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Conference Committee on the Application of Standards

International Labour Conference
106th Session, Geneva, 2017

CONFERENCE COMMITTEE ON THE APPLICATION OF STANDARDS

EXTRACTS FROM THE RECORD OF PROCEEDINGS

INTERNATIONAL LABOUR CONFERENCE

ONE HUNDRED AND SIXTH SESSION
GENEVA, 2017

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
- SUBMISSION, DISCUSSION AND APPROVAL

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Foreword

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

The report of the Conference Committee is submitted for discussion by the Conference in plenary, and is then published on the website 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 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; (iii) the report of the Committee on the Application of Standards on the observations and information concerning particular countries; and (iv) the report of the Committee on the Application of Standards: Submission, discussion and approval.

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Date: Thursday, 15 June 2017

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 231 members (126 Government members, eight Employer members and 97 Worker members). It also included ten Government deputy members, 90 Employer deputy members, and 154 Worker deputy members. In addition, 29 international non-governmental organizations were represented by observers. [1]

2. The Committee elected its Officers as follows:

Chairperson:	Mr Washington González (Government member, Dominican Republic)
Vice-Chairpersons:	Ms Sonia Regenbogen (Employer member, Canada) and Mr Marc Leemans (Worker member, Belgium)
Reporter:	Mr Mostafa Abid Khan (Government member, Bangladesh)

3. The Committee held 22 sittings.

4. In accordance with its terms of reference, the Committee considered: (i) the reports supplied under articles 22 and 35 of the Constitution on the application of ratified Conventions; (ii) the reports requested by the Governing Body under article 19 of the Constitution on the Occupational Safety and Health Convention (No. 187), and Recommendation (No. 197), 2006; the Safety and Health in Construction Convention, 1988 (No. 167), and Recommendation (No. 175), 1988; the Safety and Health in Mines Convention (No. 176), and Recommendation (No. 183), 1995; the Safety and Health in Agriculture Convention (No. 184), and Recommendation (No. 192), 2001; and (iii) the information supplied under article 19 of the Constitution on the submission to the competent authorities of Conventions and Recommendations adopted by the Conference. [2]

Opening sitting

5. The Chairperson said that he was honoured to preside over this Committee, which was a cornerstone of the regular supervisory system of the International Labour Organization (ILO). It was a forum for tripartite dialogue in which the Organization examined the application of international labour standards and the functioning of the supervisory system. The conclusions adopted by the Committee and the technical work of the Committee of Experts on the Application of Conventions and Recommendations, together with the recommendations of the Committee on Freedom of Association and the technical assistance of the Office, were essential tools for member States when implementing international labour standards. The Chairperson trusted that, in the course of the two-week session of the

[1] For the initial composition of the Committee, refer to *Provisional Record* No. 4. 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 1B: General Survey.

Conference, the Committee would be able to work harmoniously and efficiently, and in a spirit of constructive dialogue.

6. The Worker members emphasized that the Committee's task of supervising the application of standards served the objective of promoting social justice which lay behind the foundation of the ILO. The Committee's work should therefore be guided by the conviction that the development of international labour standards was a response to people's aspirations towards better living conditions and a more humane system of work. In a world characterized by cultural isolationism and populist rhetoric in the face of economic difficulties and social inequalities, the Worker members appealed for cooperation between States to ensure social progress and the well-being of all peoples and recalled the words to that effect contained in the 1944 Declaration of Philadelphia, which formed part of the ILO Constitution.

7. The Employer members noted that the Committee was the key pillar of the regular standards supervisory system: it provided the only opportunity for tripartite constituents from all ILO member States to discuss issues with governments regarding the application of ratified Conventions and specific measures for improved and sustained compliance, with the participation of Employer and Worker members. The report of the Committee of Experts was the initial basis for the work of the Conference Committee. In addition to the technical assessment and observations of the Committee of Experts regarding countries' compliance with ratified Conventions, the members of the Conference Committee contributed with their own legal evaluation, understanding and knowledge of national economic, social and political circumstances, and their experience of practical, feasible and sustainable solutions, to the final supervisory assessment, as reflected in the Conference Committee's conclusions.

Work of the Committee

8. During its opening sitting, the Committee adopted document C.App./D.1, which set out the manner in which the work of the Committee was carried out. [3] At that occasion, the Committee considered its working methods, as reflected under the next heading below.

9. 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 general discussion, reference was made to Part One of the report of the Committee of Experts on the Application of Conventions and Recommendations. A summary of the general discussion is found under relevant headings in sections A and B of Part One of this report.

10. The Committee then examined the General Survey on the occupational safety and health instruments concerning the promotional framework, construction, mines and agriculture. Its discussion is summarized in section C of Part One of this report.

11. Following these discussions, the Committee considered the cases of serious failure by member States to respect their reporting and other standards-related obligations. The result of the examination of these cases is contained in section D of Part One of this report. More detailed information on that discussion is contained in section A of Part Two of this report.

12. The Committee then considered 24 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

[3] Work of the Committee on the Application of Standards, ILC, 106th Session, C.App./D.1 (see Annex 1).

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 tripartite dialogue in its work and trusted that the governments of the countries selected would make every effort to take the necessary measures to fulfil their obligations under ratified Conventions. The result of the examination of these cases is contained in section D of Part One of this report. A summary of the information submitted by governments and the discussions of the examination of individual cases, as well as the conclusions adopted by the Committee, are contained in section B of Part Two of this report.

13. The adoption of the report and the closing remarks are contained in section E of Part One of this report.

Working methods of the Committee

14. Upon adoption of document C.App./D.1, the Chairperson announced the time limits for interventions made before the Committee. It was his intention to strictly enforce them in the interest of the work of the Committee. He also called on the members of the Committee to make every effort to ensure that sittings started on time and that the working schedule was respected. Lastly, the Chairperson recalled that all delegates were under the obligation to use parliamentary language. Interventions should be relevant to the subject under discussion and remain within the boundaries of respect and decorum.

15. The Worker members pointed out that many changes had been made recently to the Committee's working methods to make them as effective as possible. It was also important for the changes to occur without affecting the quality of the substantive work of the Committee. In that regard, the reduction of the work of the Committee – and of the Conference – to a two-week period meant an extremely heavy programme and the need for strict time management. That time constraint had become a source of concern since the seriousness of the subjects addressed by the Committee warranted more extensive debates. Moreover, the Worker members, aware that a tripartite discussion called for discipline in terms of speaking time, undertook to maintain such discipline again this year. However, even though strict time management in the previous year had enabled the Committee to finish its discussions in the allocated time, many Worker members had expressed their concern at the quality of the discussions that could take place under such conditions. Lastly, more constant engagement on the part of the three constituents, particularly the Governments, in the work of the Committee would add further weight to its conclusions. The Government group should not underestimate its contribution to the Committee's work since the sharing of experience was a useful way to inspire and enable solutions which were already tried and tested. The Worker members expressed the wish that the Committee would once again work in a constructive spirit this year with a view to adopting consensus-based, consistent and effective conclusions that would enable member States to make improvements in their law and practice.

16. The Employer members noted that the length of the report of the Committee of Experts had further increased this year, indicating that the challenges of compliance with ratified international labour Conventions had not become smaller. In their view, key to better compliance were balanced, relevant, practical and fair conclusions which pointed out to governments concerned concrete and realistic ways to move towards better implementation. This could only be achieved with full tripartite governance and ownership, which required active participation by all the tripartite constituents in the supervisory process. The Employer

members noted that the percentage of government reports received had slightly increased this year and highlighted that while some stability in government reporting seemed to have been achieved over the years, higher rates would of course be desirable since the reports were the vital fact basis and thus the starting point for any standards supervisory activity. The Employer members welcomed the fact that the number of observations sent by employers' and workers' organizations had increased, and highlighted that there was room for improvement. The Employer members welcomed the efforts to streamline reporting, including optimizing the use of technology, as considered by the Governing Body in March 2017, and trusted it would help to facilitate reporting and increase the rate of reports in future.

17. The Government member of Cuba considered that the supervisory mechanisms should maintain transparency, objectivity, impartiality and the balanced handling of information, while avoiding any possibility of being politicized or unduly manipulated. The drawing up of the lists of individual cases should satisfy the criteria of balance between fundamental and technical Conventions, between developed and developing countries, and between regions. She considered that the preliminary list of cases did not correspond to those criteria and there was a visible priority given to selecting cases relating to freedom of association to the detriment of the other Conventions. She expressed the hope that a balanced final list would be agreed upon and that the analysis of the individual cases would focus on the fundamental principles and objectives of the ILO.

18. The Government member of Egypt thought that every effort should be made to find effective solutions concerning the functioning of the Committee and the goals to be achieved in the supervision of standards. This called for clarification of the methodology used to establish the preliminary list and then the final list of individual cases. One way of improving current procedures might be to establish an additional mechanism for monitoring the comments of the Committee of Experts, whereby it could be verified whether a State had complied in the meantime with the observations made, as a result of which it could be removed from the preliminary list and hence from the final list.

Adoption of the list of individual cases

19. During the course of the second sitting of the Committee, the Chairperson of the Committee announced that the list of individual cases to be discussed by the Committee was available. [4]

20. Following the adoption of this list, the Employer members considered that the overall goal of the process for the adoption of the list of cases was to ensure a balance between the regions, between member States in terms of levels of development, and between fundamental, priority and technical Conventions. The Employer members highlighted the importance of having at least one case of progress in the list of 24 cases. In their view, progress had been made this year in achieving balance in terms of the types of Convention. The Employer members expressed regret that the Committee would not be able to discuss: the application by Equatorial Guinea of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), a case of serious failure to report in relation to which the Committee of Experts noted with deep concern that for the last ten years the reports due on ratified Conventions had not been received despite technical assistance provided in 2012; the application by Papua New Guinea of the Worst Forms of Child Labour Convention, 1999 (No. 182), which concerned extremely serious issues such as the sale and trafficking of children, commercial sexual exploitation of children as young as 13 years of age, and the situation of "adopted" children under 18 years of age who were compelled to work under

[4] ILC, 106th Session, Committee on the Application of Standards, C.App./D.4 (see Annex 2).

conditions similar to bonded labour or under hazardous conditions; the application by Sierra Leone of the Guarding of Machinery Convention, 1963 (No. 119), concerning which the Committee of Experts had drawn attention for a number of years to the fact that the national legislation did not contain provisions to give effect to the Convention; the application by Armenia of the Labour Inspection Convention, 1947 (No. 81), which concerned deficiencies in the functioning of the labour inspection system; and the application by Azerbaijan of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), concerning stereotypes and the lack of a national employment policy that favoured women in employment. The Employer members also expressed deep concern at the fact that the case of the application by the Plurinational State of Bolivia of the Minimum Wage Fixing Convention, 1970 (No. 131), which concerned the lack of consultation between 2006 and 2017 on minimum wage fixing with the Confederation of Private Employers of Bolivia (CEPB), the most representative employers' organization, was not included on the list. Lastly, the Employer members expressed deep concern about the lack of implementation of long-standing conclusions of the Conference Committee by the Government of Uruguay. The Employer members trusted, in light of the speech delivered by the President of Uruguay to the Conference and the request made for technical assistance, that the Government would move towards the implementation of Convention No. 98, in line with the Committee's conclusions.

21. The Worker members underlined the contrast between the limited number of cases examined by the Committee and the number of serious cases contained in the report of the Committee of Experts. This year, many cases had been adopted relating to violations of fundamental Conventions and that reflected the growing pressure against observance of fundamental rights at work worldwide. Even though the corresponding cases would not be discussed, the Worker members wished to highlight disturbing situations affecting the world of work, in the hope that those situations would be addressed in the very near future within other ILO supervisory bodies. One example was the violent dispersal by the police of peaceful demonstrations of workers in Indonesia and the Philippines. Further examples were the measures against fundamental rights at work in Brazil and the serious violations of fundamental rights and public freedoms in Colombia and Honduras. It was also regrettable that the Committee was not in a position to discuss the situation in Belarus in relation to the follow-up to the recommendations of the Commission of Inquiry set up under article 26 of the ILO Constitution. Regarding the situation of migrant workers in Qatar, a request had been made in connection with the possible setting up of a Commission of Inquiry and the Worker members would provide information in that regard at the November 2017 session of the Governing Body. The Worker members supported the proposal of the Employer members to discuss a case of progress since this made it possible to showcase governments which implemented the conclusions and recommendations of the supervisory bodies. However, the case of progress should be considered separately from the list of 24 selected individual cases.

22. The Government member of Brazil, with reference to the statement of the Worker members concerning his country, indicated that the modernization of labour laws was essential for strengthening collective bargaining and making rules clear and objective, so as to increase legal certainty and generate employment. The draft law did not undermine any constitutional right and was still going through legislative proceedings. Even after promulgation, it would be subject to judicial review. During recent events, the Constitution had been closely respected and all actions of the Government had been under scrutiny by the courts.

23. The Worker member of Uruguay expressed his support for the speech made by the President of his country at the opening ceremony of the Conference, particularly concerning the importance of the right to strike and the right to collective bargaining. It was the third time that an agreement was being concluded in Uruguay between employers, workers and the

Government to follow up the observations of the ILO and Uruguay had given an undertaking to request assistance from the Office.

24. The Employer member of Uruguay recalled that a complaint had been made by the employers against Uruguay for non-observance of the right to collective bargaining, in conjunction with the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). In the context of this case, which was ongoing, Uruguay had been the subject of observations on eight occasions. Little progress had been made and there was still no compliance with the provisions of Convention No. 98.

25. At the end of the sitting, the Employer and Worker spokespersons conducted an informal briefing for Government representatives on the process for the selection of individual cases.

B. General questions relating to international labour standards

Statement by the representative of the Secretary-General

26. The representative of the Secretary-General recalled that the Committee on the Application of Standards was a standing Committee of the International Labour Conference which had met each year since 1926 and its mandate, which was at the heart of the ILO's activities, consisted, among other functions, of examining and bringing to the attention of the Conference meeting in plenary session: (i) the measures taken by Members to give effect to the Conventions to which they were parties; and (ii) the information and reports concerning Conventions and Recommendations communicated by Members in accordance with article 19 of the Constitution. Under the terms of this article, the Committee examined each year a General Survey on the law and practice of member States in a specific field. The details of the Committee's work were contained in Document D.1, which also reported on the many improvements made to the working methods of the Committee following the informal tripartite consultations held on this subject since 2006.

27. Following the latest informal tripartite consultations held in November 2016, it was agreed that the summary records (PVs) of the sittings would once again this year be issued in a trilingual "patchwork" version (English, French and Spanish). Each intervention would only be reported in the language in which it was delivered, or in the language chosen by the speaker when taking the floor. The main innovation this year would be the submission for adoption by the Conference plenary of the Committee's final report, and particularly Part II on the examination of individual cases, in the same "patchwork" version. The fully translated versions of the report would be put online ten days after the end of the Conference. In addition, all the Committee's documents, including the draft summary records, would be put online on the Committee's web page, which would now be the way of sharing important documents, in conformity with the Office's "paper smart" policy. Amendments to the summary records could be submitted either in writing or by electronic mail.

28. Reviewing the progress made in the context of the Standards Centenary Initiative, the representative of the Secretary-General recalled that the launching of the initiative by the ILO Director-General was largely a result of the difficult but useful discussions on the ILO standards system within the Committee. The Standards Initiative had two components, which were both under the responsibility of the ILO Governing Body. The first was the Standards Review Mechanism and its Tripartite Working Group (TWG), which had the mandate of ensuring that the body of standards was up to date and relevant to the world of work. Work was progressing in a constructive manner in that respect. The speaker drew

attention to the direct connection between the discussion on the General Survey on occupational safety and health, and particularly the four instruments on safety and health in construction and mines, and the future work of the TWG of the Standards Review Mechanism. The discussions on the General Survey and the conclusions that the Committee would adopt on that matter would inform the work of the TWG.

29. The second component of the Standards Initiative was intended to reinforce tripartite consensus on an authoritative supervisory system. At its March 2017 session, the Governing Body held an important discussion on the follow-up to the joint report of the Chairpersons of the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association. The Governing Body had approved the common principles that would form the basis of its work in that field. It was agreed that the supervisory system was incontrovertible and that it was for the tripartite constituents to further strengthen it. Improvements needed to result in a robust, relevant and sustainable system, with effective and well-functioning supervisory procedures. Lastly, the Governing Body had emphasized that the supervisory system needed to be transparent, fair and rigorous, leading to consistent and impartial outcomes. On that basis, it had then examined ten specific proposals on which the constituents could build within the tripartite process of strengthening the supervisory system.

30. The Governing Body had examined an important proposal intended to establish regular discussions between the supervisory bodies. The proposal was based on the dialogue that has been long established between the Committee and the Committee of Experts, and was intended to strengthen that dialogue. In that context, it was planned to invite the Chairperson of the Committee on Freedom of Association to speak to the Conference Committee alongside the Chairperson of the Committee of Experts at its next session. The Governing Body had also discussed the means of strengthening the efficiency and effectiveness of the supervisory system. It was agreed that the recommendations of the supervisory bodies needed to be clear and provide practical guidance to member States. In that context, it had made specific reference to the recent experience of the Committee in drafting conclusions and recommendations. Lastly, the Governing Body had examined another important proposal intended to harmonize the follow-up to the comments of the supervisory bodies through technical assistance at the national level.

31. The representative of the Secretary-General said that, further to the latest informal tripartite consultations on the working methods of the Committee, information on the action taken by the Office to give effect to its recommendations had been put up on its dedicated website and would be regularly updated. The reports received from Governments that had benefited from such assistance often showed the extent to which the decisions and conclusions of the Committee could further the provision of targeted and very effective support by the Office. Certain development cooperation projects, which were currently being implemented under the responsibility of the International Labour Standards Department with the support of donors, and particularly the European Commission, were intended to ensure the effective application of international labour standards, and particularly compliance with reporting obligations. This was a promising form of collaboration, which the Office was actively endeavouring to develop and extend in future. With the ILO International Training Centre in Turin, the Office was continuing to provide training at the national, subregional and regional levels on international labour standards. The current year had seen the inauguration of the International Labour Standards Academy, which had the objective of disseminating knowledge and tools related to international labour standards to the ILO's tripartite constituents, judges, lawyers, law professors and media professionals. All of those activities were carried out by the Office with a view to ensuring, through specific and effective action, that international labour standards were better known, better understood and therefore better implemented.

32. Lastly, referring to the links between the work of the Committee on the Application of Standards and that of the other committees of the International Labour Conference, the representative of the Secretary-General said that the Committee for Labour Migration would examine the issue of governance in relation to migration trends on the basis, inter alia, of the conclusions that the Committee had adopted in the previous year following its discussion of the General Survey concerning the migrant workers instruments. Another committee, the Committee for Fundamental Principles and Rights at Work, would examine progress and challenges in the achievement of fundamental principles and rights at work on the global scale, and perspectives in this crucially important field with respect to international labour standards in the context of this year's recurrent discussion under the Follow-up to the ILO Declaration on Social Justice for a Fair Globalization, 2008. Furthermore, the Committee on Employment and Decent Work for the Transition to Peace would examine a new instrument to revise the Employment (Transition from War to Peace) Recommendation, 1944 (No. 71), which would be adopted by the Conference at the end of its present session and incorporated in the body of international labour standards, the application of which the Committee was responsible for examining. Lastly, the Finance Committee would examine the draft Programme and Budget for 2018–19, of which Strategic Outcome 2 focused on the ratification and application of international labour standards. In that respect, the programme and budget envisaged the systematic provision of technical assistance by the Office to promote the ratification and implementation of international labour standards, as well as support to the supervisory bodies to ensure their smooth functioning.

33. By way of conclusion, the representative of the Secretary-General reaffirmed that the Office was determined to support and consolidate the constructive participation of the tripartite constituents in a reliable supervisory system that enjoyed their confidence and in which all parties felt that they were stakeholders.

Statement by the Chairperson of the Committee of Experts

34. The Committee welcomed Mr Abdul Koroma, Chairperson of the Committee of Experts, who expressed his appreciation for the opportunity to participate in the opening of the meeting of the Committee. For schedule-related reasons, he would not be able to participate in all the discussions on the General Report and the General Survey. The Chairperson of the Committee of Experts stressed the importance of the Committee of Experts' special sitting with the two Vice-Chairpersons of the Conference Committee, which, together with his participation in the work of the Conference Committee, represented the institutional framework and good practice whereby representatives of the two bodies exchanged views on matters of common interest. At the last special sitting, the Committee of Experts had highlighted the systematic way in which it was monitoring the follow-up to the conclusions of the Conference Committee. It had also reiterated its concerns with respect to its workload, expressing the hope that measures would be taken to remedy the situation and calling for the support of the Employer and Worker members in the framework of the Standards Initiative. Additional clarifications had been provided regarding the working methods of both committees especially as they had implications for each committee's work. The Committee of Experts planned to discuss its working methods in relation to the naming of companies and the length of comments, especially with regard to technical Conventions, as a result of the views exchanged by the Employer and Worker Vice-Chairpersons.

35. Furthermore, the Committee of Experts had noted in its report the unprecedented number of observations received from employers' and workers' organizations on the application of Conventions and Recommendations, which was an indicator of the vitality of the supervisory mechanism and greatly assisted it in making its assessment. The Committee of Experts had also reiterated its longstanding concern at the low proportion of reports received by

1 September, which disturbed the sound operation of the regular supervisory procedure. Moreover, the Committee of Experts had called on all governments to ensure that copies of reports on ratified Conventions were communicated to the representative employers' and workers' organizations so as to safeguard this important aspect of the supervisory mechanism. As regards ways of increasing the visibility of its findings by country, the Committee of Experts had underlined the available electronic means, in particular the NORMLEX database, and the important practical guidance given to member States through technical assistance. In this context, the Committee of Experts had reiterated its hope that a comprehensive, adequately resourced technical assistance programme would be developed in the near future to help all constituents improve the application of international labour standards in both law and practice. Lastly, the speaker drew the Conference Committee's attention to the cases, identified by the Committee of Experts, in which, in view of the seriousness of the issues addressed, the governments concerned had been requested to provide full particulars to the Conference (paragraph 48 of its General Report).

36. Finally, the Chairperson of the Committee of Experts gave the assurance that the latter was firmly engaged in the path of meaningful dialogue with the Conference Committee and all other ILO supervisory bodies, in the interest of an authoritative and credible supervisory system and ultimately for the cause of international labour standards and social justice worldwide.

Statement by the Employer members

37. The Employer members welcomed the presence of the Chairperson of the Committee of Experts in the general discussion of this Committee. They welcomed the 2017 report of the Committee of Experts and highlighted three positive elements in that report. Firstly, the mandate of the Committee of Experts had been reproduced in paragraph 17 of its General Report, thus helping to clarify that its opinions and recommendations were not legally binding for member States. Secondly, the Employer members noted with satisfaction that most of the conclusions adopted last year had been followed up in the meantime by Office assistance, for instance by direct contacts missions and the provision of technical assistance and advice. They agreed with the Worker members that the cases discussed by the Conference Committee should be included in a special section of the Committee of Experts' report. In this regard, there was a need to apply more realism in standards supervision by making greater efforts to assess the implementation of ratified Conventions in the light of the specific circumstances of the respective countries and acknowledge the progress that could realistically be expected within a particular period of time. Assessments and recommendations for rectification in standards supervision and other means of assistance at the ILO's disposal should mesh without leaving gaps. Thirdly, the systematic reference made by the Committee of Experts in its observations to the discussions and conclusions of the Conference Committee reflected growing integration of the activity of the two main supervisory bodies, which constituted a key positive development. With reference to the continuous reproduction of considerations of the Committee on Freedom of Association in certain observations on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and on Convention No. 98, the Employer members recalled the distinct mandates of the Committee of Freedom of Association and the Committee of Experts and the fact that the Committee of Experts was called upon to analyse, in certain cases, only the legislative aspects of the Committee on Freedom of Association cases.

38. The Employer members further made a number of constructive proposals to make standards supervision more effective, transparent, relevant and sustainable: (i) in view of the need to make the report of the Committee of Experts more reader-friendly, transparent and relevant, the Employer members, observing that the outcome of the Committee of Experts' subcommittee on working methods was not reproduced in the report, proposed to set up a

joint working party of members of the two bodies to look into further improvements; alternatively, members of the Committee of Experts could be invited to participate in special meetings with members of the Conference Committee to examine possible enhancements of its working methods. In this way, the cooperation between the two pillars of the regular supervisory system, and hence its effective functioning and cohesion, could be strengthened; (ii) it would be desirable that the text of all submissions made by employers' and workers' organizations to the Committee of Experts be made available via a hyperlink in the electronic version of its report and on the NORMLEX website, should the organizations so desire; (iii) as stated in the 2017 Joint Position of the Workers' and Employers' groups, it was expected that mission reports regarding the Committee's conclusions, or a summary with the non-confidential concrete results of the mission, be published in NORMLEX; and (iv) the dedicated web page for the 2017 Conference Committee should be further expanded, for instance by adding information concerning the tripartite deliberations, including written submissions made by constituents.

