureau for Employer's Activities. Quite simply, we would be lost without their support.

Last, and certainly by no means least, I must thank Luc Cortebeeck, Worker spokesperson, and his team. We enjoyed strong collaboration. We applaud his thoughtfulness, his solutions-focused approach and his goodwill. He has again represented the Workers this year with distinction and intelligence. Thank you, Luc, and, while we appreciate that we may have lost you to the Governing Body, we are confident that your legacy leaves us in excellent shape for the future.

In conclusion, I reaffirm again the Employers' continued support for an effective and relevant ILO supervisory system. We support this report without reservation.

Original French: Mr CORTEBEECK (Worker, Belgium; Worker Vice-Chairperson, Committee on the Application of Standards)

This year we are celebrating the 100th Session of the International Labour Conference and the 85th meeting of the Committee on the Application of Standards, which was created in 1926.

I cannot pass up the opportunity to mention an interesting work that was published a few weeks ago and which is dedicated to the institutional process and the impact on the effective application of standards of the constructive dialogue established over many years between Workers, Employers and Governments within the Committee on the Application of Standards.

This study takes a structured and scientific look at the intimate, highly emotional experiences within the Committee on the Application of Standards. Within the Committee, serious and personal violations of workers' rights are discussed every year in the Committee. Sometimes this is the only international space where the workers can denounce what they live through on a daily basis in certain countries, and they do it with discipline and with dignity.

That is one of the reasons why the Conference is such an important and privileged point in time, even if some of us are under threat when we return to our countries because of the words that we have uttered. One example of this is the situation of our colleague

who intervened in the case of the Republic of Fiji as an observer from the International Trade Union Confederation (ITUC). He had previously been detained in his country and our fear is that this will happen once again, but we would point out to the representative of the Government of the Republic of Fiji that the Workers' group, in its entirety, will be vigilant as to the fate of our colleague.

We know that every year this is an important event for workers. We are aware that in the very difficult current environment our work within the monitoring system for the application of standards, in close cooperation with the Committee of Experts and the International Labour Office but also with the Employer and Government members, is an instrument for rebalancing the economic focus with a social focus. However, this year our work was really not easy, even though at the end of our work we were able to have a very positive tripartite dialogue within the Committee. And we were very happy that we arrived at common conclusions for the 25 cases which were chosen, even though setting up or drafting the list of cases was extremely difficult and a source of great tension. The preparation of this list is becoming increasingly difficult, but this year the experience was much worse than any year in the past.

On the eve of the Conference we had a list of 44 cases, the first time ever. However, very detailed preparatory work had been carried out on the basis of the criteria which are normal for our Committee and which is recognized by workers throughout all continents.

The list of the cases presented last May to governments was the fruit of a compromise between the concerns of the Workers' and of Employers' groups, together with an abiding concern to avoid haggling, blackmail, the use of a veto in one camp or the other.

The problems that arose – and the Employers may not be happy to hear this – did not arise because the Workers forgot the selection criteria, nor was it because they dragged things out, nor was it because they tried to use the Committee as an alternative forum to discuss freedom of association. It is clear that choosing cases for the list is in essence, as the spokesperson of the Committee said, automatically a subject of controversy, a discussion based on arguments put forward to criticize someone else's opinion. In the selection process, the greatest responsibility lies with the social partners, who are in charge of the practical functioning of our Committee. And that is the way it has to be.

We have to produce this list together, and it is together that we have to reach compromises in order to make choices. We cannot have a situation where one of the parties has constantly to submit to the other, which clings stubbornly to its cases. I will repeat as often as is necessary that the mission of this Committee is to take part in the monitoring of the application of Conventions ratified in the spirit of calm discussion, away from pressures relating to ideological opportunism or internal political pressure within the countries in question.

This year, the incidents that accompanied the drafting of the list forced us once again to find a creative solution in the case of Colombia, where assassinations and threats to workers continue. These incidents also forced us to remain silent on the case of Japan and Convention No. 29. At the moment, there is no prospect of a solution for this

case, despite the repeated calls to the employers and the Government in Japan. The Conference is finishing without any sign of a possibility of offering these women a respectful solution to their rights.

