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19th sitting, 13 June 2017 (cont.), 7.00 p.m.

19^e séance, 13 juin 2017, (suite), 19.00 heures

19.^a sesión, 13 de junio de 2017 (cont.), 19 horas

Chairperson: Mr Washington González

Président: M. Washington González

Presidente: Sr. Washington González

Discussion of individual cases (cont.)

Discussion sur les cas individuels (suite)

Discusión sobre los casos individuales (cont.)

Cambodia (ratification: 1999)

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

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

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

A Government representative (Mr HOU) recalled that a direct contacts mission (DCM) requested by the Conference Committee in 2016 had visited the country from 27 to 31 March 2017. The DCM had met with the Minister and high-level officials of the Ministry of Labour and Vocational Training (MLVT), representatives of the Ministry of Interior, Ministry of Justice, the National Police, the secretariat of the Arbitration Council, the

secretariat of the National Strike and Demonstrations Committee, representatives of workers' confederations, federations, unions and associations, and representatives of interested national and international non-governmental organizations. The Government had reviewed and taken due note of the DCM conclusions and recommendations.

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

forces violated the law, such incidents were investigated and those responsible convicted. In response to the specific allegation made by the International Trade Union Confederation (ITUC) in this regard, the Government needed adequate time to report as it was still awaiting for the relevant court decisions.

Regarding legislative issues, the newly adopted Law on Trade Unions (LTU) aimed at protecting lawful rights and interests of all persons covered by the Labour Law as well as the personnel of the air and maritime transportation; ensuring collective bargaining rights; promoting harmonious industrial relations; and contributing to the development of decent work, and enhancement of productivity and investment. Due note was taken of comments and concerns raised by the social partners regarding the implementation of the LTU and the issues of trade union registration and representation had been already discussed. To make it easier for a newly established trade union to get registered, the MLVT simplified and reformed the registration procedures. In particular, the LTU shortened the registration period for 60 days, as previously provided for under the Labour Law, to only 30 days. In other words, while the Labour Law required the applicant to wait until 60 days, the LTU stipulated that a trade union should be considered as having been duly registered if the applicant did not receive any information from the Registrar within 30 days following its submission. Furthermore, Prakas No. 249 on the Registration of Trade Unions and Employers' Associations was issued on 27 June 2016. It detailed procedures and provided for the list of required documents and downloadable templates. In addition, while in the past, trade unions could apply for registration only at the MLVT in Phnom Penh, to save time and reduce expenses, the registration authority was now delegated to every Provincial Department of Labour and Vocational Training. Several trainings had been carried out for officials in charge of registration. A complaint mechanism had been established to settle any disputes arising from the registration. However, as these were new regulations and practices some difficulties occurred. There was always room for improvement and some points needed to be reviewed to remedy the challenges faced by the social partners in this respect. Concerning

the recognition of the most representative status and capacity of unions to represent their members, an implementing regulation was being drafted in consultation with the social partners. Thus, at the moment, it was not necessary to amend the legislation; rather its interpretation needed to be clarified through tripartite consultation process. Several training courses for employers and workers had been conducted by the MLVT in collaboration with trade unions and employers' associations to ensure a proper understanding of the legislation and its effective implementation. Furthermore, domestic workers and workers in the informal economy were not excluded from the scope of the LTU. They were free to form a trade union of their own choice as long as the conditions stipulated under the Law were satisfied. If they failed to meet the requirement to form a union under the LTU, they could still join an association whose mission was to safeguard their rights and interests. In the same vein, civil servants enjoyed and exercised their freedom of association under the Law on Association and Non-Governmental Organization (LANGO). While the Ministry of Interior could reject the registration if it endangered or adversely affected public safety or public order, the applicant was entitled to file an appeal to the court against such a decision. The laws and regulations in force, including the Law on Common Statute of Civil Servants, the Law on Education, the LANGO, and the LTU and its implementing regulations, freedom of association of all workers, including teachers, civil servants, domestic workers and informal economy workers was fully protected and exercised. In order to further promote the exercise of this freedom, the Government would duly review the recommendations of the DCM and of this Committee to see if any further measures must be taken. The implementing regulations of the LTU were being drafted and submitted for tripartite consultations. On 9 May 2017, a tripartite meeting was convened at the MLVT to discuss four draft prakas to implement them. Further consultations would be conducted so as to address all concerns of the social partners. The Government expected to receive ILO technical support in this respect and undertook to provide a report on the implementation of the legislation in due course.