39. Finally, the Employer members raised three issues of concern in the report of the Committee of Experts. Firstly, given the increase in the number of cases of serious failure to report as compared to last year, they suggested an in-depth discussion and specific measures to be considered in the next working methods meeting of the Conference Committee. The Employer members inquired as to the concrete measures taken by the Office to ensure fuller submission of reports and responses to the Committee of Experts' comments, specifically in regard to those countries with a long history of failure to report. Secondly, they expressed concern at the heavy workload of the Committee of Experts owing to the ever-rising number of ratifications and reports to be examined. Measures used so far, such as extending reporting intervals, seemed to have been stretched to their limits. It was necessary to focus reporting on essential regulatory issues in ILO Conventions and to consider concentration, consolidation and simplification of the standards system and its supervision as a sustainable way forward. The Employer members had high expectations in this regard concerning the work of the Standards Review Mechanism Tripartite Working Group. On the basis of the information in paragraph 38 of the report, they inquired how many reports had not been brought to the Committee of Experts' attention because of lack of time or resources and what measures would be adopted to avoid the examination of reports with outdated information. Thirdly, the Employer members reiterated their belief in fundamental principles and rights at work, including freedom of association, as the foundation for democracy. At the same time, they emphasized their disagreement with the direct connection created by the Committee of Experts between Convention No. 87 and the regulation of the right to strike, as well as the ensuing extensive interpretation in this regard. They highlighted the fact that, out of 64 observations, 45 dealt with the right to strike and that, out of 62 direct requests, 51 dealt in one way or another with the "right to strike" and that, out of these 51 direct requests, 22 dealt exclusively with the right to strike. The Employer members were therefore bound to reiterate their deep concern that the right to strike remained a major, and possibly the main, issue of the supervision of Convention No. 87. Given that the Committee of Experts had continued to reaffirm its position in this respect, they were obliged to continue expressing their divergent views so as to avoid any misunderstanding in the form of tacit acceptance. Observing that the Committee of Experts' interpretations on the subject had enjoyed limited support from the Government group at the March 2017 discussions of the Governing Body, the Employer members emphasized that requests of the Committee of Experts to align national law and practice on this controversial matter were non-binding, and that there was no reporting obligation for governments to provide information concerning law and practice on the right to strike. Finally the Employer members highlighted that the conclusions of the Committee on the Application of Standards would not contain requests linked to the controversial observations on the right to strike and that the Office's technical assistance and follow-up of the conclusions would need to focus exclusively on the consensus agreed among constituents.

Statement by the Worker members

40. The Worker members welcomed the presence of the Chairperson of the Committee of Experts in the general discussion of the Conference Committee. The annual report of the Committee of Experts offered a global perspective on the implementation of international labour standards in that it compiled governments' reports on the application of standards and also a significant number of observations made by workers' and employers' organizations. Because of its independence and the quality of its analysis, the Committee of Experts was able to promote in specific ways the observance of international labour standards and the application thereof in the countries concerned, and the Conference Committee was able to perform substantive work by enriching those standards with the interventions of its various groups. Moreover, the General Surveys of the Committee of Experts cast light on the prospects for the development of international labour standards. In view of the quantity of information to be processed, the extensive, high-quality work of the Committee of Experts was to be commended.

41. However, the Worker members made some suggestions with a view to improving the quality of the report. Among other things, they suggested that the observations made by the social partners, which in many cases contained information that could enrich the examination by the experts, should be reflected more widely in the report. Moreover, the Worker members were struck by the tone of the report in certain respects: some comments that had been made for a number of years had disappeared even though the problematic situation remained. The tone adopted was sometimes very mild given the seriousness of the violations described. Some comments were so short that they made the task of selection and preparation of cases difficult. Lastly, the Worker members expressed regret that numerous important elements appeared in direct requests and not in the observations of the Committee of Experts. In order to improve readability in certain cases, it was suggested that such information be reproduced in the report of the Committee of Experts.

42. The Worker members' remarks regarding the Committee of Experts' report should be taken constructively; they did not call into question the action of the Committee of Experts, in relation to which it was necessary to acknowledge a certain amount of interpretation with respect to evaluating the conformity of national legislation and the application thereof with international labour standards. Moreover, the aim of uniformity in the observations of the Committee of Experts was to help ensure legal certainty for member States and to guaranteeing a certain predictability. Lastly, the collegiate composition of the Committee of Experts, whose members originated from regions with different legal, economic and social systems, ensured balanced, independent and impartial work, thereby reinforcing the authority of the observations and recommendations made. The Worker members wished to express once again their confidence in the work of the Committee of Experts and indicated that the workload of the latter would be one of the aspects considered when evaluating and improving the working methods of the ILO supervisory mechanisms with a view to strengthening them.

43. The Worker members wished to respond to the comments of the Employer members on the treatment of the right to strike in the Committee of Experts' report. While recalling the joint position adopted by the Workers' and Employers' groups in February 2015, which was reaffirmed at the Governing Body in March 2017, and also the statement of the Government group, the Worker members reiterated that their position on the right to strike in the context of Convention No. 87 had not changed; they considered that the right to strike needed to be recognized in the context of the aforementioned Convention since that right was linked to freedom of association, which was a fundamental right and principle of the ILO. However, it had never been a question of the Worker members claiming that the right to strike was absolute; if evidence of that was required, it sufficed to consult the numerous consensual decisions adopted in that regard within the Committee on Freedom of Association.

44. Wishing to respond to certain proposals made during the discussions, the Worker members were in favour of having a separate section in the report of the Committee of Experts concerning the individual cases dealt with by the Conference Committee in the previous year, with particular attention given to repeated cases of failure to meet obligations. Such a section would make for greater visibility and better monitoring of the action taken by member States in response to the Committee's conclusions. However, the Worker members were not in favour of the proposal to follow up and monitor cases for more than one year since this might be detrimental to the supervisory cycle. Nor were they in favour of the Employer members' proposal to publish on NORMLEX the observations sent to the Committee of Experts by any employers' or workers' organizations that wished it since this might undermine the role of the Committee of Experts. On the other hand, the Worker members considered that reproduction of the recommendations of the Committee on Freedom of Association by the Committee of Experts did not pose any problem and that the proposal that the Committee on Freedom of Association's Chairperson should present a report to the Conference Committee was interesting. Moreover, they endorsed the Employer members' proposal to publish the reports of direct contacts missions carried out at the request of the Conference Committee since that would be a source of important information in assessing progress made in cases that had been discussed by the Committee.

45. The Worker members welcomed the constructive work that had been carried out in the Committee since 2015 and they expressed the wish that, this year once again, there could be frank and constructive discussions in order to arrive, beyond any divergence of views, at consensual conclusions designed to assist member States in their efforts to honour any obligations that had not been fulfilled.

Statement by a Government member

46. The Government member of Malta, speaking on behalf of the European Union (EU) and its Member States, the Candidate Countries the former Yugoslav Republic of Macedonia, Montenegro, Serbia and Albania, and potential candidate Bosnia and Herzegovina, as well as the Republic of Moldova, pointed out that the EU was actively engaged in the promotion of universal ratification and implementation of the core labour standards, as part of the 2015 Action Plan on Human Rights. Decent work was promoted in all relevant internal and external policies, including employment, trade, human rights and development cooperation. The speaker reiterated the strong and continued support for the ILO supervisory system. While the reporting process sometimes overburdened governments, it was essential to ensure successful monitoring of the application of international labour standards and further move towards universal ratification of ILO Conventions. He commended the fact that the Committee had been able to function in a positive and constructive atmosphere since 2015. With respect to continual improvement of its working methods, the speaker referred to the efforts under the Standards Initiative to enhance complementarity and eliminate any unnecessary overlap of procedures. While not questioning the process for the selection of individual cases, he thought that discussion of cases already dealt with under the complaint procedure established in article 26 of the ILO Constitution should be avoided as much as possible. Moreover, it could be particularly relevant to address related Conventions in the same case; in that regard, the Committee of Experts had innovated this year with such an approach. He shared the general concern at the workload of the Committee of Experts. Lastly, adopting the final list of individual cases after the Conference had already started remained very challenging for governments in terms of preparation.

Reply of the representative of the Secretary-General

47. The representative of the Secretary-General assured the Committee that all comments pertaining to the methods of work of the Committee of Experts and the relations between the supervisory bodies, would be duly communicated to the Chairperson of the Committee of Experts so that the fruitful dialogue between the two committees could continue and be further enhanced. Due note had also been taken of the suggestions made with respect to questions to be further discussed in the framework of the Standards Initiative or during the tripartite informal consultations on the working methods of the Committee.

48. Concerning the request for information on the specific measures taken to ensure fuller submission of reports and responses to previous comments, technical assistance had already been programmed and both national and regional activities on reporting would take place before the end of 2017 in several of the countries mentioned during the discussion. The number of countries which had failed to supply first reports had increased due to the complexities of the Maritime Labour Convention, 2006 (MLC, 2006). The Office was providing tailored reporting assistance in this regard and would follow up on all additional requests for technical assistance. With reference to the development assistance projects aimed among other things at improved reporting launched with the support of the European Commission, she welcomed this new area of interest for development cooperation, which the Office intended to further develop with the European Commission, the only donor at present. A number of countries had succeeded in resolving reporting difficulties this year with Office assistance, though there was still room for improvement. The reflection on long-term solutions aimed at facilitating reporting in a sustainable manner was ongoing. Options such as the optimal use of information technology would be considered in the framework of the Standards Initiative.

49. With regard to the number of reports that were not brought to the Committee of Experts' attention owing to lack of time and resources, she clarified that the dates for submission of reports under article 22 of the ILO Constitution were 1 June–1 September every year. Less than half of the reports due every year were received by the final due date of 1 September. Despite the late reception of many reports, the Office endeavoured to bring as many as possible to the attention of the Committee of Experts, in particular where the report constituted a follow-up to a case discussed at the Conference Committee or concerned the subject of a procedure before the Governing Body. It was however impossible to ensure that all of these reports were submitted to the Committee of Experts, which meant that some of them were deferred to the next year. Another reason for deferral was the need to ensure the translation of a significant number of reports into one of the Office's working languages, which was a time-consuming process. Other ways for addressing the workload of the Committee of Experts would also be considered in the framework of the Standards Initiative.

50. As to the measures taken to ensure that the information brought to the attention of the Committee of Experts was up to date, she indicated that the secretariat of the supervisory bodies routinely carried out research, using the expertise of the international labour standards specialists in the field, especially as far as legal references and national developments were concerned. Moreover, the increasing number of observations received from the social partners allowed the Committee of Experts to be well informed of the situation in ratifying countries and to obtain up-to-date and crucial information in time for its examination.

51. The representative of the Secretary-General also emphasized the Office's intention to continue enhancing capacity-building for workers' and employers' organizations, so as to ensure their effective participation in the supervisory mechanism, including in particular through collaboration with ACTRAV and ACT/EMP.

Concluding remarks

52. The Worker members expressed their appreciation of the discussions held on the respective roles of the Conference Committee and the Committee of Experts aimed at improving their functioning. The systematic references of the Committee of Experts to the conclusions adopted by the Conference Committee constituted an important development which demonstrated growing cooperation between the two pillars of the regular supervisory mechanism. However, it was essential to preserve the independence of each committee from the other. The reproduction of the mandate of the Committee of Experts in paragraph 17 of its report was welcome in that respect. Nevertheless, the two committees did not operate in isolation. The Employer and Worker spokespersons were invited to the annual meeting of the Committee of Experts and thus had the opportunity to make their observations on the work of the two committees. Such occasions appeared to be sufficient and there was no need to increase their number. Consequently, the proposal to establish regular dialogue between the supervisory bodies deserved to be discussed in more detail. In the opinion of the Worker members, any action taken by the Conference Committee should have the aim of reinforcing the effectiveness of mechanisms for supervising the application of standards while preserving the mutual independence of the bodies concerned. This was a key condition for achieving the constitutional objectives of the ILO.

53. The Employer members welcomed the ongoing close cooperation between the Conference Committee, the Committee of Experts and the Office. This dialogue should not only enable the ILO constituents to better understand their obligations under the supervisory system but also enable the Committee of Experts and the Office to grasp the practical realities and needs of the constituents. Considering the Committee's general discussion and discussion on the General Survey as evidence of tripartite ownership, they trusted that this would inform various ILO initiatives, processes and publications as well as the Office's work. The Employer members welcomed the information from the Office on concrete measures taken to ensure fuller submission of reports and responses to previous comments, and trusted that technical assistance to be provided before the end of 2017 would deliver positive results. They looked forward to continuing discussions on measures to tackle this and other issues during the next informal tripartite consultation on working methods in November 2017. Recognizing the challenge of the late submission of reports, they called on governments to make efforts in this respect. The issue of translations was, however, within the Office's control and needed to be resolved. They expressed concern that, owing to the workload, the information supplied to the Committee of Experts could be outdated by the time the latter was able to consider it. The workload of the Committee of Experts was an urgent matter and should be examined in the context of the discussion on working methods. Lastly, the Employer members affirmed their respect for the independence of the Committee of Experts but said that they were bound to express disagreement when they considered that it had exceeded its mandate.

C. Reports requested under article 19 of the Constitution

General Survey on the occupational safety and health instruments concerning the promotional framework, construction, mines and agriculture

54. The Committee discussed the General Survey carried out by the Committee of Experts on the occupational safety and health (OSH) instruments concerning the promotional framework, construction, mines and agriculture, which examines the Safety and Health in Construction Convention, 1988 (No. 167), the Safety and Health in Construction

Recommendation, 1988 (No. 175), the Safety and Health in Mines Convention, 1995 (No. 176), the Safety and Health in Mines Recommendation, 1995 (No. 183), the Safety and Health in Agriculture Convention, 2001 (No. 184), and the .Safety and Health in Agriculture Recommendation, 2001 (No. 192), in the context of the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), and the Promotional Framework for Occupational Safety and Health Recommendation, 2006 (No. 197).

55. The General Survey took into account information on law and practice provided by 111 governments under article 19 of the ILO Constitution, as well as the information provided by member States which had ratified the Conventions in their reports under articles 22 and 35 of the Constitution. The General Survey also reflected the comments received from 41 workers' organizations and 17 employers' organizations pursuant to article 23 of the Constitution.

56. The representative of the Secretary-General underlined, within the context of the Standards Initiative, the direct connection between the General Survey and the Standards Review Mechanism (SRM). In that regard, she highlighted the contribution of the discussion to the work of the SRM Tripartite Working Group.

57. The Chairperson of the Committee of Experts indicated that it was the first time that any of the eight instruments had been the subject of a General Survey. He recalled that the Committee had built upon its conclusions from the 2009 General Survey concerning the Occupational Safety and Health Convention, 1981 (No. 155), and its accompanying Protocol and Recommendation, as well as the discussion of that Survey by the Conference Committee. The Committee of Experts had aimed to situate its examination within the broader framework of the 2030 Development Agenda, which turned a spotlight on OSH. The General Survey highlighted the almost universal recognition of the importance of working together to promote a safe and healthy working environment. Nonetheless, the Committee of Experts had noted that major challenges remained with respect to OSH, and in that respect, emphasized the importance of prevention to overcome them and achieve progressive improvement. Lastly, it had recalled that social dialogue was at the heart of the instruments examined and a central prerequisite for successful action at both the national and enterprise levels.

General remarks on the General Survey and its topicality

58. The Committee welcomed the subject matter of the General Survey, emphasizing its timeliness and topicality and highlighting that occupational safety and health was at the core of the ILO's mandate. Both Worker and Employer members, and a number of Government members, stressed that, as recalled by the General Survey, ILO estimates indicated that 2.3 million workers died from work-related accidents or diseases and over 313 million workers suffered non-fatal occupational injuries each year.

59. The Employer members noted that the General Survey, which built on the 2009 General Survey, allowed a more complete overview of the status of implementation of the ILO standards on OSH concerned. The significant number of reports sent by constituents showed the importance of the subject. Improving safety and health at work had a positive impact on working conditions, productivity and economic and social development. The promotion of OSH and the prevention of accidents and diseases at work was a core element of the ILO's founding mission and of the Decent Work Agenda, and it featured prominently in the Sustainable Developments Goals. OSH remained one of the most vital labour issues and should be given priority in the ILO`s work. Making the world of work safer was a continuous task that required constant effort and adaptation to new challenges.

60. The Worker members noted that the General Survey offered an opportunity to consider the important issue of OSH. Every 15 seconds, a worker died from an occupational accident or disease and 149 workers were the victim of a non-fatal accident. In practice, better OSH standards were often the difference between life and death for so many workers, and it was hoped that the common will to address the numerous OSH-related fatalities and injuries was more powerful than the various practical, legal, economic and political concerns.

61. The Government member of Malta, speaking on behalf of the EU and its Member States, indicated that the Government members of Bosnia and Herzegovina, Georgia, Republic of Moldova, Montenegro, Serbia and the former Yugoslav Republic of Macedonia aligned themselves with his statement, and recalled that the Committee's discussion was important to stimulate action to implement the 2030 Agenda for Sustainable Development and monitor progress towards achieving its targets, with particular attention to protecting labour rights and promoting safe and secure working environments for all workers under target 8.8.

62. The Government member of Kuwait, speaking on behalf of the member States of the Gulf Cooperation Council (GCC), stated that the General Survey was comprehensive and highlighted the technical aspects required to strengthen safety and health for workers. The Government member of Colombia expressed support for the conclusions of the General Survey.

63. The Government members of Belgium, Colombia, the Islamic Republic of Iran, Morocco Senegal and Sweden highlighted the importance placed by their Governments on keeping workplaces safe and secure. The Employer member of India highlighted that OSH was a subject on which the social partners agreed, although the approach and mechanisms might vary. The Worker member of South Africa emphasized the importance of both governments and employers taking measures to protect workers from dangerous workplace practices and the Worker member of Ghana underscored that freedom from fear of occupational injury or harm to health was at the heart of the ILO Decent Work Agenda.

Importance of the instruments covered by the General Survey: Conventions Nos 167, 176, 184 and 187 and Recommendations Nos 175, 183, 192 and 197

64. A number of members of the Committee commented on the value and relevance of the instruments covered by the General Survey.

65. The Worker members recalled that a total of 75 member States had ratified at least one of the four Conventions. They noted that Convention No. 187 and Recommendation No. 197 set out general principles on the basis of which each nation would establish its OSH policy, by setting basic rules for safe and healthy working conditions in dialogue with the social partners, taking into account national conditions and practice. Those were not detailed technical principles, but a series of essential basic principles which were the cornerstone of an effective OSH policy. Forty-one member States had ratified Convention No. 187. That was well below the ambitions declared when the standard had been adopted, when the Employers' Vice-Chairperson had expressed the hope of seeing 100 ratifications within the next five years. In addition to Convention No. 187 and its Recommendation, the General Survey covered six instruments concerning occupational safety and health in the construction, mining and agriculture sectors. Recalling the high number of occupational accidents and diseases recorded in those sectors, they emphasized that the ILO had rightly devoted particular attention to construction, mining and agriculture through the adoption of those specific standards.

66. The Employer members noted that Convention No. 187 was organized around two key objectives: the development of a preventative OSH culture and the application of a systems

approach to managing OSH. Those objectives were promoted through the implementation of three foundational concepts: a national policy, a national system and a national programme on OSH. Those concepts were the basis of a successful approach to OSH. They offered the necessary flexibility in implementing the Convention to ratifying States, whatever their level of development. The sectoral instruments, in contrast, were poorly ratified and contained detailed and technical provisions that resembled the provisions of a code of practice or a guideline. That was inconsistent with the general approach. In order for OSH policies to have impact, an integrated approach would be needed.

67. The Government member of Malta, speaking on behalf of the EU and its Member States, as well as Bosnia and Herzegovina, Georgia, Republic of Moldova, Montenegro, Serbia and the former Yugoslav Republic of Macedonia, expressed support for the two key aims of Convention No. 187, the development of a preventative safety and health culture and the application of a systems approach to the management of OSH at the national level. He further highlighted the importance of the three foundational concepts of the Convention, of a national policy, a national system and, where appropriate, national programmes, as key instruments for the continuous improvement of OSH.

68. The Government member of Kuwait, speaking on behalf of the member States of the GCC, afforded great importance to Convention No. 187, as it was key to preventing shortcomings related to OSH. He also attached great importance to the instruments related to the construction, mining and agricultural sectors, and indicated that the General Survey demonstrated the importance of workers' protection in those sectors.

69. The Government member of Norway considered that Convention No. 187 was a flexible instrument, as it allowed member States a wide margin of discretion with respect to its implementation. In comparison, the sectoral OSH Conventions were more technical and detailed.

National OSH policies, laws and practices

70. A number of members of the Committee provided information concerning the situation in their own countries, including national OSH policies and other OSH initiatives as well as legislative and regulatory measures taken.

National OSH policies and OSH programmes

71. A number of Government members highlighted that national OSH policies had been adopted and other measures implemented. The Government member of Malta, speaking on behalf of the EU and its Member States, as well as Bosnia and Herzegovina, Georgia, Republic of Moldova, Montenegro, Serbia and the former Yugoslav Republic of Macedonia, recalled the importance of OSH policies and referred to the EU Strategic Framework on Health and Safety at Work 2014–20. The Government member of Kuwait, speaking on behalf of the member States of the GCC, indicated that those States were working to promote national policies and programmes aimed at protecting the lives and safety of all workers, irrespective of their national or ethnic origin, in accordance with their systems and programmes. The Government member of Côte d'Ivoire indicated that, in order to achieve his Government's OSH objectives, a national policy and a national OSH programme should be finalized and adopted. He referred to the establishment of a tripartite technical advisory committee, a national observatory for occupational accidents and diseases and a national bipartite coordinating committee on OSH.

72. The Government member of Senegal indicated that a national policy to improve workplace conditions had been formulated in 1999. In 2013, national actors had undertaken a global OSH audit to assess the implementation of OSH programmes. The tripartite social partners

had prepared a national OSH plan in line with international standards, particularly Conventions Nos 155 and 187, as part of its ILO Decent Work Country Programme. The Government member of Morocco indicated that the forum for social partner consultations on OSH matters had recently created an OSH country profile, with a view to developing a national policy. South–South development cooperation on OSH was important, and her Government had recently hosted a meeting of several countries in the region to discuss national OSH systems. The Government member of the Islamic Republic of Iran referred to the implementation of a Healthy Work Environment Plan, indicating that the outcome-oriented plan had resulted in a significant reduction in dangerous incidents in the industrial, construction and mining sectors.

73. The Government member of Brazil indicated that a tripartite OSH committee had been established, which promoted improvements to the national OSH system, through the establishment of mechanisms for continuous dialogue. An OSH awareness campaign was being implemented and measures had been taken to improve the handling of OSH data. The Government member of Kenya indicated that his country had adopted a coherent national policy in 2012. The policy covered all workplaces in all sectors of the economy and all forms of work. It was reviewed every five years, and was overseen by the tripartite National Council for OSH. The Government member of Sweden indicated that the work environment policy, developed in consultation with the social partners, prioritized the prevention of accidents and a zero tolerance of fatal accidents; a sustainable working life; and a sound psychosocial working environment.

74. The Government member of Belgium stated that a national strategy for well-being at work for 2016–20 was being implemented, with the main strategic objective of reducing work-related accidents and occupational diseases. The Government member of Colombia referred to the formulation of the OSH plan for 2013–21 which aimed to advance worker protection within the framework of a preventative culture and to promote the formalization of informal work. Sectoral OSH committees with tripartite representation issued policies and guidelines for the protection of occupational risks at both the national and sectoral levels. The Government member of Egypt indicated that a national OSH strategy for 2013–17 was being implemented with the social partners. The strategy aimed to ensure the application of the highest OSH standards and to promote the development of an OSH culture through training, education, awareness raising and advice to employers' and workers' organizations.

Strengthening the legal framework for OSH and its implementation

75. A number of Government members provided information on measures taken to strengthen their national legal frameworks with respect to OSH. The Government member of Côte d'Ivoire stated that significant effort had been put into developing the national OSH system equipped with tools for prevention. The Constitution stipulated that all citizens had the right to decent working conditions, and the principle had been developed through significant regulatory and institutional measures. The Government member of the Islamic Republic of Iran indicated that new OSH regulations, developed in consultation with the ILO, had been adopted, as had regulations on hazardous jobs, which set a basis for the reduction of occupational accidents and diseases. The Government member of the Republic of Korea indicated that it was planned to expand the scope of the Labour Standards Act to provide OSH protection to all workers, and not only employees. Moreover, the level of fines for OSH violations had been revised, including by reducing the scope for the mitigation of fines and the immediate imposition of fines under certain circumstances. The Government member of Brazil stated that within the previous five years, 21 revisions to OSH standards had been adopted. The Government member of Colombia indicated that a Ministerial Regulation on minimum standards had been issued. It would protect the lives and health of

over 10 million workers and would apply to over 670 thousand enterprises covered by the country's general occupational risk system.

76. Concerning the implementation of OSH legislation, a number of Government members, including Brazil and Morocco, referred to measures to improve OSH inspections. The Government member of Kuwait, speaking on behalf of the member States of the GCC, indicated that those States actively cooperated with the International Training Centre of the ILO with a view to strengthening labour inspection. The Government member of the Islamic Republic of Iran referred to the development of a systematic labour inspection approach focused on prevention and based on the analysis of occupational accident statistics.

Challenges to the implementation of the instruments

Overcoming obstacles to the provision of safe and healthy working environments

77. A number of members of the Committee highlighted certain obstacles to the provision of safe and healthy working environments, including the challenge presented by informality, global supply chains, new and emerging risks, difficulties in labour inspection, psychosocial risks and the specific support required for small and medium-sized enterprises.