Recognizing the facts and asking for people's pardon and rectifying the situation does not involve losing face. Other governments have understood that throughout the world. In Korea there are 74 survivors aged 85 and more. The respect due to these women and those who still live in Japan means that an alternative solution has to be found with the cooperation of the Government, the Employers and the officers of the Conference, for humanitarian reasons alone. Therefore we feel a great sense of disappointment – and would like these words to be recorded in the *Provisional Record* – because I have often criticized inertia in the search for compensation in this case.

We were, however, able to acknowledge the situation of Colombian workers in the context of the general report of our Committee at a point when the discussion had not been technically concluded; the conclusions of the high-level tripartite missions, which were carried out in February of this year, were read out.

In future, in the working group on the Committee's procedure, we need to find an original solution, which is discussed by the social partners, to the problems we are faced with. The Employers and the Workers have to speak about this as quickly as possible and establish a better working basis when it comes to drafting the list relating to the defence of absolute rights.

In our Committee I also raised questions about our working methods and I hope that we will be able to come back to those issues soon, when we have our next working sessions with the experts.

Let me take a look now at the list of cases. I would like to give you some figures. We discussed 25 cases, as always, but within those 25 cases there were six cases involving double footnotes, which were added by the experts in article 56 of their report. Five cases were given a special paragraph in our Committee's report: Guatemala for Convention No. 87, with a request to maintain the technical assistance which is currently under way; Uzbekistan for Convention No. 138, regarding which an offer has been made to the Government to send a tripartite mission of observers at a high level from the ILO, together with technical assistance and an offer to involve the country in the International Programme on the Elimination of Child Labour (IPEC), as this case relates to the mobilization of thousands of children in dangerous labour in the harvesting of cotton; the Democratic Republic of the Congo for Convention No. 29, where technical assistance was also offered to the Government (not present during the discussion), with the emphasis on implementation of a reinsertion programme for victims of sexual exploitation; Myanmar/Burma, for Convention No. 87, where the Committee called for the liberation without further ado of specifically identified trade unionists (this case is so serious and goes back so far that it will also have to be discussed in the Governing Body in November 2011); and Swaziland, for Convention No. 87.

In all, our Committee discussed 12 examples of technical assistance, and we have confidence in the ability of governments to work together with the ILO to improve the respect of Conventions and their implementation in practice in the territories in ques-

tion. Three special missions were decided, apart from that already decided for Greece. We should note that this case, as well as the case relating to Romania, which concerns the implementation of Convention No. 98 and the limitations which may or may not be deemed to be acceptable in a situation of crisis, is symbolic of the threats that weigh on certain countries in the European Union (EU) as a result of the measures undertaken by the EU and the International Monetary Fund (IMF).

In the majority of cases, the experts should receive information on advances that have been made so that they can feed into their sessions of 2011. The reading of their report for 2012 will provide us with important information as to whether the governments in question are taking our Committee seriously.

I would like now to speak of certain cases which we were not able to discuss. I am not trying to deal indirectly with cases that were not part of the final list among the 44 cases that were communicated to the governments last May. I am just trying to remind people that the 19 countries that were not discussed this year should not rest on their laurels or imagine that everything is hunky-dory as far as they are concerned.

I will start by saying something about the Arab Spring. The Arab revolutions have been characterized by the fact that they were non-violent victories and were the result of work on social networks such as Facebook, Twitter or YouTube. They came unexpectedly, they came from civil society, they came from young people, but these young people – and this is an important point – were educated. In the revolution of young people in Tunisia, for example, they were able to base themselves on work that had been done by trade unions on the ground and that allowed for a rapid and spontaneous political follow-up. So it was not a revolution of empty bellies; it was a revolution which involved a lot of dignity and which led to Ben Ali stepping down.

However, not everything has been achieved; everything is not going to happen overnight. This Arab Spring led – and continues to lead – to a shake-up of authoritarian regimes. These revolutions have gone beyond the bans imposed by the people in power.

They are a sign that, after the winter of dictatorship, it is necessary to have a spring of freedom. The uprisings have changed the political order in certain authoritarian regimes, which thought that the lesson to be learned after September 2001 was that brute force was the only deterrent to terrorism. As long as leaders listen to their people and do not shut their ears, as they have done in Bahrain – not counting the torture carried out in the Syrian Arab Republic and in Yemen – the Spring phenomenon of freedom points the way towards greater democracy, better standards of living and the possibility of Decent Work and the hope of better integration into a democratic society.