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

In conclusion, the Government was doing its utmost to promote the exercise of freedom of association and to consult with the social partners. The speaker called for a strong and close collaboration with the social partners to build a peaceful environment and industrial harmony for the benefits and interests of the people and economic development. Adequate time for the implementation of the recommendations was needed. The Government undertook to provide detailed information on the observations made by the social partners to the Committee of Experts in due course.

The Worker member (Mr Leemans) highlighted that the application of the Convention had been examined by this Committee in 2007, 2010, 2011, 2013, 2014 and 2016. However, the Government continued to limit or effectively prohibit trade unions from exercising their right to organize. Since 2016 the situation had worsened substantially. The Government had curtailed freedom of association through highly repressive legislation. Perhaps the most harmful was the new LTU, adopted on 17 May 2016. The observations and direct requests of the Committee of Experts, as well as the observations of the DCM clearly indicated that its numerous provisions violated the Convention, despite the Government's claim that the Law was fully in compliance with it. Those provisions included, for example, the requirements imposed on trade union leadership and the setting of quorum for decision-making, as well as provisions that facilitated the dissolution of trade unions. Teachers remained unable to form a trade union and workers in the informal economy, including

domestic workers, remained effectively excluded from the coverage of the law. While the Government suggested that they registered as NGOs, this did not ensure the extension of trade union rights. The highly burdensome union registration process set out in the LTU and the accompanying regulations was of concern. The regulations required applicants to fill out numerous forms with excessive information, much of which was irrelevant, concerning not only workers, but also their extended family. In many cases, workers had not been provided with the information necessary to complete the application by the Government or by the employer. Applications had been denied for minor typos, reasons outside the scope of the law or for no reason at all. Because the law prohibited trade unions from carrying out any activity prior to registration under threat of sanction, the excessive delays and arbitrary denials of registration had prevented workers from exercising their fundamental rights under the Convention. The registration process was in fact, a request for a prior authorization, exercised in an arbitrary manner. In addition, once a union was registered, each year it had to submit to the Government a complete list of its activities in order to maintain registration. This was an extraordinary interference in trade unions activities and was a violation of the Convention.

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

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

The Government continued to limit the right to public protest. About 2,000 workers celebrating May Day were prevented from marching with a list of demands, including higher wages and an end to union-busting. The Worker members once again highlighted that workers continued to be disciplined or dismissed for their trade union activity. Those violations were rarely investigated effectively, and workers rarely obtained a remedy, even when the Arbitration Council ruled in their favour. Finally, they recalled that the Committee on Freedom of Association had considered that “fixed-term contracts should not be used deliberately for anti-union purposes and that, in certain circumstances, the employment of workers through repeated renewals of fixed-term contracts for several years can be an obstacle to the exercise of trade union rights.” The Government had repeatedly sought to undermine the rulings of the Arbitration Court, which had interpreted the law to prohibit fixed-term contracts beyond a total of two years, and to expand their use for even longer. In conclusion, the Worker members strongly urged the Government to respect the Convention in law and in practice.

The Employer member (Mr MACKAY) recalled that the application of the Convention by Cambodia had been examined by the Committee over a number of years. There was nothing new concerning the substance matter of the case and all issues had already been discussed before. They noted that a DCM had visited the country and wished that its report had been circulated. They recalled that this case concerned the following four issues: (1) the investigation of violence and unsolved murders of several unionists, (2) legislative issues, (3) the right to organize not adequately recognized to teachers, civil servants, domestic and informal economy workers, and (4) the independence of the judiciary. In relation to the first point, since 2014, a large number of trade union leaders and activists had been charged with criminal offences for union activities and an increasing number of injunctions and requisition orders against trade unions and workers had been granted in labour disputes, which restricted trade union activities and industrial actions. A large number of allegations against the persistent use of violence by the police against workers during

protest actions had been made. A framework for the exercise of freedom of association rights needed to be developed. The Employer members thus encouraged the Government and the social partners to look at the experience of other countries in this regard. With regard to the long-standing recommendations to carry out expeditious and independent investigations into the murders of three trade union leaders, they noted the information provided by the Government on the establishment in August 2015 of a special Inter-ministerial Commission for Special Investigations.