78. With respect to the informal economy, the Worker member of Ghana indicated that it was difficult to exercise the right to removal from dangerous work situations in that sector. The Worker member of Colombia highlighted that that was the sector where the most accidents occurred. The Government member of Côte d'Ivoire highlighted the emergence of the informal economy beyond the control of the labour administration where workers were exposed to a number of occupational risks.

79. Turning to global supply chains, the Worker members considered that certain multinational enterprises ignored their responsibilities for the health and safety of workers throughout their supply chain. The Worker member of France highlighted the importance of enterprises ensuring the respect for OSH throughout their supply chains, which were involved in 60 to 80 per cent of global trade. While certain transnational enterprises established rules on corporate social responsibility, including on OSH issues, that was insufficient for achieving significant and tangible improvements on OSH. As highlighted during the Conference Committee discussion on decent work in global supply chains held in 2016, failures at all levels within supply chains contributed to decent work deficits in working conditions, including with respect to OSH. The Worker member of South Africa emphasized that steps must be taken towards effective standards to regulate global value chains, as in many countries multinational companies disregarded health and working standards.

80. Certain members of the Committee referred to the challenges presented by new and emerging risks as well as the opportunity of technological innovation. The Employer members recalled that Recommendation No. 197 pointed to the need for risk assessments to pay attention to new hazards and risks in the workplace. While the introduction of technical innovations could involve new risks, at the same time new technology often provided possibilities to better control or eliminate them. In that respect, the Employer member of the Islamic Republic of Iran highlighted that technological improvements contributed to the reduction of workplace deaths.

81. The Government member of Côte d'Ivoire noted that his country's recent economic growth was accompanied by technology transfer, including the introduction of new chemical substances, new machines and new working methods in most economic sectors. That contributed to job growth, but was also a significant source of occupational risks for workers who often received inadequate information. The Government member of Morocco

highlighted that in view of changes in the labour market, including rapidly changing production techniques, governments and social partners had to redouble their efforts to guarantee all workers a decent, safe and healthy working environment.

82. A number of Government members, including the Government members of Morocco and Sweden, referred to the challenge presented by psychosocial risks at work. The Government member of Belgium underlined the importance of vigilance with regard to new forms of organizing work, such as temporary work and subcontracting. Belgium's national strategy aimed to raise awareness of psychosocial risks, which were a major cause of long-term absences from and incapacity for work. It was important that the issue of psychosocial risks would be addressed at the 107th Session of the International Labour Conference in June 2018 in the context of the standard-setting discussion on ending violence and harassment against women and men in the world of work. The Government member of Colombia referred to the development of an evaluation process for psychosocial risk factors which enabled enterprises to identify and address those factors in various activities and occupations.

83. Certain Worker members expressed concern regarding the implementation of labour inspection in their countries. The Worker member of Switzerland expressed concern that austerity measures had meant that inspections were not being undertaken as often as required in some cantons. The Worker member of the Republic of Korea indicated that safety and health inspections were only carried out in approximately 1 per cent of workplaces. While violations were found in 90 per cent of workplaces, penalties were quite low and no penalties of imprisonment had been applied recently in cases of fatal occupational accidents.

84. The Worker members recalled that consultation, in appropriate forms, was particularly necessary in small enterprises, where the highest number of work-related accidents occurred. The Employer members noted that many employers, in particular small businesses, relied on governmental support with respect to OSH training. The Government member of Belgium highlighted that small and medium-sized enterprises found it difficult to formulate prevention policies, and that employers must have the necessary means and expertise at their disposal. The Employer member of India highlighted that the construction, mining and agriculture sectors were all characterized by small enterprises. That posed a challenge in ensuring health and safety.

OSH challenges in construction, mining and agriculture

85. Recalling the specific challenges in the construction, mining and agricultural sectors, the Worker members stated that the ILO was right to devote particular attention to those three sectors and to have specific standards for each of them. The Government member of Malta, speaking on behalf of the EU and its Member States, as well as Bosnia and Herzegovina, Georgia, Republic of Moldova, Montenegro, Serbia and the former Yugoslav Republic of Macedonia, noted the particularly critical situation in construction, mining and agriculture and the high number of occupational accidents and diseases in those sectors, as did the Worker members of Colombia, Japan and South Africa. The Worker member of Ghana recalled the importance of the three sectors for the economy of most sub-Saharan African countries. Moreover, the Worker member of South Africa recalled that migrant workers were often engaged in those sectors, with little OSH protection and the Worker member of Colombia highlighted that informality was prevalent in those sectors.

Construction

86. The Worker members indicated that the construction sector employed between 5 and 10 per cent of the working population in industrialized countries. However, it accounted for a disproportionate number of fatal accidents, and the rate of accidents had not fallen in recent

years. The Government member of Norway highlighted the specific challenges facing the construction sector. The Government member of Belgium indicated that such difficulties included poor knowledge of regulations among those working on building sites and communication problems due to differences of language. To address that, awareness-raising campaigns had been implemented by the labour inspectorate and the national action committee for safety and health in construction. The Government member of Morocco highlighted that the construction and public works sectors provided a significant number of jobs, but gave rise to considerable occupational risks. Her Government had an action plan on the prevention of occupational risks in the sector. That included a targeted campaign to monitor working conditions on building sites, an information and awareness campaign on OSH in the sector and a charter on the prevention of occupational risks in construction and public works, signed by the social partners, sectoral stakeholders and civil society representatives. The Worker member of Ghana highlighted that enforcement of legislation remained an issue in the construction sector, including with respect to the use and disposal of asbestos.

Mining

87. With respect to mining, the Worker members recalled that mining remained the most dangerous occupation in the world, not only due to the long list of mining disasters, but also as a consequence of occupational diseases resulting from the particularly arduous working conditions. Moreover, they expressed concern that many countries which had ratified Convention No. 176 had not yet engaged in dialogue to formulate a coherent policy on safety and health in their national mining industry.

88. The Worker member of Ghana considered that the unregulated and unsupervised small-scale mining in the informal economy had endangered the lives of mineworkers and the Worker member of South Africa called for a comprehensive audit of the extractive sector with respect to the adherence of that sector to national and international standards. The Employer member of the Islamic Republic of Iran underlined that risks were particularly acute in the mining sector, and that there had been many tragic mining accidents in recent years. A coalmining accident in her country in May 2017 had killed 43 workers and left 73 others seriously injured. Specific procedures and arrangements were required to protect workers in emergencies. While the introduction of new technologies contributed to the reduction of injury and fatality rates, the number of mining accidents was related to the proliferation of illegal mining operations and a lack of up-to-date personal protective equipment.

Agriculture

89. The Worker members recalled that the sector accounted for half of all fatal work-related accidents throughout the world. They expressed concern that the sector often suffered from the absence of a coherent national OSH policy based on social dialogue. Moreover, it was a cause of deep concern that it was still necessary to negotiate with employers as to whether workers in the agricultural sector should have access to drinking water and sanitary facilities during their work, or protective measures for pregnant workers, or provide the same rights and treatment to temporary workers. A minimum level of respect for the dignity of workers in the sector was needed and social dialogue was also essential for finding solutions to the high number of work-related accidents. The exclusion of the agricultural sector, or workers in small agricultural enterprises, from certain forms of national or sectoral OSH dialogue was a very serious problem. In that respect, the Worker member of Switzerland expressed concern that in his country, agricultural workers, along with certain other categories of workers, were excluded from the OSH protections of the Labour Act.

Common commitments on OSH

Preventative approach to OSH

90. The Employer members recalled that a preventative safety and health culture was one in which the right to a safe and healthy working environment was respected at all levels, and where the principle of prevention was accorded the highest priority. Promoting high levels of safety and health at work was the responsibility of society as a whole. Occupational safety and health should not just be a priority but a fundamental value in national agendas and a national OSH culture should be built and maintained. In line with that, OSH should be part of general education and be promoted outside the workplace. Certain good examples of promotional OSH activities were cited in the General Survey, including the use of social media and OSH awards. OSH was about well-being, and that required active participation. The General Survey highlighted that another crucial element for the development of an OSH culture was the promotion of the assessment of occupational risks and hazards. While conducting risk assessments was a central pillar of OSH management in companies, it was important that assessment work in practice to ensure that businesses are able to protect their workers in a cost-effective way proportionate to the specific risks at their workplace. The focus should be on result-oriented measures that were appropriate for a workplace and using risks assessment as a tool for appropriate prevention measures at the workplace.

91. The Worker members from Japan and Ghana, as well as the Government member of the Islamic Republic of Iran, emphasized the importance of accident prevention. The Government members of Colombia, Egypt, Morocco and Sweden emphasized the importance of the preventative approach to OSH, including the development of a preventative safety and health culture. The Government member of Belgium highlighted measures taken to pursue a policy of prevention, including the development of an online interactive risk-assessment tool for businesses to carry out fast and effective risk analysis and determine the necessary prevention measures. The Government member of the Islamic Republic of Iran stated that risk-assessment management had been promoted, with the cooperation of employers, and that training on self-inspection had been provided.

92. A number of members of the Committee highlighted the importance of training and awareness raising in developing a culture of prevention. The Employer members recalled that the General Survey underlined education and training as a major contributor to the promotion of an OSH culture and thus an important component of a national OSH system. Continuous OSH training for both workers and employers was important in that respect. The Government member of Colombia indicated that a strategy had been developed to promote safety and health from school onwards to contribute to the development of a preventative culture. The Employer member of India recalled the importance of education and awareness-raising programmes on OSH as well as training and advice for both employers and workers. Technical training programmes should include modules on OSH in their curricula. The Worker member of Japan considered that OSH training, conducted jointly by the social partners, could contribute to accident prevention.

Pivotal role of social dialogue

93. The Government members of Sweden and Egypt underlined that social dialogue was an essential condition for OSH. The Government member of Malta, speaking on behalf of the EU and its Member States, as well as Bosnia and Herzegovina, Georgia, Republic of Moldova, Montenegro, Serbia and the former Yugoslav Republic of Macedonia, recalled the importance of dialogue in achieving progressive OSH achievement and expressed full support for the Committee of Experts' view that the national process, with full participation of the social partners, remained the crucial engine for improving the national OSH situation and creating safe and healthy working environments.

94. The Worker members noted that, in the General Survey, several organizations had reported practical difficulties and limited opportunities and facilities for national tripartite dialogue on OSH, including a lack of resources, the suspension of activities and an absence of support. Economic problems were a poor excuse for the dismantling of national OSH policies. In that respect, they recalled that the General Survey had emphasized the importance and the major contribution made by collective agreements in the field of OSH.

95. The Employer member of India recalled the importance of consultation with industry and employers in developing safety standards. The Worker member of Japan highlighted the importance of social dialogue, and that the absence of such dialogue contributed to accidents. The Worker member of Colombia stressed that OSH policy should be formulated in collaboration with employers' and workers' organizations. The Worker member of Ghana pointed to the need to develop robust and responsive tripartite mechanisms that ensured the prevention and remedying of OSH issues, including in the mining, construction and agriculture sectors.

Participation and cooperation at the level of the undertaking

96. The Worker members fully supported the finding by the Committee of Experts that the participation of workers in OSH matters was a fundamental and integral element for achieving safer and healthier workplaces. The right of participation needed to be guaranteed through the establishment of procedures. A strong trade union presence at the workplace was often the best guarantee of OSH. The General Survey showed that it was not unusual for that right to be undervalued during consultations on OSH issues. Major categories of workers were not able to participate in such dialogue, nor to select their representatives in a democratic manner, including in industrialized countries. The situation was difficult for precarious workers and often training or facilities were not provided for temporary workers or workers' representatives. The Committee of Experts rightly emphasized that the right of workers to designate their representatives for such consultations was essential for the establishment of an adequate OSH policy at the workplace.

97. The Employer members agreed with the Committee of Experts that effective OSH management required close cooperation among all those having responsibilities and expertise. Arrangements for cooperation, however, had to take into account the size of the enterprise and the nature of its operations. For that reason, the Conventions rightly did not require particular forms of cooperation. Enterprises must have the necessary flexibility to develop effective forms of OSH cooperation that were suited to their situation, non-bureaucratic and affordable. For example, the establishment of joint OSH committees might be an appropriate form of participation in big enterprises, but would exceed the resources of small enterprises. The Employer members emphasized the need for coordination and cooperation between different parties in the workplace and stated that good practices should be encouraged in that respect.

98. The Government member of Kenya stated that the establishment of workplace safety and health committees, with equal representation from management and workers, was mandatory for workplaces with more than 20 employees, and that training was mandatory for members of such committees. An observer representing IndustriALL Global Union recalled the importance of a worker's right to participate fully in the development and implementation of OSH policies and procedures, including risk assessments. That required effective joint health and safety committees and workers' representatives selected freely by workers themselves. The Worker member of the Republic of Korea highlighted that subcontracted workers could not join or be represented by OSH committees at their workplace. Moreover, she indicated that the role of trade unions in OSH should be strengthened.

Rights and duties of workers

99. The Employer members recalled that a safety and health culture was one in which government, employers and workers actively participated in securing a safe and healthy working environment through a system of defined rights, responsibilities and duties. They acknowledged the importance of a worker's right to a safe and healthy working environment, but considered that there was a close link between workers' rights and duties with respect to OSH. In that respect, the General Survey provided relatively little substantial information on the law and practice on workers' duties, and as close cooperation between workers and employers was important for effective OSH management, closer examination of that was required. The principle of accountability should apply to all that have OSH responsibilities and duties, including workers.

100. The Worker members considered that the right of workers to remove themselves from the workplace in the event of serious and imminent danger to their safety and health remained a matter of concern. It was unacceptable for that right to be impeded or to be dependent on preliminary procedures. Several governments had indicated that that right was not set out in national law, in breach of the requirements of the three sectoral Conventions. The frequent absence of the provision of personal protective equipment and clothing to workers was also of concern. Temporary or precarious workers should also be fully entitled to such measures.

101. With respect to the implementation of workers' rights in practice, the Worker member of Japan highlighted the importance of the right of workers to remove themselves from situations of danger, and referred to the Rana Plaza disaster in that respect. The Worker member of the Republic of Korea indicated that lawsuits had been filed in her country related to the exercise of the right to refuse hazardous work as stipulated in collective bargaining agreements. The Worker member of Ghana indicated that while national legislation allowed workers to remove themselves from unsafe working environments, that right was difficult to exercise in practice.

Employers' responsibilities with respect to OSH

102. The Employer members acknowledged that employers bore the main responsibility in ensuring OSH at the workplace, as reflected in the respective Conventions. They noted that where several employers were involved it was indeed important that the respective duties were clearly and fairly assigned among them. In this context, the Employer members referred to paragraph 269 of the General Survey, where it was stated that "the high use of subcontracting can have a significant impact in terms of the fragmentation of employers' responsibilities to ensure the safety and health of workers" and the fact that reference was also made to a study in connection with a major accident in the mining industry in an ILO member State, which found "that the establishment of subcontracting relationships was a mechanism that appeared to be particularly prone to abuse" and that "it was frequently used as a mechanism to grant worse labour conditions". The Employer members questioned whether the study intended to suggest discouraging subcontracting as a remedy to improve OSH and considered the references as clearly overstating the case. The Employer members expressed the view that while the existence of subcontracting arrangements might make OSH management more challenging, it did not hinder it, highlighting the fact that nobody would discourage the setting up of small businesses only because formal OSH management in small enterprises was more difficult than in big enterprises. The Employer members stated that a substandard OSH performance should not be confused with other bad labour conditions as different remedies might be required.

103. The Worker member of the Republic of Korea highlighted that the proliferation of the outsourcing of hazardous work had resulted in a rising number of fatal occupational accidents among subcontracted workers.

104. The Government member of Côte d'Ivoire highlighted that under the Labour Code, employers were required to take measures to protect workers from occupational accidents and diseases, and to provide health and safety training for new workers, as well as following legislative or regulatory changes. The Government member of Kenya indicated that employers' responsibilities were established in national legislation, and those applied equally to contractors and subcontractors. The Government member of the Republic of Korea stated that national legislation provided that where workers of the principal contractor and its subcontractor worked together in the same workplace, the principal contractor was required to take action to protect the subcontractor's workers from industrial accidents, and that violations could be punished. A new bill had been developed to expand the scope of principal contractors' safety and health responsibilities with the aim of reducing accident rates for subcontracted workers. Principal contractors were required to provide appropriate information on hazardous work to subcontractors, and the Government supported cooperation between principal contractors and subcontractors.

Importance of OSH statistics and systems for the notification and recording of occupational accidents and diseases

105. The Employer members concurred with the General Survey on the need for collecting and analysing relevant and accurate data. That was necessary for various purposes, in particular for prioritizing action and economic sectors; for defining realistic objectives, including indicators of progress; for measuring progress and the effectiveness of measures taken; and for assisting enterprises in their efforts to prevent work-related accidents and diseases. While the collection of data posed a challenge for many national statistical systems, as stated in paragraph 161 of the General Survey, it was a necessary precondition for the proper implementation of the Conventions. One method of data collection, referred to in the sectoral OSH instruments, was the recording and notification of occupational accidents and diseases. The General Survey, in paragraph 175, reported allegations by trade unions regarding non-compliance with recording and notification obligations by employers. While agreeing that accident and disease reporting and notification by employers was an important source of OSH information, it was important that those indications on non-compliance, in the absence of official confirmation, be clearly marked as allegations. Nonetheless, the Employer members agreed with the recommendation of the Committee of Experts in paragraph 176 that the causes of under-reporting needed to be examined and, on the basis of the outcome of the examination, proactive measures to address the difficulties should be identified. Such difficulties might include misreporting, due to the reporting of private accidents as work-related accidents and a lack of knowledge of the reporting system.

106. The Worker members noted that the General Survey had stressed several problems which resulted in significant under-reporting of occupational accidents and cases of occupational disease. They supported the call made by the Committee of Experts for governments to establish an effective and robust system for the reporting of employment accidents and occupational diseases, in consultation with the social partners. Such measurement was essential for the implementation of an effective policy. It was a concern that difficulties were still frequently observed even in the most industrialized countries.

107. The Government member of Malta, speaking on behalf of the EU and its Member States, as well as Bosnia and Herzegovina, Georgia, Republic of Moldova, Montenegro, Serbia and the former Yugoslav Republic of Macedonia, expressed concern about the difficulties in the collection and analysis of OSH data and joined the Committee of Experts in recalling the fundamental importance of reliable statistical information on OSH.

108. The Employer member of India indicated that while accidents are reflected in OSH statistics, occupational diseases caused by prolonged exposure to hazardous working conditions often went unnoticed. The Worker member of the Republic of Korea stated that official

occupational accident statistics underestimated the number of accidents, and that there was a lack of statistical information regarding fatal industrial accidents in disguised employment relationships. Workers, particularly precarious workers, had been pressured not to report accidents or apply for compensation, or to report accidents as non-work related. The Government member of the Republic of Korea stated that certain estimates of occupational accidents included non-occupational accidents, as well as accidents among the self-employed and that therefore the Government's official occupational accident figures were more reliable.

Mechanisms for achieving compliance

109. The Worker members stressed that while a good legislative framework was important, effective monitoring mechanisms to ensure compliance and, where necessary, impose penalties in the event of serious violations, were essential. Such mechanisms were in the interest of honest employers who otherwise would suffer from unfair competition from those who engaged in unscrupulous practices. The Committee of Experts had noted that the lack of human and material resources for inspection services was a recurrent problem in all regions of the world. In that respect, the role of the public authorities was fundamental. Private inspection initiatives and ISO standards could not effectively replace the role of labour inspection. The allocation of adequate human and material resources, the imposition of robust and dissuasive penalties in the event of violations, the availability of adequate training for inspectors, as well as access to all workplaces without prior authorization, were all minimum fundamental prerequisites for an effective OSH policy. The Worker members therefore fully supported the appeal by the Committee of Experts for governments to ensure that the necessary skills, resources and personnel were made available so as to ensure effective labour inspection.

110. The Employer members noted that the lack of human and material resources continued to be a major problem for labour inspection. Strategic approaches to the planning of labour inspection were necessary, including the examples in paragraphs 440 and 441 of the General Survey. Effective and efficient enforcement was not only about resources, but the quality of the inspection, the skills and capacities of inspectors, and the methods used, including the use of big data in the planning of inspection. Moreover, while penalties were a vital component of OSH compliance management, they were one of many elements. It was not appropriate that the General Survey first dealt at length with penalties and prioritized a repressive approach, and then subsequently dealt with preventive action such as guidance, advice and information.

111. The Government member of Malta, speaking on behalf of the EU and its Member States, as well as Bosnia and Herzegovina, Georgia, Republic of Moldova, Montenegro, Serbia and the former Yugoslav Republic of Macedonia, stated that focus should be given to practical implementation and enforcement of OSH provisions at all levels, and highlighted the important role of labour inspection in the progressive achievement of a safe and healthy working environment. The Government member of Belgium underlined the importance of strengthening labour inspection and the Government member of Sweden underlined that substantial resources had been allocated to recruit and train new occupational health and safety inspectors.

112. The Employer member of India indicated that the emphasis on the role of the inspectorate and the need for higher resources should be understood in light of the need for greater education, awareness raising and capacity building, and not as an increase in inspections and prosecutions. The Employer member of the Islamic Republic of Iran indicated that member States needed to strengthen their regulatory effectiveness with respect to OSH, including through the promotion of cooperation and coordination among regulatory bodies.

113. The Worker member of South Africa called for the development of the capacity of the inspectorate in the three sectors covered by the General Survey. The Worker member of Ghana considered that governments had an obligation to ensure adequate resources for regulatory mechanisms that promote OSH, and that immediate attention must be paid to building the capacity of labour inspection institutions. An observer representing IndustriALL Global Union stated that private compliance initiatives were not effective.

Broad recognition of the economic cost of dangerous and unhealthy working conditions

114. The Employer members highlighted that the General Survey rightly pointed to, in addition to the tremendous human cost, the significant economic impact of insufficient OSH measures by lost working time, interruptions in production, treatment of occupational injuries and diseases, rehabilitation and compensation. The Worker members highlighted the devastating effect of occupational accidents and diseases and considered that enforcement mechanisms were necessary to ensure that those who ignored safety standards would not gain a temporary financial advantage. The Government member of Malta, speaking on behalf of the EU and its Member States, as well as Bosnia and Herzegovina, Georgia, Republic of Moldova, Montenegro, Serbia and the former Yugoslav Republic of Macedonia, indicated that effective OSH policies not only contributed to safeguarding workers' lives and health, but also played a vital role in increasing the competitiveness and productivity of enterprises, in facilitating the establishment of a level playing field and in contributing to the sustainability of social protection systems. Moreover, the Government member of Belgium considered that dangerous and unhealthy working conditions led to reduced productivity and to bankruptcies, redundancies and closures and that it constituted a form of unfair competition among enterprises. The Government member of the Islamic Republic of Iran recalled that, while workers' lives could not be measured in economic terms, the average losses and costs incurred due to occupational accidents and diseases amounted to between 5 and 7 per cent of GDP in industrial countries, and up to 12 per cent of the GDP in certain others. Reducing this loss, through effective government policies, sensitization of employers and training of workers, could contribute to job creation and poverty reduction. In addition, the Employer member of the Islamic Republic of Iran stated that high standards for health and safety practices paid for themselves, in helping businesses avoid staff illnesses, accidents and the associated cost. High standards also had reputational value with respect to customers, regulators and employees.

Recent ratifications and future prospects

115. The Worker members supported efforts to promote ratification of all the Conventions covered by the General Survey. They encouraged all member States who had doubts as to the conformity of their national legislation with the Conventions to request technical assistance from the Office with a view to examining the possibility of ratification.

116. The Employer members stated that the promotion of the ratification of Convention No. 187 constituted a good starting point. The sectoral instruments covered by the General Survey had been poorly ratified and that, in light of the difficulties identified, there seemed to be no real enthusiasm for their future ratification. In addition, the Employer members expressed concern over the regional divide in ratifications, in particular between Europe and the Asia and the Pacific region. That raised questions on the existing perceptions of the role and the benefits of ratification of ILO OSH Conventions, in particular sectoral instruments. Furthermore, the Employer members noted that, as regards the Safety Provisions (Building) Convention, 1937 (No. 62), none of the member States that had submitted a report for the General Survey had indicated the intention to ratify the more up-to-date Convention No. 167 or to denounce Convention No. 62. The Employer members considered the unwillingness to engage with more modern instruments as an unhelpful approach.

117. The Government member of Sweden encouraged member States to ratify the instruments concerned. The Government member of Norway indicated that her Government had recently ratified Convention No. 187. The ratification process had been quite time consuming, as a thorough assessment had been necessary in order to understand and clarify the implications of the Convention, which was flexible enough to leave to ratifying countries a wide margin of discretion. The Government member of Côte d'Ivoire recalled that his Government had ratified several OSH Conventions in 2016, including Conventions Nos 155, 161 and 187. The Government member of Belgium indicated that her country was about to ratify Convention No. 187, while the three sectoral Conventions had already been ratified. The Government member of Morocco indicated that, while Morocco had already ratified Convention No. 176, the ratification of Convention No. 187 was in its final stage, namely the deposit of the instrument of ratification at the ILO.

118. The Worker member of Ghana indicated that the ratification of the Conventions covered in the General Survey would be promoted within the existing national tripartite framework. The Worker member of Switzerland expressed the hope that Switzerland would ratify the Conventions. The Worker member of the Republic of Korea indicated that the Republic of Korea had ratified a number of OSH Conventions, including Convention No. 187, but not the sectoral Conventions and she emphasized the importance of doing so.