In Bahrain, on the basis of article 26 of our Constitution, the Governing Body will adopt the necessary measures to ensure that workers' rights are guaranteed.

On this long list there was also the case of Egypt for Convention No. 87. Dr Ahmed El Borai, Minister of Labour and Migration in Egypt, reminded us in the wings of the last Governing Body meeting of the ILO: "The value of social dialogue between governments, employers and workers is important if

we are to attain social peace and create a climate which fosters economic development.”

We decided to take the Minister at his word, and we asked him to introduce new legislation on trade unions as quickly as possible which would guarantee freedom of association and the respect of other Conventions in the ILO system. The Workers’ group pays tribute today to the courage of the Egyptian people.

At this stage we are very far from the terrorism advocated by certain radical religious groups. The message is essentially secular, of simply being open to the world. It is therefore important to respond adequately to these aspirations, if we are not to damage the concept of democracy irreparably. That is one of the responsibilities of governments, particularly those governments that are in a process of transition.

It is also a wonderful opportunity to have social dialogue and strong social partners contribute to democratic change.

On our long list there was also the Netherlands for Convention No. 121 and if it was not on the final list it was only because we had to restrict ourselves to 25 cases. I will just mention that the Committee of Experts will ask the Government to provide precise information for 2011. This is a case that we will follow up with the Dutch trade union organizations, and we will come back to it if necessary in 2012.

We will do this because the case is directly relevant to the subject of the General Survey. More than that, in paragraphs 230 and 233, the General Survey specifically refers to legislation on unfitness for work, which is precisely why we put this case concerning Convention No. 121 on our long list. I would ask the Government to note this point.

This year, we did not raise the case of the Islamic Republic of Iran and the implementation of Convention No. 111. The workers follow closely developments in this very serious case, which has often been mentioned by the Committee. We hope that the Government will respond to the repeated, precise and targeted demands of the Committee of Experts in their 2011 report.

The workers also paid tribute to the liberation of Mansour Osanloo, the president of the Bus Workers Trade Union in Tehran. We are extremely happy to hear this news. Nonetheless, there are still two other leaders of the same trade union in prison, Abraham Madadi and Reza Shahabi. We would ask that they, along with Mansour Osanloo, be freed immediately.

Finally, we note the follow-up to the decision of the Governing Body of 24 March 2011 to send a high-level tripartite mission to the Bolivarian Republic of Venezuela on Conventions Nos 87 and 98, and we look forward to hearing the outcome of those missions.

To conclude, a few words on the General Survey on social security and the state of law, in the light of the follow-up to the Declaration on Social Justice for a Fair Globalization of 2008.

The Committee had a very good discussion on the General Survey, even though the Employers accused the Experts of exceeding their remit, and even if the points of view on the instruments analysed often diverge.

Our approach in the Workers’ group was to welcome the General Survey, which provided us with very good guidelines for national and international policies with respect to social security.

We have the impression that a large number of governments shared this positive analysis of the General Survey. From all continents we receive indications that social security is a guarantee for access to fundamental rights and that privatization unfortunately often leads to minimal welfare services that are unacceptable if we are to guarantee improved living standards.

We have fulfilled our obligations as regards the Committee for the Recurrent Discussions on Social Protection, because a message was sent to it by our Committee on 4 June, the main points of which were the following.

Updated ILO standards on social security systems should set up an overall legal framework backed by ILO assistance and advice.

A special effort is expected from the ILO in reinforcing the skills and training of the social partners, as well as strengthening our social dialogue. As regards Convention No. 102, which deals in stereotypes and an outdated model of the family, we expect work to be carried out by the International Labour Standards Department in order to resolve these problems.

Convention No. 168 should also be submitted to the same body. Principles of good governance by States have been brought to the fore in order to guarantee robust and long lasting social security systems.

What is needed is good administration, having well-equipped services to combat clandestine work, non-payment of social security contributions, fraud, corruption and the misuse of the system as a whole.

We must insist on the responsibility of the State to ensure that sustainable social security systems and adequate administrative and financial administration systems are set up. We also need to ensure coordination between social security policies and employment systems, as well as economic and development policies.