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

Concerning legislative issues, the Employer members noted that the LTU was promulgated in May 2016 and that during the drafting process, a series of tripartite, bipartite, multilateral and public consultations had been conducted and the ILO comments had been included in the final draft. Nevertheless, the draft did not provide full satisfaction to the social partners. The employers were not satisfied with the minimum threshold before a trade

union could be established, and the workers were dissatisfied with the scope of the law, which excluded civil servants. The ITUC had also raised the following issues with regard to the new LTU, as noted by the Committee of Experts: undue requirements for leaders and officers, including age, literacy, conviction records and permanent residence; matters such as quorum requirements for decision-making, which should be determined by trade unions themselves; the need to amend the section pertaining to the dissolution of trade unions; registration procedures; and the recognition of the MRS. These were valid questions and should be examined. It was therefore regrettable that no further details had been provided. Without those, it could only be recommended that all facts should be made available to the competent authorities so that they could be investigated.

Concerning trade union rights and civil liberties, the Employer members recalled that Article 2 of the Convention guaranteed the right of workers and employers, without distinction whatsoever, to establish and join organizations. This meant that the right to establish and join occupational organizations was guaranteed for all, including public servants and officials, whether or not they were engaged in the state administration at the central, regional or local level, were officials of bodies which provided important public services or were employed in state-owned economic undertakings. While noting the Government's indication that section 36 of the Common Statutes for Civil Servants guaranteed freedom of association rights to civil servants appointed to a permanent post in the public service, that section 37 of the Law on Education guaranteed these rights to teachers and that the LANGO also provided for freedom of association rights, the Employer members considered that some of the LANGO provisions contravened freedom of association rights of civil servants by subjecting the registration of their association to the authorization of the Ministry of Interior, which was contrary to Article 1 of the Convention. They also observed that this law lacked provisions recognizing that civil servants' associations had the right to draw up constitutions and rules, the right to elect representatives, the right to organize activities and formulate programmes without the interference of the

public authorities, and the right to affiliate to federations or confederations, including at the international level. This had created a potentially ambiguous situation in which different and conflicting applications of the Convention might occur. The Employer members urged the Government in consultation with the social partners to take appropriate measures, including through the immediate amendment of the legislation, to ensure that civil servants, including teachers, who were not covered by the LTU, were fully ensured their freedom of association rights.

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

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

The Worker member of Cambodia (Mr CHUON) stated that since the entry into force of the LTU in May 2016, freedom of association had further contracted. A whole new set of requirements had been provided for, such as the type of information to be supplied which included the employment book, the social security number, the names of the leaders and their phone numbers, and particulars of the spouse, parents and children. He stated that the said requirements were excessive, unjustified and fear-inducing. Trade union registration could now be blocked by the mere reason of not having supplied the required information. In some cases, the registration had been held up by government officers who returned documents for correction again and again. Moreover, bank accounts, financial statements,