Possible ILO action

119. The members of the Committee indicated possible action that the ILO could take in follow-up to the General Survey.

1. Standards-related action

120. The Worker members considered that it was not necessary to devote time and resources to the development of a consolidated instrument to replace the current standards. The existing instruments offered sufficient flexibility and clarity, and already made it possible to take specific national situations fully into account. As indicated by the tripartite consensus in 2015 during the Global Dialogue Forum on Good Practices and Challenges in Promoting Decent Work in Construction and Infrastructure Projects, it was much more necessary to organize a robust campaign to encourage more countries to ratify the four Conventions.

121. The Employer members noted the suggestions by certain governments in the General Survey for consolidation of existing standards. There were 18 up-to-date OSH Conventions, and the focus on four Conventions in the General Survey was not a sufficient basis to examine the broader context of that important issue. The existing sectoral OSH Conventions were unduly detailed. Looking forward, the Employer members would promote the idea of a single and coherent framework Convention combining elements from both Conventions Nos 155 and 187. Relevant Conventions, including those in the General Survey, could be drawn from to produce a schedule-based approach that would allow for easier implementation and ratification, as well as amendment as necessary in the sectors covered. A comprehensive approach to OSH was needed, as the current discussion did not include important sectors which had a high number of accidents, such as forestry and fishing. That had been done before, as the MLC, 2006, had amalgamated, coordinated and restructured the entire approach to the maritime labour industry. In that respect, the Governing Body should be asked to examine the ways and means, perhaps using the SRM, of examining all of those issues in a comprehensive manner.

122. The Government member of Norway, noting that the sectoral Conventions were technical and detailed and that the OSH instruments suffered from low rates of ratification, stated that there should be an examination of whether a revision of the instruments was needed in order to achieve their full potential. The SRM could be an appropriate occasion for that. In

addition, the Government member of Sweden looked forward to the work of the SRM TWG in the field of occupational safety and health.

2. Development cooperation and technical assistance

123. The Worker members encouraged the ILO to launch an urgent, large-scale and intensive campaign to promote the ratification and effective implementation of the Conventions covered by the General Survey and to provide legal clarifications, technical assistance and training as necessary. A proactive role for the Office was also necessary to more effectively inform member States concerning the flexibility offered by the instruments for their adaptation to specific national circumstances.

124. The Employer members supported the promotion of ratification and implementation of Convention No. 187, a modern and flexible instrument. However, they did not support a ratification and implementation campaign of the sectoral Conventions.

125. The Worker members noted that a large number of countries had already received technical assistance and support, including for the development and formulation of their national OSH policies. The ILO needed to strengthen its technical assistance, including in the fields of capacity building and policy-making. The Worker members hoped that the Office would respond rapidly to the requests for assistance and support.

126. In view of the numerous requests for technical assistance and advice on law and practice on OSH, as well as capacity-building on OSH for the social partners, the Employer members considered that the ILO should increase the assistance it provided on OSH and shift a greater share of its available resources for technical cooperation to that area. The ILO should step up its technical assistance to member States on OSH, in particular on making risk assessments and on focusing limited labour inspection resources on high-risk sectors. It should continue to provide assistance to member States in need with respect to the collection of OSH data, and develop relevant tools and guidance materials, including for the validation of data to ensure the necessary quality of the statistical information. The ILO should also help build the capacity of employers' and workers' organizations on OSH. Those organizations played an indispensable role in the promotion of an OSH culture, and the implementation of OSH systems and OSH programmes. Noting the occupational mortality rates, they concurred that OSH measures required coordinated action. In that respect, the Employer members highlighted that an integrated approach would be needed in order for OSH policies to have impact.

127. The Government member of Malta, speaking on behalf of the EU and its Member States, as well as Bosnia and Herzegovina, Georgia, Republic of Moldova, Montenegro, Serbia and the former Yugoslav Republic of Macedonia, indicated that practical tools, guides and best practices to assist micro-, small and medium-sized enterprises to perform quality risk assessments were needed to improve OSH performance. Recognizing that the ILO had already provided relevant recommendations, valuable consultations and ongoing technical cooperation with a view to creating a healthy and safe working environment, the Government member of the Islamic Republic of Iran invited the ILO to conduct capacity-building activities, such as trainings and workshops, on a regular basis and in various countries in order to share lessons learned with a view to preventing occupational accidents. The Government member of Egypt welcomed the continued cooperation with the ILO to build the capacity of the social partners in the area of OSH, while the Government member of Kenya requested ILO technical assistance with a view to addressing gaps in law and in practice in the implementation and enforcement of the Conventions ratified.

128. The Worker member of Ghana called on the ILO to promote ratification of OSH standards among member States, while ILO regional offices should provide technical assistance with

a view to the implementation of such standards. An observer representing IndustriALL Global Union emphasized that ratification of Convention No. 176 was proceeding too slowly and encouraged the ILO to promote ratification and implementation of ILO OSH standards, and pay further attention to the collection of data on occupational accidents. The Worker member of Japan called on the ILO to conduct capacity building and trainings on OSH for employers and workers jointly.

129. The Employer member of the Islamic Republic of Iran called on the ILO to provide technical assistance and support with a view to helping her country consider the possibility to ratify ILO instruments on OSH, developing awareness-raising activities in relation to the requirements of the OSH instruments covered by the General Survey, and building capacities at the national level on the implementation of OSH measures. In that respect, the ILO should expand and increase the current programmes to assist member States, targeting in particular certain technical areas and specific countries, in developing and improving their national infrastructure, including legislative and regulatory frameworks for OSH.

Concluding remarks

130. The Worker members encouraged the ILO to launch an urgent and intensive campaign to promote the ratification and effective application of the instruments covered by the General Survey and to provide legal explanations, technical assistance and training thereon, as needed. They encouraged all member States who had doubts as to the conformity of their national legislation with the Conventions to request technical assistance from the Office with a view to examining the possibility of ratification or implementation. A proactive role for the Office was also necessary to more effectively inform member States concerning the flexibility offered by the instruments for their adaptation to specific national circumstances.

131. The Worker members reiterated their concern that many countries that had ratified Conventions Nos 176 and 184 had not yet formulated a coherent national policy on OSH in those sectors, in consultation with workers' and employers' organizations. Moreover, several organizations had reported in the General Survey practical difficulties and limited opportunities for national consultations on OSH. In that respect, the General Survey had underlined the importance and significant contribution of collective agreements in the area of OSH. In addition, the establishment of an effective and robust system for the recording of occupational accidents and diseases, in consultation with the social partners, was essential for the formulation of an effective national policy on OSH. In that respect, the difficulties arising frequently in the most industrialized countries were worrying. Labour inspection was fundamental for ensuring compliance with national laws and regulations, and private compliance initiatives were not an appropriate replacement. An effective OSH policy required the allocation of adequate human and material resources, the imposition of robust and dissuasive penalties in the event of violations, the availability of adequate training for inspectors, as well as access to all workplaces without prior authorization. The Worker members reiterated that governments should ensure that the necessary skills, resources and personnel were made available so as to ensure effective labour inspection.

132. With regard to standard-setting activities, time and resources did not need to be devoted to the development of a consolidated instrument to replace the current standards, as the existing instruments offered sufficient flexibility and clarity, and already permitted the taking into account of national circumstances. The sectoral Conventions and Recommendations should be maintained. The need for that was unfortunately illustrated in the statistics on occupational accidents and diseases: mining remained the most dangerous occupation in the world; the agricultural sector accounted for half of fatal workplace accidents worldwide; and the construction sector still recorded a disproportionate number of fatal accidents. In light of that reality, specific Conventions for those sectors had been drafted to translate the general

principles set out in Convention No. 155 into more specific directives adapted to those sectors. That approach remained valid today.

133. The Employer members underlined that there was consensus that improving safety and health at work had a positive impact on working conditions, productivity, and economic and social development. The promotion of OSH and the prevention of occupational accidents and diseases were a core element of the ILO's founding mission and of the Decent Work Agenda. Additionally, promoting safe and secure working environments for all workers featured prominently in the Sustainable Development Agenda. OSH was a global concern and a priority for ILO constituents and should be given clear priority in the ILO's activities, including standards-related activities. The ILO should increase its technical assistance on OSH to member States, in particular on collecting data, on making risk assessments and on focusing limited labour inspection resources on high-risk sectors.

134. The Employer members stressed that a preventative approach on OSH should always be given priority over penalties and other repressive approaches. To that end, the ILO should also help build the capacity of employers' and workers' organizations on OSH, as these organizations played an indispensable role in the promotion of a preventative culture on OSH, the proper functioning of OSH systems and the implementation of OSH programmes. Effective and efficient cooperation between employers and workers was needed and participation mechanisms had to be adapted to small and medium-sized enterprises. For the effective management of OSH in the workplace, both employers and workers had to live up to their duties and responsibilities, while regulations had to be simple and clear and institutions had to be not unduly bureaucratic.

135. While stressing that the effectiveness of national strategies and programmes depended on their tripartite ownership, the Employer members supported the promotion of the ratification and implementation of Convention No. 187, a modern and flexible instrument. On the other hand, considering that Conventions Nos 167, 176 and 184 did not seem to have been embraced by constituents, they did not support a ratification and implementation campaign. The Employer members considered that OSH had to be analysed in a comprehensive way. In that regard, they highlighted that other hazardous sectors, including fishing and forestry, should not be overlooked, and that the focus should not only be on safety, but on health and disease prevention. The tripartite discussions in the context of the SRM provided an opportunity to discuss the possibility to consolidate ILO standards on OSH in order to ensure their continued relevance to the world of work. In the midterm, pending consolidation, reporting and supervision of OSH Conventions should be focused on a few crucial provisions.

* * *

136. The representative of the Secretary-General highlighted that both the General Survey and the views expressed during its discussion would inform the review of 19 OSH instruments (general provisions and specific risks) by the SRM TWG at its meeting in September 2017. The discussion would also inform various ILO initiatives concerning OSH, and notably the flagship programme entitled "Occupational Safety and Health Global Action for Prevention". In that respect, she took due note of the suggestions made by various members of the Committee concerning technical assistance on OSH and she indicated that those would be brought to the attention of the colleagues from the technical department concerned, who had collaborated closely in the preparation and follow-up on the General Survey. The discussion raised important points that could inform the International Labour Conference discussions next year concerning effective ILO development cooperation in support of the Sustainable Development Goals, as well as the standard-setting discussion on violence and harassment against women and men in the world of work.

Outcome of the discussion of the General Survey on the occupational safety and health instruments concerning the promotional framework, construction, mining and agriculture

137. The Committee examined the draft outcome of its discussion of the General Survey on the occupational safety and health instruments concerning the promotional framework, construction, mines and agriculture.

138. The Committee approved the outcome of its discussion, which is reproduced below.

Introduction

1. The Committee welcomed the opportunity, in its examination of the General Survey on the Safety and Health in Construction Convention, 1988 (No. 167), the Safety and Health in Construction Recommendation, 1988 (No. 175), the Safety and Health in Mines Convention, 1995 (No. 176), the Safety and Health in Mines Recommendation, 1995 (No. 183), the Safety and Health in Agriculture Convention, 2001 (No. 184), and the Safety and Health in Agriculture Recommendation, 2001 (No. 192), in the context of the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), and the Promotional Framework for Occupational Safety and Health Recommendation, 2006 (No. 197), to discuss the vital issue of occupational safety and health (OSH).

2. It recalled that the promotion of a safe and healthy working environment for all was a core element of the ILO's founding mission, reflected in the ILO Constitution and reaffirmed in the 1944 Declaration of Philadelphia, and constituted a key component of the Decent Work Agenda. Moreover, the Committee recalled the opportunity provided by the 2030 Agenda for Sustainable Development and in particular, Sustainable Development Goal 8 and target 8.8.

3. The Committee reaffirmed its commitment to protecting workers from occupational accidents and diseases and called for a reinvigoration of efforts in that respect.

4. The Committee's discussion of this year's General Survey, together with the outcome of this discussion and the General Survey itself, will inform other ILO work, particularly in the context of outcome 7 of the Programme and Budget 2018–19 on promoting safe work and workplace compliance including in global supply chains.

Needs of member States and reality on the ground

5. The Committee noted the tremendous human cost of poor OSH and expressed grave concern with respect to the estimated 2.3 million workers who die from work-related accidents or diseases and the over 313 million workers who suffer non-fatal occupational injuries each year. It further noted that the construction, mining and agriculture sectors remained sectors that faced considerable OSH challenges, and recalled the specificities of those sectors. The Committee recalled the specific challenges faced by small and medium-sized enterprises (SMEs) and the support that these enterprises required. It further emphasized the need to promote OSH in global supply chains.

6. The Committee noted the difficulties faced in numerous member States with regard to the collection of accurate and comprehensive OSH data, and it recalled the importance of such information for measuring the impact of measures taken and for determining areas for future action.

Common commitments

7. The Committee welcomed the common commitment among the tripartite constituents for the prevention of occupational accidents and diseases. Improving OSH had a positive impact on working conditions, productivity, and economic and social development. It stressed that social dialogue was invaluable to the effective promotion of OSH.

8. A preventative approach to OSH was essential, involving awareness raising, consultation, participation, information, advice and training for both workers and employers. Building and maintaining a national preventative safety and health culture was indispensable, which required tripartite engagement in securing a safe and healthy working environment

through a system of defined rights, responsibilities and duties. In this respect, workers' and employers' organizations played a key role in the development and promotion of an OSH culture.

9. The Committee recalled the essential role of national OSH policies and programmes, developed in consultation with the social partners and adapted to national realities, in achieving progressive and sustained improvement towards ensuring safe and secure working environments. It further stressed the importance of improving the application of OSH legal frameworks. It highlighted the importance of ensuring that labour inspectorates are provided with adequate human and material resources, as well as the utility of strategic approaches to the planning of labour inspection.

ILO means of action

1. Standards-related action

10. Recognizing the importance of the promotional framework for occupational safety and health, the Committee considered that the Office should undertake a campaign for the ratification and implementation of Convention No. 187. This should highlight the flexibility of the instrument with a view to its adaptation to specific national circumstances.

11. The Committee noted that the General Survey, and its discussion, could contribute to the work of the Standards Review Mechanism Tripartite Working Group, particularly its consideration of standards policy with a view to ensuring institutional coherence on OSH.

2. Development cooperation and technical assistance

12. Acknowledging the references by a number of member States to the need for technical assistance in relation to the instruments, the Committee considered that the Office should, in light of the importance of accurate OSH data, enhance its collection of OSH statistics and provide technical assistance to member States in that respect to enable measuring progress and determining future priority action. This could include assistance concerning the strengthening, in consultation with the social partners, of systems on the reporting and registration of occupational accidents and cases of occupational disease.

13. The Office should strengthen its activities with regard to providing training and capacity building for workers' and employers' organizations to enable the social partners to participate fully in the development of a preventative safety and health culture. Moreover, it should provide assistance to those countries that have ratified one or more of the Conventions covered by the survey (Conventions Nos 167, 176, 184 and 187) with respect to their implementation. In its ongoing development cooperation activities, the Office should also pay particular attention to: building national capacities related to risk assessments at the workplace, training on the strategic approach to labour inspection, ensuring safe and secure working conditions throughout global supply chains, and the special OSH needs of SMEs.

14. The Committee expected the Office to undertake the technical support requested by member States and reinforce its technical assistance on OSH.

* * *

15. The Committee requested the Office to take into account the General Survey on occupational safety and health and the outcome of its discussion of the General Survey, as reflected above, in relevant ILO work, particularly in the context of outcome 7 of the Programme and Budget for 2018–19.

D. Compliance with specific obligations

1. Cases of serious failure by member States to respect their reporting and other standards-related obligations

139. During a dedicated sitting, the Committee examined the cases of serious failure by member States to respect their reporting and other standards-related obligations. [5] As explained in document C.App./D.1, Part V, the following criteria are applied: failure to supply the reports due for the past two years or more on the application of ratified Conventions, failure to supply first reports on the application of ratified Conventions for at least two years, failure to supply information in reply to all or most of the comments made by the Committee of Experts, failure to supply the reports due for the past five years on unratified Conventions and Recommendations, failure to submit the instruments adopted for at least seven sessions to the competent authorities, and failure 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 Chairperson explained the working methods of the Committee for the discussion of these cases.

140. The Employer members recalled that the functioning of the ILO supervisory system was based primarily on the information provided by governments in their reports. Compliance with reporting obligations was crucial for an appropriate and effective supervision of ILO standards. Member States had an obligation to supply copies of their reports to the representative employers' and workers' organizations. Compliance with this obligation was also key for the implementation of tripartism at the national level. Noting with concern the information on the number of reports requested, received, and received by 1 September, and also on first reports not received, as well as the general fact that the number of cases of serious failure to report had increased since the previous year, the Employer members considered that reporting failures had to be addressed in a more suitable way. The ILO supervisory system could not function without such reports being submitted regularly. The Committee of Experts and the Office should provide information on the concrete measures taken to assist these countries with their reporting obligations, and this question should be placed on the agenda for the next informal tripartite consultations on the working methods of the Conference Committee. Regarding preventive measures, the Office should better assist member States in the pre-ratification process, particularly by advising them of the related reporting obligations and the need to make available the necessary resources. As a pilot test, a unified report form for Conventions covering related subjects might be envisaged. The Employer members wondered how many reports were not brought to the attention of the Committee of Experts because of a lack of time or resources, and what concrete measures were being considered to avoid examining reports with outdated information. It was necessary to focus reporting on essential regulatory issues covered by ILO Conventions and to consider concentration, consolidation and simplification of the supervisory mechanisms as a sustainable way forward. With respect to the participation of the social partners in the supervisory system, there were still cases where governments failed to share their reports with the social partners. The Office should do more to encourage governments to respect this obligation.

141. The Worker members emphasized that the fulfilment of constitutional obligations remained the basis of the ILO supervisory system. Governance of the system was based on the

[5] Detailed information on the examination of these cases is contained in section A of Part Two of this report.

requirement for member States to comply with articles 22 and 35 of the ILO Constitution. Cases of serious failure needed to be examined closely, particularly in relation to ratified Conventions. Thanks to ILO technical assistance, some countries had made significant progress but much remained to be done. This year once again, a significant number of reports had arrived after the deadline of 1 September. It was not only necessary to fulfil reporting obligations, but also to do so within the time limits. The failures noted above often concealed worrying situations, as the Committee of Experts had indicated in its report. The dialogue between the ILO supervisory bodies and member States was essential for the effective application of ratified Conventions. With regard to the obligation to submit adopted instruments to the competent authorities, there was a notable lack of will to comply. Lastly, it was regrettable that the failure to communicate reports to employers' and workers' organizations under article 23(2), of the Constitution prevented the social partners from participating in the effective application of international labour standards. The Office needed to ensure that countries experiencing difficulties benefited from technical assistance to help them fulfil their obligations. The initiative taken by the Office since the 105th Session of the Conference in 2016 to send letters to the member States which had failed to meet constitutional obligations was therefore to be welcomed.

142. A representative of the Office provided information to the Committee on tailored technical assistance which had been delivered to certain Pacific island countries in February 2017 on reporting obligations in relation to the MLC, 2006. The technical assistance provided resulted in the submission of the governments' first reports on the application of the MLC, 2006.

1.1. Failure to submit Conventions, Protocols and Recommendations to the competent authorities

143. In accordance with its terms of reference, the Committee considered the manner in which effect was given to article 19(5), (6) and (7) of the ILO Constitution. These provisions required member States within 12, or exceptionally 18, months of the closing of each session of the Conference to submit the instruments adopted at that session to the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action, and to inform the Director-General of the ILO of the measures taken to that end, with particulars of the authority or authorities regarded as competent.

144. 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 at least seven sessions (from the 95th Session (2006) to the 104th Session (2015), because the Conference did not adopt any Conventions and Recommendations during the 97th (2008), 98th (2009) or 102nd (2013) Sessions). This time frame was deemed long enough to warrant inviting Government delegations to the dedicated sitting of the Committee so that they may explain the delays in submission.

145. The Committee took note of the information and explanations provided by the Government representatives who took the floor during the dedicated sitting. It noted the specific difficulties mentioned by certain delegates in complying with this constitutional obligation, and in particular the intention to submit shortly to competent authorities the instruments adopted by the International Labour Conference. Some governments have 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.

146. The Committee expressed deep concern at the failure to respect the obligation to submit Conventions, Protocols and Recommendations to national parliaments. It recalled that compliance with the obligation to submit Conventions, Protocols and Recommendations to

national competent authorities was a requirement of the highest importance in ensuring the effectiveness of the ILO's standards-related activities. It also recalled that governments could request technical assistance from the Office to overcome their difficulties in this respect.

147. The Committee noted that the following countries were still concerned with the serious failure to submit the instruments adopted by the Conference to the competent authorities: **Angola, Azerbaijan, Bahamas, Bahrain, Belize, Burundi, Comoros, Croatia, Dominica, El Salvador, Equatorial Guinea, Fiji, Gabon, Guinea-Bissau, Haiti, Jamaica, Kazakhstan, Kiribati, Kuwait, Kyrgyzstan, Liberia, Libya, Pakistan, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Seychelles, Sierra Leone, Solomon Islands, Somalia, Syrian Arab Republic** and **Vanuatu**. The Committee expressed the firm hope that appropriate measures would be taken by the governments concerned to comply with their constitutional obligation to submit.

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

148. The Committee took note of the information and explanations provided by the Government representatives who took the floor during the dedicated sitting. Some governments have requested the assistance of the ILO. The Committee recalled that the submission of reports on the application of ratified Conventions was a fundamental constitutional obligation and the basis of the system of supervision. It also recalled the particular importance of the submission of first reports on the application of ratified Conventions. It stressed the importance of respecting the deadlines for such submission. Furthermore, it underlined the fundamental importance of clear and complete information in response to the comments of the Committee of Experts to permit a continued dialogue with the governments concerned. In this respect, the Committee expressed deep concern at the failure to respect these obligations and recalled that the ILO could provide technical assistance to contribute to compliance in this respect. The Committee noted the positive results of the technical assistance provided by the Office in relation to reporting obligations, including the tripartite regional workshop organized with certain Pacific island countries in February 2017 on reporting obligations in relation to the MLC, 2006.

149. The Committee noted that, by the end of the 2016 meeting of the Committee of Experts, the percentage of reports received (article 22 of the ILO Constitution) was 69.5 per cent (69.3 per cent for the 2015 meeting). Since then, further reports had been received, bringing the figure to 77.3 per cent (as compared with 75.6 per cent in June 2016).

150. The Committee noted that no reports on ratified Conventions had been supplied for the past two years or more by the following States: **Belize, Comoros, Dominica, Equatorial Guinea, Gambia, Guinea-Bissau, Guyana, Haiti, Republic of Maldives, Saint Lucia, Somalia, Timor-Leste** and **Yemen.**

151. The Committee also noted that first reports due on ratified Conventions had not been supplied by the following countries for at least two years: **Barbados, Equatorial Guinea, Guyana, Republic of Maldives, Nicaragua, Nigeria, Saint Vincent and the Grenadines** and **United Kingdom (Bermuda)**.

152. The Committee noted 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 2016 from the following countries: **Belize, Cabo Verde, Comoros, Congo, Croatia, Dominica, Equatorial Guinea, Eritrea, Gambia, Greece, Guinea, Guinea-Bissau, Guyana, Haiti, Libya, Netherlands (Aruba), Nicaragua, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Sierra**

Leone, Singapore, Solomon Islands, Sri Lanka, Swaziland, Syrian Arab Republic, Thailand, Timor-Leste, Vanuatu, Viet Nam and **Yemen.**

1.3. Supply of reports on unratified Conventions and Recommendations

153. The Committee stressed the importance it attached to the constitutional obligation to supply reports on unratified Conventions and Recommendations. In effect, these reports permitted a better evaluation of the situation in the context of the General Surveys of the Committee of Experts. In this respect, the Committee expressed deep concern at the failure to respect this obligation and recalled that the ILO could provide technical assistance to contribute to compliance in this respect.

154. The Committee noted 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: **Armenia, Belize, Comoros, Congo, Democratic Republic of the Congo, Dominica, Fiji, Grenada, Guinea-Bissau, Guyana, Haiti, Kiribati, Liberia, Libya, Marshall Islands, Nigeria, Saint Kitts and Nevis, Saint Lucia, San Marino, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, Tuvalu, United Arab Emirates, Vanuatu, Yemen** and **Zambia**.

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

155. The Committee noted that no information had yet been received from the **Islamic Republic of Iran** or **Rwanda** concerning the names of 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 for the last three years. The Committee pointed out that the fulfilment by governments of their obligation to communicate reports and information to the organizations of employers and workers was a vital prerequisite for ensuring the participation of those organizations in the ILO supervisory system.

2. Application of ratified Conventions

156. The Committee noted with interest the information provided by the Committee of Experts in paragraph 54 of its report, which listed new cases in which that Committee had expressed its satisfaction at the measures taken by governments following comments it had made as to the degree of conformity of national legislation or practice with the provisions of a ratified Convention. In addition, the Committee of Experts had listed in paragraph 57 of its report cases in which measures ensuring better application of ratified Conventions had been noted with interest. These results were tangible proof of the effectiveness of the supervisory system.