The Committee supports the idea of a Social Protection Floor subject to a progressive approach, which is relevant and ensures the sustainability of social security systems.

We regret that the various challenges posed by migration, which are increasing, were not dealt with. The important thing is to ensure that the number of ratifications, in future increases, once the content of these conclusions has been activated.

We also hope that we will be able to meet the challenge facing our two committees, especially as the General Survey in 2012 will be much more complex as it will deal with the eight fundamental Conventions.

It remains for me to thank everybody. Thank you, Mr Potter, who had to leave the Conference before it ended and was replaced by Mr Chris Syder. I thank the Workers’ group for the excellent work that it did over the past three weeks.

I thank Sérgio Paixão Pardo, who really is our best Chairperson. I thank Ms Doumbia-Henry, Ms Curtis and our counterparts at the ILO for their technical help and their legal support. I would also like to thank the Reporter, Christian Horn.

I would like to thank the staff of the ILO for their help and their friendliness and the interpreters without whom we would be lost. I thank the ITUC, and particularly Stephen Benedict.

I would particularly like to thank the Officers of the Workers’ group for the Committee on the Application of Standards, who were extremely in-

volved in the organization of our work, particularly Trine Lise Sundness, José Pinzon, Mademba Sok and Annie Van Wezel.

On behalf of the Workers' group, I thank Kurshid Ahmed who over the years has played an extremely important role in our Committee and in the ILO. And I thank those who have helped us from ACTRAV, Beatriz Vacotto and Enrico Cairola, as well as my closest collaborators Andrée Debrulle, Gilbert Deswert and Véronique Rousseau.

I would like now to ask you all to approve our Committee's report.

Original Portuguese: Mr PAIXÃO PARDO (Government, Brazil; Chairperson, Committee on the Application of Standards)

Once more we are at the end of the work of our Committee on the Application of Standards. I will not refer to the reports prepared by Mr Horn or to those of the Vice-Chairpersons, although they were most informative.

I would just like to make a couple of comments. In the follow-up to the 2008 ILO Declaration on Social Justice for a Fair Globalization, our Committee looked at social protection in the world and we concluded that, for many years, the ILO has ensured the welfare of the workers of the world with a minimum level of social protection, as reflected basically in the contents of the Social Security (Minimum Standards) Convention, 1952 (No. 102), and the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168). A Social Protection Floor is necessary to combat poverty and the ILO's instruments are an excellent starting point for this.

I would like to thank the President of the Conference, Mr Nkili for having visited our Committee, thus enabling us to give him a warm welcome. We were very pleased to have him with us. He realized that our Committee works very hard to improve the world of work.

Our Committee will not finish its work today. We are going to continue working until the next International Labour Conference in 2012, implementing the conclusions and providing technical assistance to our members.

Our conclusions are the result of social dialogue and agreement between the members of the Committee. Our special paragraphs cannot be deemed to be a punishment. They are an invitation to reflect, to dialogue, to discuss a de facto situation and to see what can be done between the social partners and, when necessary, the ILO too can help with technical assistance.

Our conclusions, which reflect the discussions in the Committee, should be seen as a starting point for dialogue and a plan of action to correct possible shortfalls in the application of a Convention. The list of countries should not be deemed to be a blacklist, it is an invitation to explain to the Members how a Convention is being applied and I am indeed very sorry not to have had a case of progress to examine at this meeting.

I would like to thank the Chairperson of the Committee of Experts for visiting our Committee for the first time. I know he was most impressed by what he heard and saw, and I am sure that our dialogue with the Committee of Experts will be even better in the future. I would like to express my satisfaction to the plenary at the way in which the Committee worked. We managed our time well. We were disciplined and we managed to say in a few

words everything that we wanted to say. I would also like to thank everyone for cooperating in this regard. Therefore, Mr President, I would like to launch the idea that time should be managed in the Governing Body in the same way as in our Committee.

I would like to open a parenthesis – we need to improve the preparation of the list. This should be done in a timely fashion, ensuring that a greater diversity of issues are examined. We defend the link between fundamental standards and democracy, but we cannot overlook technical standards and standards-setting as well.