and activity reports would have to be supplied to the Ministry, in order to keep the registered trade union status. Trade unions and individuals could be prosecuted for inciting protests if they had objected to the minimum wage level approved by the Wage Council. In short, the right of trade unions to manage their operations and conduct activities had been undermined. Collective bargaining and negotiations to resolve collective disputes had been paralyzed, since the passing of the LTU. The Department of Labour and the Arbitration Council had precluded unions from filing collective disputes for their members either because they had not kept their registration status, or because they no longer were the most representative union. Employers had taken advantage of that to reject negotiations of collective bargaining agreements or dispute resolutions. He indicated that the problem before the Committee concerned the implementation of that new piece of legislation, rather than a lack of ministerial regulations. The absence of trade union dissolutions did not mean that trade unions could operate and perform their duties freely. As long as the LTU remained, trade unions and trade unionists would regularly be under the threat of being prosecuted for “illegal operation”. Moreover, for the sake of preserving “legal peace”, trade unions could lose the right to represent their members’ interests in the workplace. The requirements concerning age, literacy and absence of criminal records for trade union leaders had left out a number of unions from the informal sector. Workers in the informal sector could not produce their employment information and were in effect excluded. Additionally, no steps had been taken towards reforming the Common Statutes for Civil Servants nor the Law on Education, in order to ensure equal rights for public servants and teachers. Employers had continued using short-term employment contracts and terminating workers for joining trade unions. Judicial harassment was ongoing and violence had remained unpunished. Little action had been taken by the Government in order to implement the legal protection of trade unions, to clear or reduce the arbitration backlog, including that of the reinstatement awards brought by the national centres to the Committee last year. Instead, the authorities and employers had been using the LTU to challenge the unions’ legal status or representativeness. Unionists had genuinely feared that the draft Law on Labour Procedure

of the Labour Courts would further exclude minority unions from submitting collective disputes. Under the mandatory dispute procedure, trade unions' right to declare industrial action would be further undermined. As regards freedom of association and respect of trade union rights, the situation had not improved since the Committee's latest examination. The Government had to amend the LTU related regulations in order to bring it into compliance with the Convention, drop all criminal charges against workers and union leaders, and resolve the reinstatement cases. Ultimately, the Government also had to take measures to ensure fair, independent and transparent investigation of previous murder cases, punish the perpetrators and provide compensation as prescribed by law.

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

The Government member of Malta (Mr MARSH), speaking on behalf of the European Union (EU) (as well as the Candidate Country Montenegro, the former Yugoslav Republic of Macedonia, Montenegro, Serbia and Albania continue to be part of the Stabilisation and Association Process, **the country of the Stabilisation and Association**

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

freedom of association rights were respected and enforced. It was important, also in the context of the EU's Generalised Scheme of Preferences, that Cambodia took concrete and lasting measures to ensure the respect of core labour rights.

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

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

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

The Government member of the United States (Mr SHEPARD) commended the Government for its ongoing engagement with the ILO and its constituents, including during the recent DCM, in order to bring its laws in line with international labour standards. However, noting that there were still areas for improvement, he expressed his continued support for the conclusions reached by both the Committee of Experts and the Conference Committee. In particular, he noted the Committees of Experts' observations that certain key provisions of the LTU did not comply with the Convention. He recommended that the Government should consider the following actions: to amend the Law to cover workers who were currently excluded; to remove excessive registration requirements that may impact a union's ability to become registered, form federations, or otherwise interfere in a union's activities; to remove requirements for specific quorums or ballot thresholds, which may interfere with a union's right to draw up its own constitution and by-laws; to remove

minimum literacy and age requirements that interfere with the right to vote or ability to run for office; and to ensure that any subsequent implementing regulations do not further restrict the ability of unions to register and gain most representative status or access dispute resolution procedures. In light of the allegations that trade union leaders and activists had been charged with criminal offences for participating in union activities, and considering the information on the increase in unfavourable labour dispute resolutions intended to restrict union activities, he also recommended that the Government should take steps to foster an environment that is free from violence, pressure, and intimidation for trade unionists. He urged the Government to take immediate action to effectively address issues of non-compliance with the Convention with the technical assistance of the ILO and in full consultation with the social partners, beginning by complying with the recommendations of the 2016 Conference Committee. He also urged the Government to provide a progress report to the ILO on its efforts to adopt the Law on Labour Procedure of the Labour Court.

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

Arbitration Council awards. She urged the Government to take measures to prevent the criminalization of union leaders.