157. At its present session, the Committee examined 24 individual cases relating to the application of various Conventions. [6]

[6] A summary of the information submitted by governments, the discussion and conclusions of the examination of the individual cases are contained in section B of Part Two of this report.

2.1. Specific cases

158. The Committee recalled that its working methods provided for the possibility of drawing the attention of the Conference to its discussion of the cases, a full record of which appears as Part Two of this report. It had not made use of that possibility this year.

2.2. Continued failure to implement

159. 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 made no mention in this respect.

3. Participation in the work of the Committee

160. The Committee wished to express its appreciation to the **52** governments which had collaborated by providing information on the situation in their countries and participating in the discussion of their cases.

161. The Committee regretted that the Governments of the following States failed to take part in the discussions concerning their country and the fulfilment of their reporting and other standards-related obligations: **Azerbaijan**, **Bahamas**, **Bahrain**, **Cabo Verde, Comoros, Eritrea, Fiji, Gabon, Haiti**, **Kyrgyzstan, Nicaragua**, **Papua New Guinea**, **San Marino**, **Sao Tome and Principe, Sri Lanka**, **Syrian Arab Republic**, **Swaziland**, **Viet Nam** and **Yemen**.

162. The Committee noted with regret that the Governments of the following States, which were not represented at the Conference, were unable to participate in the discussions concerning their country and the fulfilment of their reporting and other standards-related obligations: **Armenia**, **Belize, Dominica, Equatorial Guinea, Gambia, Grenada, Guinea-Bissau, Guyana, Kiribati, Liberia, Marshall Islands, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sierra Leone, Solomon Islands, Timor-Leste, Tuvalu** and **Vanuatu**.

E. Adoption of the report and closing remarks

163. The Committee's report was adopted as amended.

164. The Government member of Ghana, speaking on behalf of the Africa group, expressed satisfaction with the constructive nature of the Committee's discussion and highlighted the importance of the work of the ILO supervisory bodies given their role in promoting and monitoring progress in the implementation of Conventions. However, he wished to raise two points. First, the criteria for selecting countries to appear before the Committee presented shortcomings and gave rise to concerns regarding the transparency of the selection process. Countries from the Africa region, including four countries from North Africa, had appeared eight times before the Committee during the current session, despite the fact that, as acknowledged by the Committee, some of them were facing very difficult circumstances. While the Africa group was not opposed to the exclusion of governments in drawing up the list, the selection criteria should be made known to all ILO constituents. The Africa group called for transparency in the process of preparing the list of individual cases and looked forward to receiving information on how countries were placed on the list. Second, he raised

concerns that the Committee's discussion focused only on cases of non-compliance and suggested that cases of progress be included on the list. To advocate for social justice, the Committee should take the time to discuss positive cases, in order to share best practices and give encouragement to draw positive lessons. He expressed the hope and expectation that the number of cases of alleged violations on the list of 24 cases could be reduced and a few best practices added, while also discussing more cases on technical Conventions.

165. The Government member of Spain indicated that the question of whether the conclusions of the Committee on the individual cases should be adopted without the Government concerned having been heard beforehand could be a subject of discussion during the informal tripartite consultations on the Committee's working methods, in which all governments could participate, at least as observers.

166. The Government member of Brazil supported the statement of the Government member of Spain and indicated that the purpose of the consultations on this matter should be to enable governments to be aware of the conclusions that concerned them, at least before the conclusions were adopted by the Committee.

167. The Government member of the Bolivarian Republic of Venezuela indicated that this year was the first time that the floor had not been given to the government concerned immediately after the adoption of the conclusions relating to it. Giving the floor only after all the conclusions had been read amounted to not granting the right of reply. All the issues relating to the functioning of the Committee should be discussed as a matter of urgency during the informal tripartite consultations on the Committee's working methods.

168. The Government member of Malta indicated that he understood both the concerns of the Government members who had spoken and the position of the Chairperson of the Committee, who had to organize the discussion. These concerns should be discussed during the informal tripartite consultations referred to previously.

169. The Employer members commended the Committee's report and recommended its adoption. The work of the Committee had taken place in a constructive and open atmosphere, and any subsisting divergences in the Committee had been voiced in a spirit of mutual respect. The Committee had once again demonstrated its ability to lead a meaningful and results-oriented tripartite dialogue, thus reaffirming its role as the centre stage of ILO regular standards supervision. The Committee provided the only opportunity for tripartite constituents from all ILO member States to discuss issues with governments regarding the application of ratified Conventions and specific measures for improved and sustained compliance, based on the Committee of Experts' technical preparatory work. The technical innovations in the work of the Committee had rendered the use of its time even more efficient and constituted evidence of the value and contributions of its Working Party on Working Methods. Additional opportunities for the Working Party to meet and continue to improve the efficiency and transparency of the Committee's work would be welcomed.

170. Concerning the adoption of the outcome of the discussion by the Committee on the General Survey, the Employer members highlighted that OSH was a priority for them, and should be a priority for the ILO. With regard to the individual cases, the list of 24 cases had been negotiated in good faith and delivered in time, ensuring a threefold balance among the regions, as regards the levels of development of member States, and between fundamental, priority and technical Conventions. They believed that the Committee should also consider cases of progress so as to share best practices, as well as additional cases on technical Conventions. Furthermore, the Employer members appreciated the fact that the Committee had adopted, on the basis of consensus, short, clear and straightforward conclusions falling within the scope of the relevant Convention, which noted areas of progress and identified

what was expected from governments and concrete steps to address compliance issues, without reiterating elements of the discussion or reflecting divergent views.

171. The Employer members emphasized that the follow-up to the Committee's conclusions was a key facet of tripartite governance within the supervisory system. The Office's technical assistance or follow-up missions, direct contacts missions and high-level tripartite missions needed to focus exclusively on areas of consensus and have as their mandate the Committee's conclusions, which should not be enlarged unilaterally. They encouraged the Office to include the ILO workers' and employers' specialists in the preparation and implementation of the missions, in line with the ILO's tripartite structure and mandate, and with a view to a balanced follow-up to the Committee's conclusions. The Office should also ensure that the most representative employers' and workers' organizations were prepared to contribute to the success of the mission and its follow-up, and that mission reports were made available after a reasonable period of time. The goal of the supervisory system was to guide member States on key matters relating to the governance of labour and social policy, thus enabling them to promote adequate protection of workers and full employment through sustainable enterprises.

172. The Worker members welcomed the success of the work of the Committee, which continued to function on the basis of the consensual approach agreed upon in 2015. The general discussion had been the opportunity to address issues relating to the Committee's working methods and to the report of the Committee of Experts on the Application of Conventions and Recommendations, whose independence and expertise had been recalled by the Worker members. Hence they expressed regret at the fact that the Committee of Experts' work had been called into question by certain Employer members during the examination of the case of Botswana. The Worker members supported the conclusions adopted by the Committee further to the discussion of the General Survey calling on the Office to launch a campaign for the ratification of Convention No. 187. The Worker members would also have liked to see included in the conclusions the recognition of the compulsory nature of the procedures for the consultation of the social partners at all levels, the responsibility of multinationals in supply chains, and the strengthening of labour inspection through dissuasive penalties. Lastly, the Worker members drew attention to the link between the General Survey and other instruments, in particular the Occupational Safety and Health Convention, 1981 (No. 155), which was not part of the General Survey but the ratification of which should be promoted at the same level as that of Convention No. 187. Alongside the promotion of existing Conventions, the Worker members expressed the wish that the discussions on the future of work could give rise to new standard-setting initiatives for addressing, inter alia, new forms of employment that were currently outside the scope of the international standard-setting system.

173. The list of 24 individual cases adopted by the Committee at the start of its work was concerned with examples of serious failure to fulfil obligations relating to fundamental, governance and technical Conventions. The Worker members considered that the list did not contain any case of progress. Without ruling out the possibility of noting progress during discussions, the presence of a country on the list generally meant that there was a serious failure regarding implementation by that country of the Convention under examination. Only three cases had dealt with technical Conventions this year. Their selection was sometimes made difficult by the shortness of the Committee of Experts' comments on them. The Worker members encouraged governments to supply more information on these technical Conventions in their reports. Moreover, the Worker members had expressed their deep concern at the fact that the examination of the cases had highlighted a general trend of the use of violence and intimidation to discourage the exercise of trade union rights. In response to the query by a number of governments concerning the process for drawing up the list of individual cases, the Worker members recalled the explanations contained in a dedicated working document of the Committee and also the informal information meeting for briefing

governments on this matter which took place immediately after the adoption of the final list of cases in the presence of the Vice-Chairpersons of the Committee.

174. The Worker members welcomed the fact that it had been possible to adopt conclusions for all the cases. Now it was for the governments concerned to ensure their application. Hence their attitude was vitally important. The Worker members deplored the attitude of mutual support of certain governments, which were not exempt from the observance of international labour standards. On the contrary, the Worker members wished to see an attitude that focused resolutely on the observance of standards by member States and government groups. In this way the fundamental mission of the Committee would be strengthened.

175. The Chairperson underlined the importance of tripartism as a means of maintaining and strengthening the role of the ILO. The Chairperson thanked the Employer and Worker Vice-Chairpersons, the Reporter and all the Government, Employer and Worker members for their engagement in the work of the Committee. He also thanked the secretariat for its continuous collaboration and support.

Geneva, 15 June 2017

(Signed) Mr Washington González
Chairperson

Mr Mostafa Abid Khan
Reporter

Annex 1

INTERNATIONAL LABOUR CONFERENCE C.App./D.1

106th Session, Geneva, June 2017

Committee on the Application of Standards

Work of the Committee

I. Introduction

This document (D.1) sets out the manner in which the work of the Committee on the Application of Standards (CAS) is carried out. It is submitted to the Committee for adoption when it begins its work at each session of the Conference. [1] The document reflects the results of the discussions and informal tripartite consultations that have taken place, since 2002, on the working methods of the Committee, including on the following issues: the elaboration of the list of individual cases to be discussed by the Committee, the preparation and adoption of the conclusions relating to these individual cases, time management and respect for parliamentary rules of decorum.

This document takes into account the results of the last informal tripartite consultations on the working methods of the CAS held in March and November 2016.

II. Terms of reference and composition of the Committee, voting procedure and report to the Conference

Under its terms of reference as defined in article 7, paragraph 1, 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.

In accordance with article 7, paragraph 2, of the Standing Orders of the Conference, the Committee submits a report to the Conference. Since 2007, in response to the wishes expressed by ILO constituents, the report of the Committee has been published both in the

[1] Since 2010, it is appended to the General Report of the Committee.

Record of Proceedings of the Conference and as a separate publication, to improve the visibility of the Committee's work.

Questions related to the composition of the Committee, the right to participate in its work and the voting procedure are regulated by section H of Part II of the Standing Orders of the Conference.

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

III. Working documents

A. Report of the Committee of Experts

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

Report III (Part 1A) contains, in Part One, the General Report of the Committee of Experts, and in Part Two, the observations of the Committee of Experts 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. At the beginning of the report there is an index of comments by Convention and by country. In addition to the observations contained in its report, the Committee of Experts has, as in previous years, made direct requests which are communicated to governments by the Office on the Committee's behalf. [2]

Report III (Part 1B) contains the General Survey prepared by the Committee of Experts on a group of Conventions and Recommendations decided upon by the Governing Body.

B. Summaries of reports

At its 267th Session (November 1996), the Governing Body approved new measures for rationalization and simplification of the arrangements for the presentation by the Director-General to the Conference of summaries of reports submitted by governments under articles 19, 22 and 35 of the Constitution. [3] Requests for consultation or copies of reports may be addressed to the secretariat of the CAS.

[2] See para. 39 of the General Report of the Committee of Experts. A list of direct requests can be found in Appendix VII of Report III (Part 1A).

[3] See report of the Committee of Experts, Report III (Part 1A), Appendices I, II, IV, V and VI; and Report III (Part 1B), Appendix III.

C. Other information

The secretariat prepares documents (which are referred to, and referenced, as "D documents") which are made available [4] during the course of the work of the Committee to provide the following information:

(i) reports and information which have reached the International Labour Office since the last meeting of the Committee of Experts; based on this information, the list of governments which are invited to supply information to the Conference Committee due to serious failure to respect their reporting and other standards-related obligations is updated; [5]

(ii) written information supplied by governments to the Conference Committee in reply to the observations made by the Committee of Experts, when these governments are on the list of individual cases adopted by the Conference Committee. [6]

IV. General discussion

In accordance with its usual practice, the Committee begins its work with the consideration of its working methods on the basis of this document. The Committee then holds 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, which is primarily based on the General Report of the Committee of Experts.

It also holds a discussion on the General Survey entitled *Working together to promote a safe and healthy working environment*. The General Survey concerns the occupational safety and health instruments concerning the promotional framework, construction, mines and agriculture, more specifically, the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) and Recommendation (No. 197), 2006; the Safety and Health in Construction Convention, 1988 (No. 167) and Recommendation (No. 175), 1988; the Safety and Health in Mines Convention, 1995 (No. 176) and Recommendation (No. 183), 1995; and the Safety and Health in Agriculture Convention, 2001 (No. 184) and Recommendation (No. 192), 2001. [7]

[4] D documents will be made available online on the Committee's dedicated web page (hard copies will be made available to delegates upon request).

[5] See below Part V.

[6] See below Part VI (supply of information).

[7] It should be recalled that the subjects of General Surveys have been aligned with the strategic objectives that are examined in the context of the recurrent discussions under the follow-up to the ILO Declaration on Social Justice for a Fair Globalization (2008). The discussion of General Surveys by the Committee will continue to be held one year in advance of the recurrent discussion under the new five-year cycle of recurrent discussions adopted by the Governing Body in November 2016. The full synchronization of General Surveys and their discussion by the Committee will be re-established under the new cycle in the context of the recurrent discussion on social protection (social security) to be held by the Conference in 2020 (see GB.328/INS/5/2 and GB.328/PV (paras 25 and 102)).

V. Cases of serious failure by member States to respect their reporting and other standards-related obligations [8]

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 dedicated sitting of the Committee. Governments that submit the required information before the sitting will not be called before the Committee. The discussion of the Committee, including any explanations of difficulties that may have been provided by the governments concerned, and the conclusions adopted by the Committee under each criterion are reflected in its report.

The Committee identifies the cases on the basis of criteria which are as follows: [9]

– 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 instruments adopted during the last seven sessions of the Conference to the competent authorities, in accordance with article 19 of the Constitution. [10]

– No information has been received as regards all or most of the observations and direct requests of the Committee of Experts to which a reply was requested for the period under consideration.

– The government has failed during the past three years to indicate the representative organizations of employers and workers to which, in accordance with article 23, paragraph 2, of the Constitution, copies of reports and information supplied to the Office under articles 19 and 22 have been communicated.

VI. Individual cases

The Committee considers cases relating to the application of ratified Conventions. These cases are selected on the basis of the observations published in the report of the Committee of Experts.

Preliminary list. Since 2006, an early communication to governments of a preliminary list of individual cases for possible discussion by the Committee concerning the

[8] Formerly known as "automatic" cases (see *Provisional Record* No. 22, International Labour Conference, 93rd Session, June 2005, para. 69).

[9] These criteria were last examined by the Committee in 1980 (see *Provisional Record* No. 37, International Labour Conference, 66th Session, 1980, para. 30).

[10] This time frame begins at the 95th Session (2006) and concludes at the 104th Session (2015) of the International Labour Conference, bearing in mind that the Conference did not adopt any Conventions or Recommendations during the 97th (2008), 98th (2009) and 102nd (2013) Sessions.

application of ratified Conventions has been instituted. Since 2015, the preliminary list of cases has been made available 30 days before the opening of the International Labour Conference. The preliminary list is a response to the requests from governments for early notification, so that they may better prepare themselves for a possible intervention before the Committee. It may not in any way be considered definitive, as the adoption of a final list is a function that only the Committee itself can assume.

Establishment of the list of cases. The list of individual cases is submitted to the Committee for adoption, after the Employers' and Workers' groups have met to discuss and adopt it. The final list should be adopted at the beginning of the Committee's work, ideally no later than its second sitting. The criteria for the selection of cases, as revised in 2015, should reflect the following elements:

- the nature of the comments of the Committee of Experts, in particular the existence of a footnote; [11]
- the quality and scope of responses provided by the government or the absence of a response on its part;
- the seriousness and persistence of shortcomings in the application of the Convention;
- the urgency of a specific situation;
- comments received by employers' and workers' organizations;
- the nature of a specific situation (if it raises a hitherto undiscussed question, or if the case presents an interesting approach to solving questions of application);
- the discussions and conclusions of the Conference Committee of previous sessions and, in particular, the existence of a special paragraph;
- the likelihood that discussing the case would have a tangible impact;
- balance between fundamental, governance and technical Conventions;
- geographical balance; and
- balance between developed and developing countries.

There is also the possibility of examining one case of progress as was done in 2006, 2007, 2008 and 2013. [12]

Since 2007, it has been the practice to follow the adoption of the list of individual cases with an informal information session for governments, hosted by the Employer and Worker Vice-Chairpersons, to explain the criteria used for the selection of individual cases.

Automatic registration. Since 2010, cases included in the final list have been automatically registered and scheduled by the Office, on the basis of a rotating alphabetical system, following the French alphabetical order; the "A+5" model has been chosen to ensure a genuine rotation of countries on the list. This year, the registration will begin with countries with the letter **"J"**. 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 the Committee of Experts requested governments to submit full particulars to the Conference

[11] See paras 43–50 of the General Report of the Committee of Experts. The criteria developed by the Committee of Experts for footnotes are also reproduced in Appendix I.

[12] See paras 51–57 of the General Report of the Committee of Experts. The criteria developed by the Committee of Experts for identifying cases of progress are also reproduced in Appendix II.

("double-footnoted cases"). [13] Since 2012, the Committee begins its discussion of individual cases with these cases. The other cases on the final list are then registered by the Office also following the abovementioned alphabetical order.

Information on the agenda of the Committee and the date on which cases may be heard is available:

(a) through the *Daily Bulletin* and the Committee's dedicated web page;

(b) by means of a D document containing the list of individual cases and the working schedule for the examination of these cases, which is made available to the Committee as soon as possible after the adoption of the list of cases. [14]

Supply of information. Prior to their oral intervention before the Conference Committee, governments may submit written information that will be summarized by the Office and made available to the Committee. [15] These written replies are to be provided to the Office at least **two days** before the discussion of the case. They serve to complement the oral reply that will be provided by the government. They may not duplicate the oral reply nor any other information already provided by the government. 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 to hold consultations with the Reporter and the Vice-Chairpersons. The conclusions should take due account of the elements raised in the discussion and information provided by the government in writing. The conclusions should be short, clear and specify the action expected of governments. They may also include reference to the technical assistance to be provided by the Office. The conclusions should reflect consensus recommendations. Divergent views can be reflected in the CAS record of proceedings. Conclusions on the cases discussed will be adopted at dedicated sittings. The governments concerned will be informed of the adoption of conclusions by the secretariat including through the *Daily Bulletin* and the web page of the Committee.

As per the Committee's decision in 1980, [16] Part One of its report will contain a section entitled "Application of ratified Conventions", in which the Committee draws the attention of the Conference to: (i) cases of progress, where governments have introduced changes in their law and practice in order to eliminate divergences previously discussed by the Committee; (ii) certain special cases, which are mentioned in special paragraphs of the report; and (iii) cases of continued failure over several years to eliminate serious deficiencies in the application of ratified Conventions which it had previously discussed.

VII. Participation in the work of the Committee

As regards failure by a government to take part in the discussion concerning its country, despite repeated invitations by the Committee, the following measures will be applied, in conformity with the decision taken by the Committee at the 73rd Session of the Conference

[13] See para. 48 of the General Report of the Committee of Experts.

[14] Since 2010, this document is appended to the General Report of the Committee.

[15] See above Part III(C) (ii).

[16] See footnote 9 above.

(1987), as amended at the 97th Session of the Conference (2008), [17] and mention will be made in the relevant part of the Committee's report:

– 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 draw attention in its report to the importance of the questions raised. [18] In both situations, a particular emphasis will be put on steps to be taken to resume the dialogue.

VIII. 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. Each intervention will be reflected only in the corresponding working language – English, French or Spanish – and the draft minutes will be made available online on the Committee's dedicated web page (hard copies will be made available to delegates upon request). [19] It is the Committee's practice to accept amendments to the draft minutes of previous sittings prior to their approval by the Committee. The time available to delegates to submit amendments to the draft minutes will be clearly indicated by the Chairperson when they are made available to the Committee.

[17] See *Provisional Record* No. 24, International Labour Conference, 73rd Session, 1987, para. 33; and *Provisional Record* No. 19, International Labour Conference, 97th Session, 2008, para. 174.

[18] In the case of a government which is not accredited or registered to the Conference, the Committee will not discuss the substance of the case, but will draw attention in its report to the importance of the questions raised. It was considered that 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 (see *Provisional Record* No. 18, International Labour Conference, 100th Session, 2011, Part I/54).

[19] These new modalities result from the informal tripartite consultations of March 2016. Delegates who will be intervening in a language other than English, French or Spanish will be able to indicate to the Secretariat in which of these three working languages their intervention should be reflected in the draft minutes.

The amendments should be clearly highlighted and submitted either electronically or in hard copy. Please refer to Appendix III or contact the secretariat in relation to the procedure for amendments to draft minutes and their electronic submission. In order to avoid delays in the preparation of the Committee's report, no amendments may be accepted once the draft 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 amendments to the elimination of errors in the report of their own statements, and not to ask to insert long additional passages.

This year, the second part of the report of the Committee which reflects the discussions of cases in which governments are invited to respond to the comments of the Committee of Experts will be submitted for adoption to the plenary session of the Conference in a single document reflecting the working language – English, French or Spanish – in which statements were delivered by the member of the Committee. Only the first – general – part of the report and the conclusions reached after the discussion of individual cases will be translated at that stage in all three languages for adoption. [20] The fully translated versions of the report will be made available online ten days following its adoption.

IX. Time management

- Every effort will be made so that sessions start on time and the schedule is respected.
- Maximum speaking time during the examination of individual cases will be as follows:
  - fifteen minutes for the government whose case is being discussed, as well as the spokespersons of the Workers' and the Employers' groups;
  - ten minutes for the Employer and Worker members, respectively, from the country concerned to be divided between the different speakers of each group;
  - ten minutes for Government groups;
  - five minutes for the other members;
  - concluding remarks are limited to ten minutes for the government whose case is being discussed, as well as spokespersons of the Workers' and the Employers' groups.
- Maximum speaking time will also apply to the discussion of the General Survey, as follows: [21]
  - fifteen minutes for the spokespersons of the Workers' and the Employers' groups;
  - ten minutes for Government groups;
  - five minutes for the other members;
  - concluding remarks are limited to ten minutes for spokespersons of the Workers' and the Employers' groups.

[20] These new modalities result from the informal tripartite consultations of November 2016.

[21] These new modalities result from the informal tripartite consultations of March 2016.

– 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.

– The list of speakers will be visible on screens in the room. Early registration on that list of delegates intending to take the floor is encouraged. [22]

– 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. [23]

X. 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.

[22] These new arrangements result from the informal tripartite consultations of March 2016.

[23] See Part VI above.

Appendix I

Criteria developed by the Committee of Experts for footnotes

Excerpts of the General Report of the Committee of Experts (106 III(1A))

43. As in the past, the Committee has indicated by special notes (traditionally known as "footnotes") at the end of its comments the cases in which, because of the nature of the problems encountered in the application of the Conventions concerned, it has seemed appropriate to ask the government to supply a report earlier than would otherwise have been the case and, in some instances, to supply full particulars to the Conference at its next session in June 2017.

44. In order to identify cases for which it inserts special notes, the Committee uses the basic criteria described below, while taking into account the following general considerations. First, the criteria are indicative. In exercising its discretion in the application of the criteria, the Committee may also have regard to the specific circumstances of the country and the length of the reporting cycle. Second, the 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 a "double footnote". The difference between these two categories is one of degree. Third, 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) when there has been a recent discussion of the case in the Conference Committee. Finally, the Committee wishes to point out that it exercises restraint in its recourse to "double footnotes" in deference to the Conference Committee's decisions as to the cases it wishes to discuss.

45. The criteria to which the Committee has regard are the following:

– 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.

46. In addition, the Committee wishes to emphasize that its decision not to double footnote a case which it has previously drawn to the attention of the Conference Committee in no way implies that it has considered progress to have been made therein.

47. At its 76th Session (November–December 2005), the Committee decided that the identification of cases in respect of which a government is requested to provide detailed information to the Conference would be a two-stage process: first, the expert initially responsible for a particular group of Conventions recommends to the Committee the insertion of special notes; second, in light of all the recommendations made, the Committee will, after discussion, take a final, collegial decision once it has reviewed the application of all the Conventions.

Appendix II

Criteria developed by the Committee of Experts for identifying cases of progress

Excerpts of the General Report of the Committee of Experts (106 III(1A))

51. Following its examination of the reports supplied by governments, and in accordance with its standard practice, the Committee 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.

52. At its 80th and 82nd Sessions (2009 and 2011), 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 measures 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 relates to the adoption of 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.