This year our Committee has completed 85 years of hard work helping to change the world. We are not just a voice crying out in the middle of the ocean. We are a dynamic voice which cries out together with those calling for justice and peace in the modern world.

I would also now like to thank our very kind Reporter, Mr Horn, for the excellent report which he has presented. I would also like to thank and pay tribute to the spokespersons Mr Potter, represented here by Mr Syder, and Mr Cortebeek, who was acknowledged by our Committee, and also extend thanks to the other spokespersons of the groups. I would like to thank Ms Doumbia-Henry and Ms Curtis and all the ILO experts who accompanied us in our discussions and worked into the early hours of the morning on the report.

I would invite you, Mr President, and all the delegates to approve the report of our Committee which is an important contribution to progress for men and women in the world of work.

Original French: The PRESIDENT

I would now like to open the discussion on the report.

Original Russian: Mr ALIMUKHAMEDOV (Government, Uzbekistan)

This 100th Session of the International Labour Conference is of great practical significance in the implementation of the goals and principles of the ILO for the creation of decent working conditions, ensuring employment and social protection.

We endorse the decisions adopted at this 100th Session which envisage, firstly, the implementation of policies to promote employment and social protection of workers in accordance with the Global Jobs Pact, and secondly, sustainable economic growth with the goal of creating the conditions for decent work and improved living standards.

In this regard, Uzbekistan is consistently implementing specific measures to create new jobs and preserve existing jobs, to stimulate and support labour activities of the population and families, as well as providing targeted social assistance for workers, the low paid, young people, children, women and persons with disabilities.

In accordance with our established priorities for economic and social development, a policy document for further democratic reforms and the creation of civil society, and our anti-crisis programme, the principles of tripartism and social partnership are being developed, safeguards facilitating the development of small businesses and private enterprise are being strengthened, as well as systems of general and vocational education and training and health care.

These actions are in line with the ILO's strategy and fundamental ILO Conventions, which have to take national conditions of member States into account.

However, during the discussions at this 100th Session on the report of Uzbekistan concerning its implementation of the Worst Forms of Child Labour Convention, 1999 (No. 182), the specific proposals in support of action by Uzbekistan to apply the Convention, which were made by representatives of China, Singapore, the Bolivarian Republic of Venezuela, Cuba, Pakistan, Russian Federation, Azerbaijan, Turkmenistan and Belarus, were not reflected. The fruitful work being done in Uzbekistan to combat child homelessness and parental neglect, as well as prostitution, drug dependence and trafficking involving children – on which information was submitted to the ILO at the end of May and beginning of June this year – was disregarded as was the total absence in Uzbekistan of child slavery and bonded labour and any involvement of children in armed conflicts.

Despite the fact that the worst forms of child labour include child trafficking, using them for prostitution, production of pornography or narcotics and other activities that are harmful to their safety or morals, the assessment of the application by Uzbekistan of Convention No. 182 and the proposals of the ILO experts have focused on the use of children in cotton harvesting, with a call to the Government to accept a high-level mission to assess the application of this Convention.

This narrow approach results in a one-sided and thus distorted impression of the application by Uzbekistan of Convention No. 182.

We have not seen, in the adoption of conclusions concerning Uzbekistan, any respect for the principle of equality between the parties, that is, due regard for conclusions and proposals not only of employers' and workers' representatives but also those of governments.

We consider in this regard that it would be appropriate to review the rules and procedures that govern the discussions in the Committee on the Application of Standards on the observance by countries of ratified Conventions, and this should also include according governments the right to speak and make proposals which should then be taken into account when any decisions or conclusions are adopted.

We will continue to develop cooperation with the ILO along these lines, and we hope for dialogue based on trust and an objective, constructive approach to assessing the application of ILO Conventions.

Original French: The PRESIDENT

If there are no further requests for the floor, we are going to approve the report of the Committee on the Application of Standards. If there are no objections, can I take it that the Conference approves the report of the Committee as a whole?

(The report is approved.)

I see that there is a request for the floor by the representative of the workers of Barbados, Sir Roy Trotman. I give him the floor.

Mr TROTMAN (Worker, Barbados; Chairperson of the Workers' group of the Conference)

It is normal practice that if we in the Workers' group have a request, that we will do so at this point

in the proceedings. While I speak as the Workers' delegate for Barbados, I also speak as the Chairperson of the Workers' group in this Conference.