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

The Worker member of Australia (Mr PERICA) stated that the Government had either directly participated in, or tacitly condoned, wide spread discrimination, intimidation and violence against organized workers and their representatives. Members and leaders of independent unions were being routinely terminated. In the case of independent trade unions, the dismissal of their elected leaders or candidates, once the employer had been informed of their identity, entailed their destruction. In some cases, local unions were uprooted with all, or a majority of its members. Trade union leaders had been dismissed for "serious misconduct" and fabricated offences. Strikers had been terminated, despite having observed all procedures. Legal protection was not enforced and the use of strike breakers had remained unpunished. In the event of reinstatement being awarded by Arbitration Councils the awards were simply ignored, in some cases, for years. The situation was exemplified by the Cambodian Alliance of Trade Unions (CATU) case and that of the Building and Woodworkers' Trade Union in Cambodia (BWTUC). Three CATU officials had been dismissed and the remaining one had resigned following threats to her parents by company representatives. Three local union leaders of BWTUC had been sacked after a congress,

more than 60 workers had been locked up by a security guard in order to prevent them from joining a strike, and another leader was threatened with legal action for allegedly stealing company property and inciting strike action. Such blatant and serious breaches of the Convention should not be tolerated, and the Government should be placed under the highest possible supervision.

The Worker member of the United States (Ms DOMINGO), jointly with the Canadian Labor Congress, recalled that the LTU expressly prohibited teachers from organizing. While the Government insisted that teachers were able to exercise their freedom of association through the LANGO, groups such as Human Rights Watch had decried this law as “designed to restrict the legitimate activities of civil society and human rights defenders in violation of the right to freedom of association”. The Committee of Experts noted that the LANGO violated the Convention. Indeed, the Government used the LANGO for political discrimination against dissident organizations. For six months now, the Cambodian Independent Teachers’ Association had not been able to secure registration based on its political orientation against the ruling party. In practice, the LTU also prohibited informal sector workers from organizing. In order to form a union, informal workers must meet the requirement of including at least ten workers employed in the formal economy by a single employer. It is extremely difficult for informal sector workers to organize under this model. For example, the BWTUC, which organized in the informal construction industry, had been unable to register any of its seven local unions. This restriction affected the vast majority of Cambodia’s workforce. The Organization for Economic Cooperation and Development estimated that 76.7 per cent of Cambodian workers laboured in the informal economy. Over half of these workers were women; all of these workers were marginalized. In respect of domestic workers, most of the country’s 240,000 domestic workers were required to cook, clean, and take care of their employer’s children between eight and 13 hours a day. They worked seven days a week with no holidays. The Cambodian Domestic Workers Network, citing an ILO study, reported that 60 per cent of domestic workers earned

less than \$50 a month, while only 4 per cent earn more than \$100 a month. To put this into perspective, living wage researchers called for a monthly wage of at least \$195 per month in 2016. Denying informal sector workers labouring in precarious industries the right to freedom of association is particularly concerning. The Committee had repeatedly commented that LANGO did not provide equal trade union rights to the public servants and the informal workers. It was not an alternative to amending the applicable laws for full protection to these workers' right to organize. She called on the Government to guarantee that all Cambodian workers enjoyed the protections of the Convention.

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

La membre travailleuse de la France (M^{me} ALEXANDRE), s'exprimant également au nom de la Fédération internationale des ouvriers du transport, a déclaré que la liberté d'association pose de nombreux problèmes au Cambodge et impacte de plein fouet les capacités de négociation collective des travailleurs, et donc leurs conditions de travail et leurs salaires. Si l'Etat est garant de la mise en œuvre des normes internationales du travail, les entreprises ne sont pas pour autant exemptes de responsabilités, notamment en ce qu'elles ont devoir de vigilance tout au long de leur chaîne d'approvisionnement. Malheureusement,