53. Since first identifying cases of satisfaction in its report in 1964, the Committee has continued to follow the same general criteria. The Committee expresses ***satisfaction*** in cases in which, **following comments it has made on a specific issue, governments have taken measures through either the adoption of new legislation, an amendment to the existing legislation or a significant change in the national policy or practice, thus achieving fuller compliance with their obligations under the respective Conventions.** In expressing its satisfaction, the Committee indicates to governments and the social partners that it considers the specific matter resolved. The reason for identifying cases of satisfaction is twofold:

– to place on record the Committee's appreciation of the positive action taken by governments in response to its comments; and

– to provide an example to other governments and social partners which have to address similar issues.

…

56. Within cases of progress, the distinction between cases of satisfaction and cases of interest was formalized in 1979. [1] 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**. The Committee's practice has developed to such an extent that cases in which

[1] See para. 122 of the Report of the Committee of Experts submitted to the 65th Session (1979) of the International Labour Conference.

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.

Appendix III

Procedure for amendments to draft minutes

With reference to **Part VIII of document C.App./D.1**, this note provides information on the new procedure for amendments to draft minutes (PVs), taking into account the fact that, since 2016, each intervention is reflected in the draft PVs only in the corresponding working language [1] – English, French or Spanish – and the draft PVs will be made available online on the Committee's dedicated web page. [2]

It is recalled that the Committee's practice is to accept amendments to the draft PVs of previous sittings **prior to their approval by the Committee**. The time available to delegates to submit amendments to the draft PVs will be clearly indicated by the Chairperson when the draft PVs are made available to the Committee.

Delegates are encouraged to submit their amendments to the secretariat **electronically** in "track changes" via the following email address: AMEND-PVCAS@ilo.org. In order to make amendments directly in track changes, delegates are invited to request the "Word version" of the minute by sending an email to the address above.

Amendments will be received **only if they are sent from the email address** which will have been provided by the delegate concerned when requesting the floor. The secretariat will acknowledge receipt of the amendment and may contact the delegate concerned when the request does not fulfil the requirements contained in document C.App./D.1, which read as follows: *Minutes are a **summary of the discussions** and are not intended to be a verbatim record. Delegates are requested to **restrict amendments to the elimination of errors in the report of their own statements, and not to ask to insert long additional passages***. Delegates should specify the draft PV concerned and make clearly visible the changes they wish to make.

Delegates who wish to submit hard copies of their amendments will still be able to do so, once a day, from 1.30 p.m. to 2.30 p.m. in Office No. 6-25. The secretariat will verify that the request fulfils the requirements reproduced above. Delegates will therefore need to show their identification badge.

[1] **When filling in a request for the floor, delegates will be requested to indicate in which working language (English, French or Spanish) their intervention should be reflected in the draft PVs, if this intervention is not in one of these three languages. They will also be requested to provide an email address and a phone number.**

[2] Hard copies will be made available to delegates upon request.

Annex 2

INTERNATIONAL LABOUR CONFERENCE C.App./D.4

106th Session, Geneva, June 2017

Committee on the Application of Standards

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 document.

The text of the corresponding observations concerning these cases will be found in document C.App./D.4/Add.1.

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, 106th Session, 2017)

Case No.	Country	Convention No. (The page numbers in parentheses refer to the English version of the Report of the Committee of Experts)
1	Malaysia – Peninsular Malaysia/Sarawak**	19 (page 554)
2	Poland**	29 (page 221)
3	Ukraine**	81/129 (page 482)
4	El Salvador**	144 (page 441)
5	Ecuador**	87 (page 105)
6	Kazakhstan	87 (page 135)
7	Libya	182 (page 296)
8	Mauritania	29 (page 207)
9	Paraguay	29 (page 217)
10	Democratic Republic of the Congo	182 (page 277)
11	United Kingdom	102 (page 564)
12	Sudan	122 (page 500)
13	Turkey	135 (page 177)
14	Bolivarian Republic of Venezuela	122 (page 502)
15	Zambia	138 (page 357)
16	Afghanistan	182 (page 264)
17	Algeria	87 (page 42)
18	Bahrain	111 (page 369)
19	Bangladesh	87 (page 48)
20	Botswana	87 (page 61)
21	Cambodia	87 (page 71)
22	Egypt	87 (page 110)
23	Guatemala	87 (page 125)
24	India	81 (page 462)

** Double footnoted case.

REPORT OF THE COMMITTEE ON THE APPLICATION OF STANDARDS

OBSERVATIONS OF THE COMMITTEE OF EXPERTS ON THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS – INDIVIDUAL CASES

INTERNATIONAL LABOUR CONFERENCE

106th Session, Geneva, June 2017

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

Individual cases

C019 - Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)

Malaysia - **Peninsular Malaysia** ***(Ratification: 1957)***

Sarawak ***(Ratification: 1964)***

Article 1(1) of the Convention. Equal treatment of foreign workers. Since 1996 the Committee has been requesting that foreign workers be transferred back to the social security scheme of nationals, as the workers' compensation scheme, which is now applicable to them, provides for significantly lower compensation payments in the form of lump sums and not of a periodical payment as guaranteed by the social security system. The Government stated in its last report its willingness to extend the social security scheme for national workers to foreigners and informed in its 2016 report that it recently held a technical consultation with the ILO on these issues with a view to initiating internal discussions on the way forward. ***The Committee recalls that the current situation, whereby foreign employees are not entitled to equal treatment with national workers in respect of employment injury compensation persist since 1993. The ILC Committee on the Application of Standards has at several occasions also asked the Government to comply with the obligations assumed under the Convention and put an end to the discriminatory treatment of foreign workers as regards employment injury compensation. The Committee strongly hopes that, with the technical cooperation of the ILO, the Government will be able to report progress on the measures taken in this respect.***
[The Government is asked to supply full particulars to the Conference at its 106th Session and to send a detailed report in 2017.]

C029 - Forced Labour Convention, 1930 (No. 29)

Mauritania

(Ratification: 1961)

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 105th Session, May–June 2016)

Articles 1(1), 2(1) and 25 of the Convention. Slavery and the vestiges of slavery. In its previous comments, the Committee urged the Government to continue taking the necessary measures to mobilize the competent authorities and society at large with a view to continuing to combat slavery and its vestiges by ensuring strict compliance with the new legislation and that the victims of slavery are identified and have access to justice. The Committee notes the discussion held in June 2016 in the Committee on the Application of Standards of the International Labour Conference and observes that the Conference Committee expressed deep concern that, in practice, the Government had yet to take sufficient measures to combat slavery. Following the discussion, the Government accepted a direct contacts mission, which visited Mauritania from 3 to 7 October 2016. The Committee notes the report of the mission. It also notes the observations made by the International Trade Union Confederation (ITUC) and the General Confederation of Workers of Mauritania (CGTM), received on 31 August and 1 September 2016, respectively.

(a) Effective enforcement of the legislation

The Committee previously requested the Government to accompany the adoption of the Act of 2015 criminalizing slavery and punishing slavery-like practices (hereinafter the 2015 Act) with specific measures to ensure its effective enforcement. The Act reinforced the legislative framework to combat slavery by providing, among other measures, for the possibility for associations for the defence of human rights which have benefited from legal personality for at least five years to take legal action and to be party to civil proceedings, as well as for the establishment of collegial courts to hear cases of offences relating to slavery.

The Committee notes in this regard, from the information contained in the mission's report and communicated by the Government, that the three special criminal courts competent in matters relating to slavery, which have been established in Nema, Nouakchott and Nouadhibou, are operational. The court in Nema handed down a first ruling, under which two persons were convicted to a sentence of five years of imprisonment (of which four years are suspended) and the payment of damages to the victims. In addition, investigating magistrates have already referred a number of cases to the courts in Nema and Nouadhibou, which will be judged in accordance with the 2015 Act. The Government indicates that cases pending before the courts prior to the adoption of the 2015 Act will also be heard by the special criminal courts, but under the 2007 Act.

The Committee also notes the Government's indication that the technical cooperation project currently being developed in Mauritania by the Office to support the implementation of the 2015 Act is assigning a significant proportion of its resources to reinforcing the competent actors for the identification of slave-like practices, and particularly the prosecution services, investigating magistrates and other actors involved in the process, such as the police, the gendarmerie and the administrative authorities. The Government considers that this support will enable it to give effect to its regularly reiterated political will to bring an end to the vestiges of slavery and slavery-like practices which may persist.

The Committee notes the indication by the ITUC in its observations that the police and the judicial authorities have shown themselves to be resistant to investigating or initiating prosecutions following allegations of slavery lodged by victims or associations. According to the ITUC, several cases of slavery reported to the authorities have been reclassified as less serious offences. In other instances, cases have been resolved through informal settlements. While recognizing the importance of the adoption of the 2015 Act and the ruling handed down by the criminal court of Nema, the ITUC considers that the sentence imposed is light in relation to the gravity of the crime committed.

As the mission emphasized in its report, the Committee considers that it is indispensable for the three special criminal courts to operate effectively throughout the territory and to be provided with the necessary personnel and adequate material and logistical resources. The Committee recalls that, under the terms of *Article 25* of the Convention, States are required to ensure that the penalties established by law for the exaction of forced labour are really adequate and are strictly enforced. ***The Committee therefore trusts that the Government will pursue the significant efforts already being made to reinforce the judicial system and that it will take the necessary measures to enable the special criminal courts to render justice so as to ensure that no cases of slavery go unpunished. Considering that to achieve this objective it is indispensable to reinforce the whole of the criminal investigation and prosecution system, the Committee requests the Government to indicate the measures taken to continue raising awareness and training the actors responsible for law enforcement and for the creation of specialized units in the Office of the Public Prosecutor and the forces of order. It is essential that these authorities are in a position to gather proof, assess the facts correctly and initiate the corresponding judicial procedures. Finally, the Committee requests the Government to provide information on the number of cases of slavery reported to the authorities, the number of those cases which resulted in judicial action, and the number and nature of the convictions handed down. The Committee recalls in this respect that the penalties imposed must be commensurate with the seriousness of the crime committed in order to be of a dissuasive nature. Please also indicate whether victims of slavery have been compensated for the damages suffered, in accordance with section 25 of the 2015 Act.***

(b) Assessment of the real situation in relation to slavery

The Committee previously emphasized the complexity of the phenomenon of slavery and its vestiges and the necessity for the Government to take action within the framework of a coordinated global strategy. In this regard, the Committee notes that the direct contacts mission considered that a number of specific elements brought to its knowledge prove that slavery exists in Mauritania. The mission emphasized that "slavery and the vestiges of slavery are two phenomena which do not cover the same situations, do not have the same scope and call for different targeted measures. It is important to identify these two phenomena better. A qualitative and/or quantitative study should make it possible to provide a specific and objective basis for the discussions, thereby calming the debate and demystifying the issue at both the national and international levels." The Committee notes in this regard the Government's indication that it has included as a priority action in the technical cooperation project developed with the Office the preparation of a study which would make it possible to collect sufficient and reliable data on the alleged practices of slavery and in general on forced labour. The Committee also notes the reference by the

ITUC to the fact that certain authorities deny the existence of slavery and do not recognize the "vestiges" of slavery. The ITUC considers that such statements send a prejudicial message to the authorities responsible for the enforcement of the legislation to combat slavery.

The Committee recalls that both the Committee of Experts and the Conference Committee have been emphasizing for several years the importance of conducting research work to provide a qualitative and quantitative analysis of the situation with regard to slavery in Mauritania. ***The Committee hopes that the Government will not fail to take the necessary measures to conduct a study that will enable it to be in possession of reliable data on the nature and prevalence of slavery-like practices in Mauritania. The Committee hopes that these data will provide a basis for improving the planning and targeting of public interventions with a view, on the one hand, to reaching out effectively and protecting persons who are victims of slavery and, on the other, determining more effectively the measures intended to combat the vestiges of slavery.***

(c) Inclusive and coordinated action

With regard to the need to adopt a global coordinated approach, the Committee previously noted that action to combat slavery and its vestiges falls within the purview of the roadmap to combat the vestiges of slavery, responsibility for the implementation and follow-up of which lies with a Ministerial Committee chaired by the Prime Minister. The Committee notes the Government's indication that 70 per cent of the recommendations contained in the roadmap have been implemented. Many awareness-raising activities have been carried out in collaboration with civil society and the religious authorities, such as: the awareness-raising caravans which have travelled throughout the territory (ten of the 15 regions of the country); the organization of seminars and discussions on the radio and television to raise awareness of the unlawful nature of slavery; the position taken by the Uléma community concerning the prohibition of slavery and the decision to harmonize Friday prayers, which for several months addressed the position of Islam in relation to the prohibition of slavery. With regard to action to combat poverty, the Committee notes that the Tadamoun Agency (National Agency to Combat the Vestiges of Slavery) is continuing to develop programmes targeting zones in which there is little state presence and zones in which the descendants of slaves *(adwabas)* are concentrated, and particularly the Triangle of Hope. The objective of these programmes is to provide basic services in the fields of sanitation, education and health. The programmes implemented are also aimed at providing the population with means of production. Finally, with reference to education, the Committee notes the action undertaken in priority education areas, and the apprenticeship programmes developed for teenagers who have never gone to school.

The Committee notes that the mission welcomed the efforts made by the Government in these fields. It also welcomed the multisectoral approach and the inter-ministerial coordination which have been introduced to combat slavery and its vestiges. However, the mission emphasized that this coordination should be accompanied by greater communication and visibility of the action taken. This action must form part of an inclusive approach involving the social partners and civil society. In this respect, the Committee notes the complaint by the CGTM of the absence of dialogue, particularly with representative trade unions, which risks compromising government programmes and the efforts made to combat slavery and its vestiges.

The Committee hopes that the Government will continue to implement all of the recommendations contained in the roadmap and that the Inter-ministerial Technical Committee will undertake an evaluation of the impact of the measures taken in this context. Recalling that action to combat slavery requires the broadest commitment, the Committee hopes that on the occasion of this evaluation and the determination of further action, the Government will continue to collaborate with civil society and the religious authorities, and that it will associate the social partners with such action. The Committee also hopes that the Government will continue to provide the Tadamoun Agency with the necessary resources to combat the vestiges of slavery, which are manifest in the poverty, dependence and stigmatization of which the descendants of slaves may be victims.

(d) Identification and protection of victims

The Committee previously emphasized that the victims of slavery are in a situation of great vulnerability which requires specific action by the State. The Committee notes the observation by the mission in its report that the relation between victims and their masters is multidimensional. Their economic, social and psychological dependence varies in degree and results in a broad range of situations that call for a series of complementary measures. Victims are not aware of their rights and may come under very strong social pressure if they denounce their situation. The mission considered that it would be appropriate to establish a mechanism to provide shelter for presumed victims as soon as they lodge a complaint or are identified. ***The Committee expresses the firm hope that the Government will continue the action taken to delegitimize slavery with a view to reaching out to all the persons who may be concerned, whether they are masters or slaves. The Committee requests the Government to indicate the measures taken to ensure that victims who are identified or who denounce their situation are assisted and protected so that they can assert their rights and stand up to any social pressure exerted upon them. Please indicate whether the creation of a public mechanism to provide shelter to victims is planned and specify the manner in which the authorities collaborate with associations that protect and defend slaves. Finally, the Committee requests the Government to specify the assistance provided to victims so that they can reconstruct their lives and to prevent them returning to a situation of dependence in which they are stigmatized and vulnerable to abuse.***

Paraguay

(Ratification: 1967)

The Committee takes note of the Government's report and the observations of the Central Confederation of Workers Authentic (CUT–A) and the International Trade Union Confederation (ITUC) received respectively on 1 July and 31 August 2016.

Articles 1(1), 2(1) and 25 of the Convention. Forced labour of indigenous workers. The Committee previously firmly encouraged the Government to continue to take necessary measures, within the framework of coordinated and systematic action, to respond to the economic exploitation and in particular the debt bondage to which certain indigenous workers are subjected, especially in the Chaco region of Paraguay. The Committee noted the adoption of several measures which demonstrate the Government's commitment to address this problem. It noted, in particular: the activities undertaken by the Commission on Fundamental Rights at Work and the Prevention of Forced Labour, and the creation of a subcommission in the Chaco region; the establishment of an office of the Department of Labour in the locality of Teniente Irala Fernandez (central Chaco); the activities undertaken in collaboration with the International Labour Office with a view to the

development of the national strategy to prevent forced labour; and the creation within the labour inspectorate of a technical unit for the prevention and eradication of forced labour. The Committee requested the Government to ensure that these different structures were provided with the adequate means to carry out appropriate monitoring in the regions concerned, identify victims, investigate the complaints received, and ensure that the national strategy to prevent forced labour is adopted.

The Committee notes the Government's indication in its report that the Commission on Fundamental Rights at Work and the Prevention of Forced Labour met in July and December 2015 for the development of the national strategy to prevent forced labour. The Ministry of Labour contributed to the process by leading several workshops, some of which were tripartite and others specifically targeted at representatives of indigenous communities, or workers' or employers' organizations. In this regard, the Government has provided a draft strategy for 2016–20 which was adopted on 15 November 2016 by Decree No. 6285. The Committee notes that this strategy adopts a results-oriented approach and constitutes the framework for the development of local and regional policies and plans. It sets out three principal objectives: educate and raise awareness of situations of forced labour; develop and implement a comprehensive system of prevention, detection and eradication of forced labour and of victim protection; and reduce people's vulnerability to forced labour. In this respect, the ITUC indicates that workers' organizations have not been sufficiently consulted during the process of elaboration of the strategy. The CUT–A considers that the strategy is general and does not contain specific actions, especially relating to indigenous communities in the Chaco and the eastern region. In addition, the strategic objectives do not include a component on suppression and punishment of perpetrators. The CUT–A also considers that the strategy should refer to institutional strengthening of labour inspection and to the need for coordination between the inspectorate and the Office of the Public Prosecutor.

The Committee recognizes that the participatory process that led to the adoption of the national strategy to prevent forced labour constitutes an important step against forced labour and urges the Government to intensify its efforts to effectively implement the strategy, particularly in regions with weak state presence and where forced labour indicators have been identified (Chaco and the eastern region). This goal could be achieved, for example, by adopting regional action plans. The Committee requests the Government to indicate the priority actions that have been defined and measures taken to raise awareness on forced labour; respond to the situation of vulnerability faced by indigenous workers; and protect the victims identified. The Committee also refers the Government to its comments under the Indigenous and Tribal Peoples Convention, 1989 (No. 169).

Imposition of effective penalties. The Committee previously insisted on the need to build the capacities of the law enforcement bodies and to improve the legislative framework against forced labour to ensure that victims have effective access to justice and that those imposing forced labour are punished. The Committee notes the Government's indication that labour inspection staff increased in 2015 across the country through the recruitment of 30 labour inspectors who had received training in the fundamental rights at work, including forced labour. In April 2015, a delegation of the Ministry of Labour, Employment and Social Security visited the Chaco region in Paraguay to examine the working conditions in agricultural undertakings. In addition, in the second half of 2015 inspections were also conducted in this region, during which the inspectorate identified certain labour rights violations but no cases of forced labour. The Government adds that, since March 2015, new courts have been established in the Chaco region and judges designated to them are competent in criminal, civil, trade and labour law.

The Committee notes that, in their observations, the CUT–A and the ITUC refer to a lack of resources and to the operational problems of the office of the Department of Labour in the central Chaco region. As this office is too far from the departmental capital, it is almost impossible for indigenous workers to get there to report violations committed against them. The trade unions also mention that, in practice, the Directorate for Indigenous Labour and the technical unit for the prevention and eradication of forced labour of the labour inspectorate are not able to function. In addition, the CUT–A rejects the statement that there is no forced labour in Paraguay and expresses its concern at the fact that workers who are victims of exploitation or debt bondage do not have access, in practice, to an effective mechanism enabling them to submit complaints about their situation and preserving their anonymity with regard to their employers. In this respect, the CUT–A notes that the inspection conducted by the delegation of the Ministry of Labour in 2015 in the Chaco region was publicized and included employers. Regarding the inspection visits of agricultural undertakings and the failure to detect cases of debt bondage, the CUT–A considers that factors relating to debt processes and to discrepancies in the payment of wages were not adequately examined. Lastly, the CUT–A raises the issue of the high prices fixed by the employers in commissaries where workers have no choice but to buy their basic goods, as well as the deductions made against their salaries.

The Committee notes with ***deep concern*** the operational problems facing the bodies set up to enable indigenous workers who are victims of labour exploitation to exercise their rights, as well as the lack of information on the activities performed by those bodies. ***Given the geographic characteristics of the country and the severe poverty of certain communities, the Committee recalls that it is essential that the Government continues to strengthen state presence in the regions concerned, by equipping law enforcement agents with the means to identify situations of forced labour and protect the most vulnerable people. The Committee therefore requests the Government to provide specific information on the means and actions led by the technical unit for the prevention and eradication of forced labour, the subcommission of the Commission on Fundamental Rights at Work and the Prevention of Forced Labour in the Chaco region, and the office of the Department of Labour in the locality of Teniente Irala Fernandez.***

Recalling that under Article 25 of the Convention, criminal penalties must be imposed and strictly enforced for persons found guilty in the exaction of forced labour, the Committee requests the Government to provide information on the judicial proceedings launched against persons exacting forced labour in the form of debt bondage or otherwise. Noting the absence of judicial decisions issued in this regard, the Committee hopes that the Government will not fail to ensure that national criminal law contains sufficiently specific provisions adapted to the national circumstances to enable the competent authorities to initiate criminal proceedings against the perpetrators of these practices and punish them.

Article 2(2)(c). Obligation to work imposed on non-convicted detainees. For many years, the Committee has been emphasizing the need to amend the Act on the prison system (Act No. 210 of 1970), under the terms of which prison labour shall be compulsory for persons subjected to security measures in a prison establishment (section 39 in conjunction with section 10 of the Act). Under the terms of *Article 2(2)(c)* of the Convention, only prisoners who have been convicted in a court of law may be subjected to the obligation to work. In this regard, the Government refers to the adoption of the Code on the Execution of Criminal Sentences (Act No. 5162/14). The Committee notes that this Code regulates the execution of criminal sentences handed down by the courts and does not contain provisions concerning security measures which may be imposed before a ruling. The Committee notes, however, that the new Code on the Execution of Criminal Sentences

does not repeal the Act on the prison system (Act No. 210 of 1970). ***The Committee therefore requests the Government to take the necessary measures to formally repeal the provisions mentioned of Act No. 210 of 1970 and to ensure that persons subject to security measures in prison establishments are not subjected to the obligation to work in prison.***

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

Poland

(Ratification: 1958)

The Committee notes the observations of the Independent and Self-Governing Trade Union ("Solidarnosc") received on 29 August 2016 as well as the Government's reports.

Articles 1(1), 2(1) and 25 of the Convention. Vulnerable situation of migrant workers with regard to the exaction of forced labour. The Committee notes the observations of Solidarnosc, stating that Poland is a country of destination of people who become victims of forced labour, the majority of whom are migrants. Solidarnosc also states that there has been exploitation of citizens of the Democratic People's Republic of Korea (DPRK) for forced labour in Poland. The Committee notes Solidarnosc's indication that there were 239 DPRK workers brought legally to Poland in 2011 and 509 workers brought legally in 2012. According to Solidarnosc's indication, DPRK workers have to send back to the regime a large part of their legitimate earnings. The Committee notes Solidarnosc's concern regarding the working conditions of those workers, which might be assimilated to forced labour. Solidarnosc mentions that ten years ago, DPRK workers were discovered in a fruit plantation near Sandomierz on the coastal construction sites. Their salary was only $20 instead of the $850 promised in the contract, their passports were taken away, they were working on average 72 hours per week and they were placed in barracks, from which they were prohibited to leave.

The Committee notes the Government's statement, in its communication dated 7 October 2016, that in 2016 comprehensive controls of the legality of employment of foreigners in selected entities known to employ DPRK citizens were carried out throughout the country. During those controls, no cases of illegal employment were detected but a number of infringements of the provisions of the Act on Employment Promotion and provisions of the Labour Law were found. In the controlled entities there were no instances of failure to pay or payment of a lower amount than that stated in the foreigners' work permits. Findings of this respect were made on the basis of evidence of payments presented by the employers (bank transfers and payrolls with signatures of DPRK citizens). The information supplied by the regional labour inspectorates shows the labour inspectors have found no proof that a given employer or entrepreneur would employ a national of the DPRK in conditions giving rise to a suspicion of forced labour.

The Committee also takes notes of the report of the Special Rapporteur of the United Nations on the situation of human rights in the DPRK of 8 September 2015 (A/70/362). In this report, the Committee notes the Special Rapporteur's indication that nationals of the DPRK are being sent abroad by their Government to work under conditions that reportedly amount to forced labour (paragraph 24). According to the report, 50,000 DPRK workers operate in countries such as Poland and mainly in the mining, logging, textile and construction industries. The Committee notes, as examples of working conditions, that: the workers do not know the details of their employment contract; workers earn on average between $120 and $150 per month, while employers in fact pay significantly higher amounts to the Government of the DPRK (employers deposit the salaries of the workers in accounts controlled by companies from the DPRK); the workers are forced to work sometimes up to 20 hours per day with only one or two rest days per month; health and safety measures are often inadequate; safety accidents are allegedly not reported to local authorities but handled by security agents; they are given insufficient daily food rations; their freedom of movement is unduly restricted; they are under constant surveillance by security personnel and are forbidden to return to the DPRK during their assignment (paragraph 27); workers' passports are confiscated by the same security agents; workers are threatened with repatriation if they do not perform well enough or commit infractions; and host authorities never monitor the working conditions of overseas workers. The Committee notes the Special Rapporteur's indication that companies hiring overseas workers from the DPRK become complicit in an unacceptable system of forced labour and that they should report any abuses to the local authorities, which have the obligation to investigate thoroughly and end such partnership (paragraph 32).