I should like, sir, to indicate to you that we, the Workers' delegates to the 100th Session of the International Labour Conference, here in Geneva in June 2011, have appended our names to a document regarding an article 26 complaint that we wish to make. And I should like to read that complaint to the assembly and indicate the names of the signatories.

I shall read the letter which will go to the Director-General and request that the Governing Body pursue the matter in the way the letter requests. The letter of complaint under article 26 of the ILO Constitution reads as follows:

"We, Workers' delegates to the 100th Session of the International Labour Conference, (Geneva, June 2011), whose names are included hereunder, wish hereby to file a complaint under article 26 of the ILO Constitution against the Government of Bahrain for violations of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), ratified by Bahrain on 26 September 2000.

Following a series of peaceful demonstrations in the months of February and March, demanding economic and social changes and expressing support for ongoing democratization and reform, a large number of union members, trade unionists and leaders have been dismissed. All those directly, or indirectly, supporting the demonstrations have also been affected and suffered various forms of sanctions at work.

Specifically:

1. The Government has failed to meet its constitutional obligation towards non-discrimination and, despite ratification of Convention No. 111, discrimination in employment and occupation has been sanctioned on an increasing scale in both the private and public sectors.
2. The process of reprisals against workers was initiated by official authorities requesting the submission of reports on absences from work and of threatening to use legal action and measures ranging from pay cuts to termination of employment. This process has been further emulated by the private sector.
3. Large-scale dismissals from employment have taken place on such grounds as workers' opinion, belief and trade union affiliation, after lists were drawn up to screen them systematically. Some 2,000 workers have thus been dismissed including many on the basis of videos and photos identifying participants and demonstrations as grounds for dismissal.
4. Mechanisms were set up to look into complaints against dismissals in both the public and private sectors with no guarantees of redress for established abuses by employers and Government.
5. Doctors and health-care workers have similarly been dismissed and/or affected in their professional lives on the sole grounds of treating victims of acts of brutality during demonstrations.
6. The same joint committee of major companies that announced the formation of committees to investigate dismissals in response to the Prime Minister's earlier call, is now publicly threatening trade union leaders with criminal and civil prosecution in case they do not resign. The management of one company, Gulf Aluminium Rolling Mill Company – GARMCO, wrote a letter

telling dismissed workers that their relationship with the Company ended with the decision to dismiss them, leaving them with the limited right to address the Company on individual and personal grievances.

7. New hiring processes are taking place with explicitly stated preference for specific workers on such grounds as opinion, belief, trade union affiliation and national extraction.
8. Workers and new recruits are being requested to sign also political allegiance and pledges restricting their rights at work, including the right to strike and the right to certain benefits, as a precondition for their continued employment.
9. In at least one instance (the board of the General Organization for Social Assurance), workers' representatives on a tripartite body have been excluded from taking part in board meetings on the basis of their trade union affiliation.

Finally, we submit that all attempts by trade unions to reinstate social dialogue have been shamefully rejected by the Government.

Taking into account issues mentioned above, we, the undersigned, feel obliged to lodge a complaint under article 26 of the ILO Constitution and call upon the Governing Body to propose measures for

the effective observance of the fundamental Convention in law and in practice. The complainants reserve the right to submit additional information hereto at the appropriate time."

It is signed by Sir Roy Trotman, Barbados; Luc Cortebeek, Belgium; Bheki Ntshalintshali, South Africa; Julio Roberto Gómez, Colombia; Barbara Byers, Canada; Rabiadou Diallo, Guinea; Abdesslem Jerad, Tunisia; Yves Veyrier, France; Sam Gurney, United Kingdom; Sarah Fox, United States; Hadja Kaddous, Algeria; and Trine Lise Sundness from Norway.

Original French: The PRESIDENT

We take note of the complaint against the Government of Bahrain, concerning alleged violation of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), which has been submitted by a number of Workers' delegates at this session of the Conference. It will be taken up in accordance with the procedure under article 26 of the Constitution.

We have come to the end of our work for today. I would like to thank you all for your participation.

(The Conference adjourned at 6.05 p.m.)