une grande entreprise de la construction participe allègrement à bafouer les droits fondamentaux des travailleurs par le biais de l'entreprise commune moyennant laquelle elle opère dans les trois aéroports du pays et qui a, en 2012, apporté unilatéralement des modifications substantielles à l'accord collectif existant, au mépris des trois organisations syndicales représentées sur ces sites. Au motif de vouloir introduire la polyvalence dans les emplois, l'entreprise a commencé à harceler les travailleurs afin qu'ils signent individuellement une lettre dite «volontaire» supprimant toutes les garanties obtenues pour la période de l'accord couvrant 2011-2013. Menaces, intimidations, lettres d'avertissement, discriminations ont alors été le quotidien de ces travailleurs qui refusaient de voir leurs droits ainsi niés. L'entreprise a alors recruté de nouveaux employés polyvalents qui ont eu pour interdiction de dévoiler les termes de leurs contrats de travail aux trois syndicats signataires de l'Accord sur l'échelle des salaires et la description des tâches 2004-2013 et de l'Accord 2011-2013. Les salariés ont vu leurs charges et intensité de travail augmenter, la comptabilité des heures supplémentaires se réduire drastiquement, les perspectives d'avancements et les bonus disparaître, et les salaires baisser des deux tiers. Dans l'aéroport de Siem Reap, l'entreprise a interdit les grèves et recourt régulièrement à des embauches en contrats à durée déterminée pour casser les grèves. La responsabilité sociale des entreprises sur une base volontaire, et dans ce cas d'une multinationale française, est largement insuffisante pour garantir les droits fondamentaux dans le cadre des chaînes d'approvisionnement mondiales. Il convient d'appeler au respect des droits fondamentaux par les multinationales dans les chaînes d'approvisionnement, au respect des normes internationales du travail et au respect des principes des Nations Unies relatifs aux entreprises et aux droits humains, et de soutenir une norme de l'OIT relative au travail décent dans les chaînes d'approvisionnement. L'oratrice a conclu en déclarant son soutien à l'initiative du gouvernement de l'Equateur pour un traité contraignant des Nations Unies relatif aux entreprises et aux droits humains.

The Worker member of the Republic of Korea (Ms RYU) recalled that during the examination of the case in the Conference Committee in 2016 she had already referred to

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

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

made in a timely manner, he indicated that adequate time was needed to implement the DCM recommendations.

The Employer member (Mr MACKAY) stated that the Committee had received a great amount of information, some of which was new and a lot of which was not. The discussion had confirmed that there was a good understanding of the issues at hand. The DCM report captured the essence of the case and summarized the recommendations that had been made over a number of years. The Government should seek ILO technical assistance to address remaining issues; the comments of the Committee of Experts should provide guidance in this process. They further encouraged the Government, through tripartite consultations, to effectively normalize the ability of all organizations and all workers to join organizations of their own choosing. The concerns of both employers' and workers' organizations with regard to the LTU, should be addressed through the social dialogue, to which the Government had expressed its full commitment. Similarly, the DCM recommendations regarding the exercise of the right to industrial action should be addressed through tripartite dialogue. Overall, social dialogue was the preferable course of action. The Government should be given time to address these issues internally.

The Worker members (Mr LEEMANS) emphasized that each year the issues remained remarkably the same. There continued to be acts of violence against trade unionists by police or thugs with impunity. Anti-union dismissals of workers were committed regularly without any remedy or sanction. Harassment and intimidation of union leaders and activists by employers and state officials continued. Workers who carried out peaceful rallies were met by a phalanx of heavily armed police. The legal framework regulating trade unions was far from compliant with the Convention. They emphasized that the climate of violence and murders of trade unionists constituted a serious obstacle to freedom of association, as repeatedly highlighted by the International Labour Conference. A resolution adopted in 1970 stated that "freedom of association [was] wholly ineffective without the protection of the unionist's fundamental civil liberties". The LTU and the proposed new laws made Cambodia

even less compliant with its legal obligations. The Government was using new laws and regulations to deny registration to trade unions, which were not aligned with the governing political party. Unregistered unions were considered illegal and leaders could be sanctioned for carrying out legitimate trade union activity in the absence of registration, even when it had been arbitrarily denied. Fixed-duration contracts were commonly used to frustrate trade unions. Those problems were compounded by a highly-politicized judiciary. The Worker members noted with interest the DCM report, which reflected many of the concerns they and the Committee of Experts had raised before. However, they noted that the Government had no intention to take any measures to solve the issues that the Workers group, the ILO and other UN bodies had raised. The report was handed to the tripartite constituents in Cambodia and it was surprising to hear that somebody mentioned that the report had not been distributed. They hoped that it would also be sent to the Committee of Experts for its examination in its next session in November 2017. The Worker members urged the Government to elaborate a road map together with all social partners in order to define time-bound actions to implement the recommendations of the Committee of Experts and the DCM.

The sitting closed at 9 p.m.
La séance est levée à 21 heures.
Se levantó la sesión a las 21 horas.

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