The Committee recalls the importance of taking effective action to ensure that the system of the employment of migrant workers does not place the workers concerned in a situation of increased vulnerability, particularly when they are subjected to abusive employer practices such as retention of passports, deprivation of liberty, non-payment of wages, and physical abuse, as such practices might cause their employment to be transformed into situations that could amount to forced labour. ***The Committee therefore urges the Government to strengthen its efforts to ensure that migrant workers are fully protected from abusive practices and conditions amounting to the exaction of forced labour and to provide information on the measures taken in this regard. The Committee also requests the Government to take concrete action to identify the victims of forced labour among migrant workers and to ensure that these victims are not treated as offenders. Lastly, the Committee requests the Government to take immediate and effective measures to ensure that the perpetrators are prosecuted and that sufficiently effective and dissuasive sanctions are imposed.***

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

[The Government is asked to supply full particulars to the Conference at its 106th Session and to reply in full to the present comments in 2017.]

C081 - Labour Inspection Convention, 1947 (No. 81)

India

(Ratification: 1949)

The Committee recalls that, at the 104th Session of the International Labour Conference in June 2015, the application of the Convention by India was discussed by the Committee on the Application of Standards (CAS), which requested detailed information from the Government in relation to the issues discussed. In this respect, the Committee previously observed with concern that most of the questions raised by the CAS had remained unanswered. The Committee notes that the Government provides replies in the present report in relation to some of the requests made by the CAS and the Committee.

Legislative reforms. In its comment published in 2011, the Committee noted the Government's reference to the proposed re-examination of labour laws in order to ensure a "hassle-free" industrial environment and put an end to malpractices by inspection staff ("Ending Inspector Raj"). The Committee also noted the concerns raised by the International Trade Union Federation (ITUC) that the legislative bills introduced as of 2014 would have far-reaching consequences for labour inspection. While the Committee noted that the Government had not provided the explanations requested by the CAS on the impact of the proposed amendments to labour laws and regulations on the labour inspection system, it nevertheless welcomed that it had sought technical assistance from the ILO in relation to some draft labour laws being reviewed in the legislative reform. The Committee also reminded the Government of the request made by the CAS to ensure, in consultation with the social partners, that the amendments to the labour laws undertaken at the central and state levels comply with the provisions of the Convention, and encouraged the Government, with reference to its previous comments concerning the Factories Act and the Dock Workers (Safety, Health and Welfare) Act, to bring these laws into conformity with the requirements provided for in *Articles 12(1)(a)* and *18 of the Convention.*

The Committee notes that, in reply to the Committee's reiterated request for information concerning the proposed legislative initiatives in relation to labour inspection, the Government indicates in its report that the proposed draft legislation is at a very preliminary stage, as consultations with interested stakeholders, including tripartite constituents and the ILO are ongoing. The Government provides a table containing information on the tripartite meetings held in 2015 in relation to the draft Small Factories Bill, 2015, the draft Labour Code on Wages and the draft Labour Code on Industrial Relations and indicates that, in view of the ongoing consultations, it would be premature for the Government to affirm its position in relation to the proposed draft legislation. ***The Committee requests the Government, in line with the 2014 conclusions of the CAS, to ensure, in consultation with the social partners, that the amendments to the labour legislation comply with the principles of the Convention, and that the current legislative reform brings the national law into conformity with its requirements, where it is not yet in conformity with these principles.***

The Committee requests the Government to provide information on the laws that are currently being revised, the tripartite consultations undertaken, and the progress made with the drafting, approval and submission of laws to Parliament. It also requests the Government to provide a copy of any legislative texts that have been adopted. The Committee finally requests that the Government continue to avail itself of ILO technical assistance in the ongoing legislative reform.

Articles 12, 16 and 17 of the Convention. Labour inspection reform, including the implementation of a computerized system to randomly determine the workplaces to be inspected. In its previous comment, the Committee noted the information provided by the Government on the introduction of a computerized system, which randomly determined which labour inspector would visit which factory based on information gathered from risk assessments. It noted the concerns raised in relation to this system by the Centre of Indian Trade Unions (CITU), which observed that labour inspectors no longer had the power to decide on the workplaces to inspect, and the ITUC, which observed that employers were notified in advance of inspections and penalties could only be imposed after an inspector had issued a written order and given the employer additional time to comply. The ITUC further indicated that the decision to rename inspectors as facilitators also implied that enforcement was not part of the objectives of the labour inspection system.

The Committee notes that the Government indicates that the computerized system has substantially improved the effectiveness of inspections, and has resulted in an increased number of inspections visits and improved enforcement activities (although, according to the Government, the relevant results need time to materialize). It also notes the Government's explanations as requested by the Committee, on the criteria for the initiation of labour inspections, that there are four different types of inspections. First, "emergency inspections" are immediately carried out in the event of fatal or serious accidents, strikes and lockout, etc. Secondly, "mandatory inspections" are carried out during a period of two years in workplaces where "emergency inspections" were previously carried out and which are therefore entered as high-risk workplaces in the system. Thirdly, "inspections approved by the Central Analysis and Intelligence Unit (CAIU)" are carried out in workplaces with prima facie evidence of labour law violations (the CAIU takes a decision to enter such workplaces in the system on the basis of information gathered through labour inspection reports, the information contained in self-assessments, complaints and other sources). Fourthly, "operational inspections" are carried out in workplaces that are categorized as low risk, a certain number of which have to be carried out every year, which are randomly selected by the system.

In reply to these observations made by the CITU concerning the absence in the hands of labour inspectors of any power to initiate an inspection of their own accord to undertake inspections, the Government indicates that the system for the random selection of low-risk workplaces for inspections was introduced to avoid labour inspectors undertaking inspections on the basis of criteria other than a risk of non-compliance in workplaces (such as their own convenience or flawed, biased or arbitrary judgments). In reply to these observations of the ITUC concerning the prior notification of inspection visits, the Government explains that "emergency inspections" and "inspections approved by the CAIU" are carried out without prior notice, whereas "mandatory inspections" and "operational inspections" are carried out with or without prior notice upon decision by the regional head inspector. The Government adds that the decision to carry out inspections with or without prior notice is based on objective criteria (such as the practical need in some cases to give time to employers to prepare certain records and documents). The Committee notes that the Government has not provided a reply in relation to the other observations made by the ITUC concerning the possibility to initiate enforcement activities only after having given employers time to rectify a labour law violation. ***The Committee requests the Government to ensure that the free initiative of labour inspectors to undertake labour inspections where they have reason to believe that a workplace is in violation of legal provisions or where they believe that workers require***

protection (Article 12(1)(a) and (b)), is still possible in the new system. The Committee also once again requests that the Government provide information on the measures taken, in law and practice, to ensure that labour inspectors have the discretion under Article 17(2) to initiate prompt legal proceedings without previous warning, where required. Noting the Government's indication that the number of inspections has increased and the enforcement activities have been enhanced, the Committee also requests the Government to provide relevant statistics to corroborate these statements.

Articles 10, 16, 20 and 21. Availability of statistical information on the activities of the labour inspection services to determine their effectiveness and coverage of workplaces by labour inspection at the central and state levels. The Committee notes that, once again, no annual report on the work of the labour inspection services has been communicated to the ILO, nor has the Government provided the detailed statistical information as requested by the CAS. While the Committee welcomes the efforts made by the Government to provide information on the activities of the labour inspection services at the central and state levels aggregated in relation to ten different laws, in relation to 19 states (information for the same period of time was previously communicated by the Government in relation to 11 states), this information nevertheless does not allow the Committee to make an informed assessment on the application of *Articles 10* and *16* in practice. The Committee notes that even basic statistical information in relation to the number of labour inspectors has not been provided, and recalls the previous observations made by the ITUC that, in many cases, the labour inspection services continued to be extremely understaffed. In this context, the Committee welcomes the Government's indication that it is willing to seek technical advice from the ILO with a view to the establishment of registers of workplaces liable to inspection and the preparation of the annual labour inspection report. ***The Committee encourages the Government to take the necessary steps to ensure that the central authority publishes and submits to the ILO an annual report on labour inspection activities containing all the information required by Article 21 in relation to the central and state levels. Noting the Government's intention to seek technical assistance for the establishment of registers of workplaces at the central and state levels and the annual labour inspection reports, the Committee encourages this endeavour, hopes that such assistance will be provided and requests the Government to provide information on any progress made in this regard.***

The Committee requests the Government in any event to make an effort to provide statistical information that is as detailed as possible on the activities of the labour inspection services, including as a minimum, information on the number of labour inspectors in the different states, and the number of inspections undertaken at central and local levels.

Articles 10 and 16. Coverage of workplaces by labour inspections. Self inspection scheme. In its previous comments, the Committee noted the observations made by the CITU and the Bharatiya Mazdoor Sangh (BMS) which observed that there was an absence of any mechanism for the verification of information supplied through the self-certification scheme (which requires employers employing more than 40 workers to submit self-certificates). The Committee notes that self-assessments are among the sources of information used by the CAIU to draw a conclusion on a prima facie evidence of labour law violations, and a decision to enter the relevant workplace in the system for an inspection visit to be carried out. The Committee notes that the Government has not provided the requested explanation as to the arrangements for verification of the information supplied by employers making use of self-certification schemes. ***The Committee once again requests the Government to provide information on how the information submitted through self-certificates is verified by the labour inspectorate. Noting that the Government has not provided the requested information on private inspection services, the Committee also once again requests the Government, in line with the 2015 conclusions of the CAS, to provide information on the OSH inspections undertaken by certified private agencies, including the number of inspections, the number of violations reported by such agencies, and compliance and enforcement measures taken.***

Articles 2, 4 and 23. Labour inspection in special economic zones (SEZs) and the information technology (IT) and IT-enabled services (ITES) sectors. In its previous comments, the Committee noted the Government's indication that very few inspections had been carried out in the SEZs and in the IT and ITES sectors. It also noted the Government's indication that while enforcement powers may be delegated to the Development Commissioner (a senior government employee) under the Special Economic Zones Rules, 2006, this does not weaken the enforcement of the labour law in any manner and has only been done in certain cases. On the other hand, it noted the observations made by the ITUC that trade unions in SEZs were largely absent in view of anti-union discrimination practices and that working conditions were poor, and that enforcement powers had been delegated to the Development Commissioners in several states (their central function of which is to attract investment).

The Committee notes that the Government has still not provided the detailed information on labour inspections in SEZs as requested by the CAS and the Committee, but that it has provided information in relation to the application of ten laws in four SEZs (previously this information was provided in relation to three SEZs). The Committee notes that in the absence of any comprehensive statistics, an assessment of the effective application of the labour law legislation in the SEZs and the IT and ITES sectors is not possible. ***The Committee therefore once again requests the Government to provide detailed statistical information on labour inspections in all SEZs (including on the number of SEZs and the number of enterprises and workers therein, the number of inspections carried out, offences reported and penalties imposed, and industrial accidents and cases of occupational disease reported).***

The Committee also once again requests the Government to specify the number of SEZs in which enforcement powers have been delegated to Development Commissioners. In accordance with the request made by the CAS, the Committee once again requests the Government to review, with social partners, the extent to which delegation of inspection powers from the Labour Commissioner to the Development Commissioner in SEZs has affected the quantity and quality of labour inspections, and communicate the outcome of this review. The Committee also requests the Government to provide information on the number of workplaces in the IT and ITES sectors, and the inspections carried out in these sectors.

Articles 12(1)(a) and (b), and 18. Free access of labour inspectors to workplaces. The Committee notes that the Government has once again not provided the detailed information requested by the CAS on compliance with *Article 12* of the Convention with regard to access to workplaces in practice, to records, to witnesses and other evidence, as well as the means available to compel access to such. Moreover, it notes that the Government has not provided the requested statistics on the denial of such access, steps taken to compel such access, and the results of such efforts. ***The Committee once again requests the Government to provide this information.***

C081 - Labour Inspection Convention, 1947 (No. 81)

C129 - Labour Inspection (Agriculture) Convention, 1969 (No. 129)

Ukraine

(Ratification: 2004)

In order to provide a comprehensive view of the issues relating to the application of the ratified governance Conventions on labour inspection, the Committee considers it appropriate to examine Convention No. 81 and Convention No. 129 in a single comment.

Technical assistance with a view to strengthening the labour inspection services. The Committee notes with ***interest*** that the Government requested ILO technical assistance for support in undertaking its labour inspection reforms initiated in 2014. The Committee notes that, as a result of this request made in February 2015, the ILO has, among other technical activities, established a needs assessment of the current structure of the State Labour Service (SLS) in November 2015 (2015 ILO needs assessment). This makes a number of recommendations on how to improve the effective functioning of the SLS, applying international labour standards and using best practices as a reference. The Committee also notes the information provided by the Government in its report on the initiation of the ILO project on "The strengthening of the effectiveness of the labour inspection system and social dialogue mechanisms" in September 2016 which aims to improve the national legal framework as well as compliance mechanisms, including through the revision of the Regulations of the SLS, the organization of the labour inspection, and the collaboration with the social partners. ***The Committee requests that the Government provide information on the activities undertaken in the framework of the technical assistance provided and the measures taken to strengthen the labour inspection services in relation to the principles of the Convention.***

Articles 12(1)(a) and (b), 15(c) and 16 of Convention No. 81 and Articles 16(1)(a) and (b), 20(c) and 21 of Convention No. 129. Restrictions and limitations to labour inspection. Further to the Committee's reiterated request to amend Act No. 877-V of 2007 concerning the fundamental principles of state supervision and monitoring of economic activity, so as to bring it into conformity with the abovementioned Articles of the labour inspection Conventions, the Committee welcomes the Government's indication that further to amendments in 2014, Act No. 877-V of 2007 no longer applies to the activities in the area of labour and employment legislation by the State Labour Inspectorate.

The Committee notes however with ***deep concern*** the information provided by the Government in its report on the moratorium introduced between January and June 2015 on labour inspections (pursuant to the Concluding Provisions of Act No. 76 VIII of 28 December 2014 on the repeal of several legislative acts), as a result of which there was a significant rise in the number of complaints made to the SLS concerning labour law violations. In this respect the Committee notes with ***concern*** that the number of labour inspections between 2011 and 2014 decreased from 42,323 to 21,015 and that in 2015, only 2,704 labour inspection visits were undertaken. The Committee further notes with ***concern*** the information provided by the Government that two Bills have recently passed the first reading in the Parliament of Ukraine, namely Bill No. 2418a of 21 July 2015 and Bill No. 3153 of 18 September 2015, which propose to place a fresh moratorium on scheduled inspection visits until 31 December 2016 and thereby restrict state oversight and monitoring of labour law. However, the Committee also notes that an ILO delegation was invited by the Government in the context of a technical mission to Kyiv in October 2016 to attend a hearing in Parliament on the proposed amendments to the Labour Code, which are supposedly intended to bring the Labour Code into conformity with the principles of the Conventions. In this context, the Committee welcomes the fact that, following the mission, the Government has requested informal opinions in relation to three legislative drafts, including on the procedures and regulations concerning labour inspection in the area of working conditions, occupational safety and health and mining. ***Recalling that a moratorium placed on labour inspection is contrary to the principles of the Convention, the Committee urges the Government to ensure that the proposed amendments to the national legal framework are undertaken with the purpose of bringing the national legislation into conformity with the Conventions and do not introduce restrictions and limitations on labour inspection. The Committee strongly encourages the Government to continue to avail itself of ILO technical assistance for this purpose.***

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

[The Government is asked to supply full particulars to the Conference at its 106th Session and to reply in full to the present comments in 2017.]

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Algeria

(Ratification: 1962)

The Committee notes the observations of the International Organisation of Employers (IOE), received on 1 September 2016, which are of a general nature. The Committee also notes the observations of the International Trade Union Confederation (ITUC), received on 1 September 2016, on persistent violations of the Convention in practice, in particular the arrest in February 2016 of trade union members at the trade union centre, and acts of violence by the police against protest action in the public education sector. Lastly, the Committee notes the observations of the General and Autonomous Confederation of Workers in Algeria (CGATA), received on 27 June 2016, denouncing the persistence of difficulties for independent trade unions to register and undertake their activities, and cases of police violence at peaceful demonstrations. ***Noting the extreme gravity of the allegations, the Committee urges the Government to provide its comments and detailed information in response to the ITUC and the CGATA.***

Legislative issues

Act issuing the Labour Code. The Committee recalls that the Government has been referring since 2011 to the process of adopting a law issuing the Labour Code. In this regard, the Committee recalled the need for consultations with the representative employers' and workers' organizations in order to take their views into account. In its report, the Government indicates that the latter have participated in all the tripartite exercises initiated and that some of the Committee's recommendations have been taken into account. However, the Government does not provide a more up-to-date version of the draft bill. ***Noting that this process has still not been concluded despite the time that has passed, the Committee expects the Government to take all the necessary measures for the adoption of the law issuing the Labour Code without any further delay. The Committee is sending comments on the bill in relation to the application of the Convention in a request addressed directly to the Government, and trusts that it will take them duly into account and adopt the amendments requested.***

Moreover, the Committee notes with ***regret*** that the Government confines itself to reiterating its previous replies to the other legislative issues raised in the Committee's previous comments. ***Recalling that it has been making these comments for ten years and that the Government has failed to offer an adequate response, the Committee urges the Government to take all the necessary measures to adopt the amendments requested to the following provisions.***

Article 2 of the Convention. Right to establish trade union organizations. The Committee recalls that its comments have focused on section 6 of Act No. 90 14 of 2 June 1990 on the exercise of the right to organize, which restricts the right to establish a trade union organization to persons who are originally of Algerian nationality or who acquired Algerian nationality at least ten years earlier. The Committee previously noted the Government's indication that the Act in question will be amended so that the right to establish trade unions is extended to foreign nationals. ***The Committee trusts that the Government will amend section 6 of Act No. 90-14 as soon as possible so that it recognizes the right of all workers, without distinction on the basis of nationality, to establish trade unions. The Committee also refers the Government to the comments it is making in a direct request asking for the amendment of the relevant provisions on this point in the draft bill to issue the Labour Code.***

Article 5. Right to establish federations and confederations. The Committee recalls that its comments have related to sections 2 and 4 of Act No. 90 14 which, read jointly, have the effect of restricting the establishment of federations and confederations in an occupation, branch or sector of activity. The Committee previously noted the Government's indication that section 4 of the Act will be amended to include a definition of federations and confederations. ***In the absence of information on any new developments in this regard, the Committee trusts that the Government will amend section 4 of Act No. 90-14 as soon as possible in order to remove any obstacles to the establishment by workers' organizations, irrespective of the sector to which they belong, of federations and confederations of their own choosing. The Committee also refers the Government to the comments it is making in a direct request asking for the amendment of the relevant provisions on this point in the draft bill issuing the Labour Code.***

Trade union registration in practice

The Committee recalls that its comments have related to the issue of particularly long delays in the registration of trade unions. Its previous comments referred in particular to the situation of the Higher Education Teachers' Union (SESS), the National Autonomous Union of Postal Workers (SNAP) and the CGATA. In its report, the Government indicates that SNAP has been registered, that the authorities informed the SESS of certain requirements that must be met to bring its application into conformity with the law, and that the CGATA was informed in 2015 that it did not meet the legal requirements for the establishment of a confederation. The Committee notes with ***concern*** the CGATA's allegations denouncing the persistence of obstacles to the registration of newly created trade unions, most recently in the case of the Autonomous Union of Attorneys in Algeria (SAAVA) and the Autonomous Algerian Union of Transport Workers (SAATT). The Committee recalls that the Committee on Freedom of Association and the Committee on the Application of Standards of the International Labour Conference have also addressed this issue in recent years and have requested the Government to process registration applications more rapidly. The Government nevertheless continues to indicate repeatedly that the trade unions concerned have not fulfilled certain requirements. ***The Committee expects the Government to take all the necessary measures to guarantee the prompt registration of trade unions which have met the requirements set out by law, and, if necessary, expects the competent authorities to ensure that the organizations in question are duly informed of the additional requirements that have to be met. The Committee requests the Government to indicate which requirements were not fulfilled and urges it to process the registration applications of the CGATA, the SESS, the SAAVA and the SAATT rapidly.***

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

Bangladesh

(Ratification: 1972)

The Committee takes note of the observations provided by the International Organisation of Employers (IOE) received on 1 September 2016, which are of a general nature. The Committee notes the observations from the International Trade Union Confederation (ITUC) received on 1 September 2016. ***The Committee takes notes of the response of the Government to the 2015 ITUC observations and requests the Government to provide its comments on the latest ITUC communication with regard to issues covered by the Convention.***

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 105th Session, May–June 2016)

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2016 concerning the application of the Convention. The Committee observes that the Conference Committee urged the Government to: (i) undertake amendments to the 2013 Labour Act to address the issues relating to freedom of association and collective bargaining identified by the Committee of Experts, paying particular attention to the priorities identified by the social partners; (ii) ensure that the law governing the export processing zones (EPZs) allows for full freedom of association, including the ability to form employers' and workers' organizations of their own choosing, and to allow workers' organizations to associate with workers' organizations outside the EPZs; (iii) investigate as a matter of urgency all acts of anti-union discrimination, ensure the reinstatement of those illegally dismissed, and impose fines or criminal sanctions (particularly in cases of violence against trade unionists) according to the law; and (iv) ensure that applications for union registration are acted upon expeditiously and are not denied unless they fail to meet clear and objective criteria set forth in the law. The Conference Committee also invited the Government to implement the recommendations of the 2016 high-level tripartite mission together with the social partners. The Committee also takes note of the report of the high-level tripartite mission.

Civil liberties. In its previous comment, the Committee expressed trust that all perpetrators and instigators responsible for violence against trade unionists would be identified, brought to trial and punished so as to prevent the repetition of such acts, and requested the Government to provide information on the outcome of the ongoing trials and investigations, including in relation to the 2012 murder of a trade unionist and the alleged violence against the secretary-general of another trade union. The Committee notes the Government's statement that any reported case of violence against trade unionists is handled by law enforcement agencies in line with the national legislation, but that in situations of violence or vandalism public and private property must be protected and those involved in such acts must be interrogated. The Government adds that measures are taken during such proceedings to avoid any form of harassment or disruption of trade union activities. The Committee ***regrets*** that, despite having replied to the 2015 ITUC observations, the Government does not address the specific incidents of violence against trade unionists alleged therein and fails to provide concrete information on the results of investigations or proceedings in this regard, including in relation to the 2012 murder of a trade unionist. The Committee further notes with ***concern*** the new allegations of specific incidents of violence and use of force against trade unionists in the latest ITUC communication, as well as its general allegations that since 2013, trade union leaders have suffered violent retaliation by their employers, have been harassed and intimidated and that the police routinely fail to carry out credible investigations into such cases of anti-union violence. ***The Committee requests the Government to provide detailed information on the outcome of investigations and trials into serious allegations of violence and harassment, including those reported by the ITUC in its 2015 and 2016 communications.***

In its previous comment, the Committee also noted the development of a helpline for submission of labour-related complaints targeting the ready-made garment (RMG) sector in the *Ashulia* area and requested the Government to provide further information on its expansion into other geographical areas and statistics on its use, the precise nature of the follow-up to calls and the number of cases resolved. The Committee notes the Government's indication that between December 2015 and May 2016, a total of 490 complaints were received through the helpline from RMG sector workers in the targeted area. The Government adds that many complaints were also received from other geographical areas and industrial sectors and that the operation of the helpline should be expanded to all sectors. ***Welcoming this information, the Committee requests the Government to continue to provide information on further expansion of the helpline, as well as statistics on its use, including the precise nature of the follow-up to calls, the number and nature of investigations undertaken and violations found and the number of cases resolved.***

Article 2 of the Convention. The right to organize. Registration of trade unions. In its previous comments, the Committee expressed trust that the online registration system would facilitate resolution of registration applications expeditiously and requested the Government to continue to provide statistics on the registration of trade unions and the specific legislative obstacles invoked for causes of denial. The Committee notes the Government's indication that: (i) the amendment of the Bangladesh Labour Act (BLA) in 2013 simplified the registration process and, up to August 2016, a total of 960 new trade unions have been registered, out of which 385 in the RMG sector, and 21 new trade union federations until August 2016; (ii) from March 2015, when the online registration system was introduced, a total of 512 online applications were received; and (iii) in 2016, the percentage of successful registration applications amounted to 58 per cent in the Dhaka Division and 38 per cent in the Chittagong Division, which presented an increase in comparison to previous years. While taking due note of the reported increase in the percentage of trade unions registered in 2016, the Committee observes that according to this information almost half of trade union applications in the Dhaka Division and almost three quarters of applications in the Chittagong Division have been rejected over the past year. Furthermore, the Committee notes that according to the ITUC, the approval of trade union applications remains at the absolute discretion of the Joint Director of Labour (JDL) and, even when registration is granted, factory management often seeks injunctive relief from courts to stay union registration, thus freezing union activity for several months pending the final hearing on the issue. The Committee also observes that the high-level tripartite mission, which visited Bangladesh in April 2016, noted that the procedure for registration of trade unions and its practical application were heavily bureaucratic and had the likelihood of discouraging trade union registration and of intimidating workers, especially the extensive steps taken by the Ministry of Labour and Employment with respect to name verification (comparison of signatures in the registration application and the employers' list of workers, as well as individual interviews with workers to verify authenticity of their signatures). The report of the mission further observed that the combination of the broad discretionary powers of the JDL when processing applications for registration, the lack of transparency on the reasons for rejection and delays in judicial

proceedings have led to an increased rejection of registration requests and a decreasing registration of trade unions over the past few years. ***The Committee requests the Government to provide information on the reasons for which such a high number of registration applications were refused in 2016 and to continue to provide statistics on the registration of trade unions and the use of the online registration application. The Committee further requests the Government to take any necessary measures to ensure that the registration process is a simple formality, which should not restrict the right of workers to establish organizations without previous authorization. In this regard, it recalls the recommendations of the high-level tripartite mission that invited the Government to devise standard operating procedures to render the registration process a simple formal requirement not subjected to discretionary authority and to establish a public database on registration to improve transparency in handling registration applications. The Committee trusts that when taking measures to facilitate the registration process, the Government will take fully into account the Committee's comments, as well as the conclusions of the Conference Committee and the high-level tripartite mission.***

Minimum membership requirements. As regards the existing 30 per cent of the enterprise minimum membership requirement in the BLA, the Committee requested the Government to review sections 179(2), 179(5) and 190(f) of the BLA with the social partners with a view to their amendment and to provide information on the progress made in this regard. ***Regretting*** the absence of Government information on this point, the Committee must again recall its ***deep concern*** that workers are still obliged to meet this excessive requirement for initial and continued union registration; and that unions whose membership falls below this number will be deregistered. ***Emphasizing that such a high threshold for merely being able to form a union and maintain registration violates the right of all workers, without distinction whatsoever, to form and join organizations of their own choosing provided under Article 2 of the Convention, the Committee reiterates its previous request to the Government.***

The Committee also noted that Rule 167(4) of the Bangladesh Labour Rules appeared to introduce a new minimum membership requirement of 400 workers to establish an agricultural trade union, a requirement which was not set out in the BLA itself. It therefore requested the Government to clarify the implications of this Rule and, if it was shown that it restricted the right to organize of agricultural workers, to modify the Rule so as to align it with the BLA and in any case to lower the requirement to ensure conformity with the Convention. The Committee notes the Government's indication that the 2013 amendment of the BLA provided agricultural workers the right to form trade unions and that Rule 167(4) is applicable to workers engaged in field crop production who can form groups of establishments. According to the Government, any inconsistency with the Convention can be corrected through consultation with the stakeholders. ***The Committee requests the Government once again to clarify whether Rule 167(4) of the Bangladesh Labour Rules establishes a minimum membership requirement of 400 workers, and if so, to align it with the BLA and in any event lower it to ensure conformity with the Convention. The Committee requests the Government to report on all developments in this regard.***

Articles 2 and 3. Right to organize, elect officers and carry out activities freely. For a number of years, the Committee had requested the Government to review the following provisions of the BLA to ensure that restrictions on the exercise of the right to freedom of association and related industrial activities are in conformity with the Convention and to indicate steps taken to this effect: scope of the law (sections 1(4), 2(49) and (65), and 175); restrictions on organizing in civil aviation and for seafarers (sections 184(1), (2) and (4), and 185(3)); restrictions on organizing in groups of establishments (section 183(1)); restrictions on trade union membership (sections 2(65), 175, 185(2), 193 and 300); interference in trade union activity (sections 196(2)(a) and (b), 190(e) and (g), 192, 229(c), 291 and 299); interference in trade union elections (sections 196(2)(d) and 317(d)); interference in the right to draw up their constitutions freely (section 179(1)); excessive restrictions on the right to strike (sections 211(1), (3), (4) and (8), and 227(c)), accompanied by severe penalties (sections 196(2)(e), 291, and 294–296); excessive preferential rights for collective bargaining agents (sections 202(24)(c) and (e), and 204); and cancellation of trade union registration (section 202(22)) as well as excessive penalties (section 301). The Committee ***deeply regrets*** that the Government has once again failed to provide information on the steps taken to review the abovementioned provisions of the BLA and notes that the Government simply indicates that the review of the BLA in 2013 involved tripartite consultations with workers and employers, as well as the ILO, and that both the BLA and the Bangladesh Labour Rules were framed in a manner to better fit the socio-economic conditions of the country. ***The Committee, also noting the conclusions of the Conference Committee, urges the Government, in consultation with the social partners, to review and amend the mentioned provisions to ensure that restrictions on the exercise of the right to freedom of association are in conformity with the Convention.***

Bangladesh Labour Rules. In its previous comment, the Committee also raised a number of issues concerning the conformity of the Bangladesh Labour Rules with the Convention. The Committee noted with concern that Rule 188 provided a role for the employer in the formation of the election committees to conduct the election of worker representatives to participation committees in the absence of a union. The Committee also noted that Rule 202 restricted, in a very general manner, the actions that can be taken by trade unions and participation committees, and that there was no rule providing appropriate procedures and remedies for unfair labour practice complaints. Observing the Government's commitments undertaken within the framework of the implementation of the European Union, United States and Bangladesh Sustainability Compact, the Committee requested the Government to indicate steps taken to ensure that workers' organizations were not restricted in the exercise of their internal affairs and that unfair labour practices were effectively prevented. The Committee also requested the Government to clarify the impact of Rule 169(4) (eligibility for membership to the union executive committee), which refers to the notion of permanent workers, on the right of workers' organizations to elect their officers freely. The Committee notes the Government's indication that its commitments undertaken within the Sustainability Compact are regularly monitored and that any intervention in the exercise of internal affairs or unfair labour practices is notified immediately. The Committee also notes, as indicated by the ITUC, that Rule 190 prohibits casual workers, apprentices, seasonal and subcontracted workers from voting for the worker representatives to participation committees, and Rule 350 gives the Director of Labour broad powers to enter union offices to inspect the premises, books and records and to question any person about the fulfilment of the union's objectives. In this regard, the Committee recalls that the rights under the Convention are granted to all workers without distinction or discrimination of any kind, including to apprentices, temporary and subcontracted workers; and that the autonomy, financial independence, protection of the assets and property of organizations are essential elements of the right to organize administration in full freedom (supervision is compatible with the Convention only when it is limited to the obligation of submitting annual financial reports, verification based on serious grounds to believe that the actions of an organization are contrary to its rules or the law and verification called for by a significant number of workers; it would be incompatible with the Convention if the law gave authorities powers to

control which go beyond these principles, or which over-regulate matters that should be left to the trade unions themselves and their bylaws – see General Survey of 2012 on the fundamental Conventions, paragraphs 109–110). ***In the absence of concrete information from the Government on the issues raised, the Committee requests the Government to undertake any necessary measures to ensure that, under the Bangladesh Labour Rules, workers' organizations are neither restricted nor subject to interference in the exercise of their activities and internal affairs, that unfair labour practices are effectively prevented and that all workers, without distinction whatsoever, may participate in the election of representatives.***

Article 5. The right to form federations. The Committee had previously noted the Government's indication that section 200(1) of the BLA, which sets the requirement of the minimum number of trade unions to form a federation to five, was a result of tripartite consensus and requested the Government to provide information on the right of trade unions to form federations, including on the number of federations formed since the amendment of the BLA and as to whether any complaints have been made in relation to the impact that this provision has had on the right of workers' organizations to form the federation of their own choosing. The Committee notes the Government's indication that since the amendment of the BLA in 2013 until August 2016, 21 new trade union federations have been registered.

Right to organize in EPZs. In its previous comments, the Committee urged the Government once again to resubmit the law governing the EPZs for full consultations with the workers' and employers' organizations in the country with a view to enacting new legislation for the EPZs in the near future, which would be fully in conformity with the Convention. The Committee notes the Government's indication that: (i) up until June 2016, out of 409 eligible enterprises in the EPZs, referendums were held in 304 enterprises, and workers in 225 enterprises opted to form a workers' welfare association (WWA); (ii) WWAs are actively performing as collective bargaining agents and from January 2013 to December 2015 submitted 260 charters of demands, which were all settled amicably and concluded by the signing of agreements; (iii) after a wide range of consultations with the elected worker representatives in the EPZs, investors and other relevant stakeholders, adoption of a comprehensive Bangladesh EPZ Labour Act is at the final stage – the draft Act was approved by the Cabinet and is in the process of adoption by Parliament; and (iv) the opinions put forward by the social partners were addressed within the limits of the socio-economic conditions in the country in conformity with international labour standards. While recognizing that the draft EPZ Labour Act represents an effort to provide the zones with protection similar to that provided outside the zones and in many areas reproduces the provisions of the BLA, the Committee observes that the sections concerning freedom of association and unfair labour practices mainly transpose into the draft the EPZ Workers' Association and Industrial Relations Act (EWWAIRA) of 2010, which has been addressed by this Committee for a number of years due to its non-conformity with the Convention and that, according to the ITUC, workers' representatives were not consulted in the process. Further observing that the scheme of industrial relations in the EPZs is more restrictive than the one outside the zones under the BLA, the Committee notes that the following provisions of the draft EPZ Labour Act are not in conformity with the Convention: the imposition of a trade union monopoly at enterprise and industrial unit levels (sections 94(2) and 106); excessive minimum membership and referendum requirements to create a WWA – 30 per cent of workers have to demand formation of a WWA, 50 per cent of eligible workers have to cast a vote in the referendum and more than 50 per cent of the votes cast must be in favour of formation of a WWA (sections 95(1), 96(2)–(3)); prohibition to establish a WWA during one year after a failed referendum (section 98); interference of the Zone Authority in internal union affairs: formation of a committee to draft the constitution (section 99(2)); approval of funds from an outside source (section 100(2)); approval of WWAs constitutions (section 101); organization and conduct of elections to the Executive Council of WWAs (sections 97(1) and 109(1)); approval of the Executive Council (section 110), and determination of the legitimacy of a WWA (section 119(c)); restriction of WWA activities to zones thus banning any engagement with actors outside the zones, including for training or communication (section 108(2)); legislative determination of the tenure of the Executive Council (section 111); elimination of the possibility for WWAs to join together in a federation (section 108(3) and the deletion of previous draft section 113); possibility to deregister a WWA at the request of 30 per cent of eligible workers even if they are not members of the association (section 115(1)); prohibition to establish WWAs during one year after the deregistration of a previous WWA (section 115(5)); cancellation of a WWA on grounds which do not appear to justify the severity of the sanction (section 116(1)(c) and (e)–(h)); prohibition to function without registration (section 118); prohibition of strike or lock-out for four years in a newly established industrial unit and imposition of obligatory arbitration (section 135(9)); excessive penalties, including imprisonment, for illegal strikes (sections 160(1) and 161); severe restrictions on the exercise of the right to strike – possibility to prohibit strike or lock-out after 15 days or at any time if the continuance of the strike or lock-out causes serious harm to productivity in the Zone or is prejudicial to public interest or national economy (section 135(3)(4)); prohibition of activities not specified in the Constitution and prohibition of any connection with any political party or any non-governmental organization (section 177(1)–(2)); the power of the Zone Authority to exempt any employer from the provisions of the Act making the rule of law a discretionary right (section 182); excessive requirements to form an association of employers (section 121); prohibition of an employer association to maintain any relation with another association in another zone or beyond the zone (section 121(2)); and excessive powers of interference in employers' associations' affairs (section 121(3)). The Committee also notes that section 199 provides the possibility for the Zone Authority to establish regulations, which may further restrain the right of workers and their organizations to carry out legitimate trade union activities without interference, and that Chapter XV on administration and labour inspection, including the maintenance of counsellor-cum-inspector under the supervision of the Zone Authority, run counter to the notion of independent government authority to apply the laws fairly. In light of these considerations, the Committee is of the view that the mentioned provisions of the draft EPZ Labour Act would need to be significantly amended or replaced in order to be brought into conformity with the Convention. ***Recalling that both the Conference Committee and the high-level tripartite mission requested the Government to ensure that any new legislation for the EPZs allows for full freedom of association, including the right to form free and independent trade unions and to associate with the organizations of their own choosing, and emphasizing the desirability of a harmonization of the labour law throughout the country which would ensure that the rights, inspection, judicial review and enforcement are equal for all workers and employers, the Committee requests the Government to address all the issues noted, encouraging it to consider replacing Chapters IX, X and XV of the draft Act by Chapter XIII of the BLA (as revised in line with the Committee's comments), thereby providing equal rights of freedom of association to all workers and bringing the EPZs within the purview of the labour inspectorate (Chapter XX of the BLA). The Committee requests the Government to provide information on any measures taken to bring the draft EPZ Labour Act into conformity with the Convention.***

In its previous comment, the Committee requested the Government to indicate which labour laws were applicable to Special Economic Zones (SEZs) and ensured the rights under the Convention. Noting the Government's indication that pending the enactment of a new law, the

EWWAIRA is applicable to these zones, the Committee expresses ***concern*** at the fact that the EWWAIRA, which has been repeatedly addressed by the Committee due to its non-conformity with the Convention, is rendered applicable to other designated economic zones, rather than seeking to guarantee full freedom of association rights to all workers under a common legal regime. ***In view of its comments concerning the draft EPZ Labour Act and of concerns raised as to the limitation of freedom of association rights through the proliferation of special legal regimes, the Committee invites the Government to reconsider the adoption of a separate labour law for the SEZs and to opt instead for the application of the BLA, as revised in line with the Committee's comments. The Committee trusts that, irrespective of the legislation applicable, all freedom of association rights under the Convention will be fully guaranteed to workers in SEZs.***

In view of the above, the Committee once again recalls the critical importance which it gives to freedom of association as a fundamental human and enabling right and expresses its firm hope that significant progress will be made in the very near future to bring the legislation and practice into conformity with the Convention.
[The Government is asked to reply in full to the present comments in 2017.]

Botswana

(Ratification: 1997)

The Committee takes note of the observations of the International Organisation of Employers (IOE) received on 1 September 2016, which are of a general nature. The Committee also notes the observations from: the International Trade Union Confederation (ITUC) received on 1 September 2016, referring mainly to matters currently or previously addressed by the Committee and alleging lockout of workers in the mining sector; the ITUC and the Botswana Federation of Trade Unions (BFTU) received jointly on 1 September 2016, concerning new amendments of the Trade Disputes Act (TDA); the BFTU received on 13 September 2016; and Education International (EI) and the Trainers and Allied Workers Union (TAWU) received on 12 October 2016. ***The Committee requests the Government to provide its comments on these observations, as well as on the pending observations made by: the TAWU in 2013 (alleging favouritism of certain trade unions by the Government); the ITUC in 2013 (alleging acts of intimidation against public workers); and the ITUC in 2014 (alleging violations of trade union rights in practice).***

Article 2 of the Convention. Right to organize of prison staff. In its previous comments, the Committee once again requested the Government to take the necessary measures to amend section 2(1)(iv) of the Trade Unions and Employers Organisations Act (TUEO Act) and section 2(11)(iv) of the TDA, which exclude employees of the prison service from their scope of application, as well as section 35 of the Prison Act, which prohibits members of the prison service from becoming members of a trade union or any body affiliated to a trade union. The Committee notes the Government's indication that the prison service is part of the disciplined force and that amendments to the stated laws would not alter their situation, but that civilian personnel in prisons, governed by the Public Service Act and the Employment Act, are allowed to unionize and that 50 such workers are members of trade unions. As regards the Government's statement that the prison service is part of the disciplined force justifying its exclusion from the Convention, the Committee observes that while the prison service does form part of the disciplined force of Botswana together with the armed forces and the police (article 19(1) of the Constitution), each of these categories is governed by separate legislation – the Prison Act, the Police Act and the Botswana Defence Force Act – and the Prison Act as a separate statute does not appear to provide members of the prison service with the status of the armed forces or the police. The Committee, therefore, considers that the prison service cannot be considered to be part of the armed forces or the police for the purposes of exclusion under *Article 9.* ***The Committee requests the Government once again to take the necessary measures, including the pertinent legislative amendments, to grant members of the prison service all rights guaranteed by the Convention. The Committee requests the Government to provide information on any developments in this regard.***

Article 3. Right of workers' organizations to organize their activities and formulate their programmes. In its previous comments, the Committee noted with interest the decision of the High Court of Botswana which found that Statutory Instrument No. 57 of 2011 declaring veterinary services, teaching services and diamond sorting, cutting and selling services, and all support services in connection therewith to be essential, was unconstitutional and therefore "invalid" and "of no force and effect". However, the Committee notes with ***concern*** the indication of the BFTU that section 46 of the new Trade Disputes Bill (Bill No. 21 of 2015) enumerates a broad list of essential services, including the Bank of Botswana, diamond sorting, cutting and selling services, operational and maintenance services of the railways, veterinary services in the public service, teaching services, government broadcasting services, immigration and customs services, and services necessary to the operation of any of these services. The Committee also observes that in line with section 46(2) of the Trade Disputes Bill, the Minister may declare any other service as essential if its interruption for at least seven days endangers the life, safety or health of the whole or part of the population or harms the economy. Recalling that, in light of the right of workers' organizations to organize their activities and formulate their programmes, essential services, in which the right to strike may be prohibited or restricted, should be limited to those the interruption of which would endanger the life, personal safety or health of the whole or part of the population, the Committee considers that the services enumerated do not constitute essential services in the strict sense of the term and that harm to the economy caused by the interruption of a service is insufficient to consider it as an essential service. ***The Committee requests the Government to take the necessary measures to amend the draft Trade Disputes Act to reduce the list of essential services accordingly.***

The Committee had also previously requested the Government to provide information on the progress made in relation to the amendment of section 48B(1) of the TUEO Act, which grants certain facilities only to unions representing at least one third of the employees in the enterprise, and section 43 of the TUEO Act which provides for inspection of accounts, books and documents of a trade union by the Registrar at "any reasonable time". The Committee notes the Government's statement that the amendment process of the TUEO Act is ongoing and that the social partners have submitted their proposals for amendments. The Committee further notes that the BFTU indicates that the Government had requested it to submit proposals for amendment of the TUEO Act but that no discussion has taken place on the subject matter. ***The Committee trusts that, in the framework of the ongoing amendment process of the TUEO Act and in consultation with the social partners, the abovementioned provisions will be amended taking fully into account the Committee's comments. The Committee requests the Government to provide information on any developments in this regard and to provide the text of the***

amended TUEO Act once adopted.

The Committee further observes that a new Public Service Bill, 2016, is in the process of being adopted and should replace the Public Service Act, 2008. ***The Committee requests the Government to provide a copy of the Public Service Act upon its adoption or, if not yet adopted, the Bill in its current form.***

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

Cambodia

(Ratification: 1999)

The Committee notes the observations of the International Organisation of Employers (IOE), received on 1 September 2016, which are of a general nature. The Committee further notes the observations made by the International Trade Union Confederation (ITUC) received on 1 September 2016, which denounce that a large number of trade union leaders and activists have been charged with criminal offences for union activities since 2014, as well as that an increasing number of injunctions and requisition orders against trade unions and workers have been granted in labour disputes to restrict trade union activities and industrial actions. At least 114 injunctions and requisition orders have allegedly been granted since 2014, in particular in the garment industry and the tourism sector. The ITUC further protests against the persistent use of violence by the police against workers during protest actions. ***The Committee notes with concern the seriousness of these allegations and requests the Government to provide its comments on the observations submitted by the ITUC, and in particular detailed information on the specific cases mentioned.***

The Committee takes note of the comments of the Government in reply to the previous allegations from the ITUC, Education International (EI) and the National Educators' Association for Development (NEAD) of violence against trade unionists, harassing lawsuits against trade union leaders and activists, impediments to the registration of new independent trade unions, and intimidation against teachers joining trade unions (in particular police intimidation during the national Congress of the NEAD in September 2014). The Committee observes that, while it continues to object to the allegation of blockage to the registration of new trade unions, the Government indicates that most cases presented previously have been resolved through the existing legal procedures and that the competent authorities have been working closely with all the parties concerned to ensure full compliance with the national laws and regulations and the Convention.

Follow-up to the discussion of the Committee on the Application of Standards (International Labour Conference, 105th Session, May–June 2016)

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards in June 2016 concerning the application of the Convention by Cambodia. The Committee notes that, in its conclusions, the Conference Committee requested the Government to: (i) ensure that freedom of association can be exercised in a climate free of intimidation and without violence against workers, trade unions or employers, and act accordingly; (ii) ensure that the Trade Union Law is in full conformity with the provisions of the Convention and engage in social dialogue, and with the technical assistance of the ILO; (iii) ensure that teachers and civil servants are protected in law and practice consistent with the Convention; (iv) undertake full and expeditious investigations into the murders of and violence perpetrated against trade union leaders and bring the perpetrators as well as the instigators of these crimes to justice; and (v) ensure that the Special Inter-Ministerial Committee keeps the national employers' and workers' organizations informed on a regular basis of the progress of its investigations. The Committee also notes that the Conference Committee invited the Government to accept a direct contacts mission before the next International Labour Conference in order to assess progress. ***The Committee welcomes the Government's acceptance of the direct contacts mission and trusts that the mission will take place in the near future.***

Trade union rights and civil liberties

Murders of trade unionists. With regard to its long-standing recommendation to carry out expeditious and independent investigations into the murders of trade union leaders Chea Vichea, Ros Sovannareth and Hy Vuthy, the Committee had previously noted the Government's indication that a special Inter ministerial Commission for Special Investigations was established in August 2015 to ensure thorough and expeditious investigations of these criminal cases. The Committee notes from the Government's report that the Inter ministerial Commission for Special Investigations held its first meeting on 9 August 2016 and adopted measures with regard to its functioning, which include the use of electronic communication for reporting on progress made by each member of the Commission and regular meetings every three months to review progress made for each case. With regard to its previous recommendation that the Special Inter-ministerial Commission keeps the national employers' and workers' organizations informed on a regular basis of the progress of its investigations, the Committee notes from the conclusions of the Committee on Freedom of Association in its examination of Case No. 2318 (380th Report, November 2016) that a tripartite working group attached to the Secretariat of the Commission has also been established in order to allow the employers' and workers' organizations to provide information in relation to the investigation and to provide their feedback on the findings of the Commission. While the Committee duly notes the measures described, it must express its ***concern*** with the lack of concrete results concerning the investigations requested despite the time that has elapsed since the setting up of the Inter-ministerial Commission. ***Recalling the need to conclude the investigations and to bring to justice the perpetrators and the instigators of these crimes in order to end the prevailing situation of impunity in the country with regard to violence against trade unionists, the Committee urges the competent authorities to take all necessary measures to expedite the process of investigation, and firmly requests the Government to keep the social partners duly informed of developments and to report on concrete progress in this regard to the direct contacts mission.***

Incidents during a demonstration in January 2014. In its previous observation, the Committee requested the Government to provide information on any conclusions and recommendations reached by the three committees set up following the incidents that occurred during the strikes and demonstrations of 2–3 January 2014 which resulted in serious violence and assaults, death, and arrests of workers as well as alleged procedural irregularities in their trial. In its report, the Government reiterates that the strike action turned violent and that the security forces had to intervene in order to protect private and public properties, and to restore peace. The Government further indicates that the three committees have been transformed and assigned more specific roles and responsibilities: (i) the Damages Evaluation Commission concluded that the total amount of damages is not less than US$75 million including damages on public and private properties in Phnom Penh and some

other provinces; (ii) the Veng Sreng Road Violence Fact-Finding Commission concluded that the incident was a riot instigated by some politicians by using the minimum wages standards as the propaganda, and did not fall under the definition of a strike action under international labour standards since demonstrators blocked public streets at midnight, hurled burning bottles of gasoline and rocks at the authorities and destroyed private and public properties; and (iii) the Minimum Wages for Workers in Apparel and Footwear Section Study Commission was transformed into the existing Labour Advisory Committee, which is tripartite and advises on promoting working conditions including minimum wage setting. The Committee notes, however, that ITUC maintains that the committees established to investigate into the incidents were not credible, that an independent investigation into the events is still necessary and that those responsible for the acts of violence – which led to the death of 5 protesters and the wrongful arrest of 23 workers – must be held accountable. Noting the divergent views expressed by the Government and the ITUC on the handling of these incidents, the Committee must express its ***deep concern*** at the acts of violence which resulted in the death, injury and arrest of protesters following originally a labour dispute demonstration, and the absence of information from the Government in this regard. ***The Committee, recalling that the intervention of the police should be in proportion to the threat to public order and that the competent authorities should receive adequate instructions so as to avoid the danger of excessive force in trying to control demonstrations that might undermine public order, urges the Government to provide specific information, as well as the findings of the Commissions, with regard to the circumstances leading to the death, injury and alleged wrongful arrests of protesters, and on any measures taken as a result of the conclusions reached by the three mentioned Commissions.***

Legislative issues

Law on Trade Union (LTU). In its previous observation, while noting that the Government had further revised the draft Trade Union Law and had submitted it to the Council of Ministers, the Committee expressed the hope that the draft law would be adopted in the very near future and would be in full conformity with the provisions of the Convention. The Committee notes the Government's indication that the LTU was promulgated on 17 May 2016 and that during the drafting period from 2008 to 2016, a series of bipartite, tripartite, multilateral and public consultations have been conducted, and the technical comments of the ILO have been integrated in the final draft. The Government however points out that despite all efforts the Law does not provide full satisfaction to the social partners: (i) the employers are not satisfied with the minimum threshold before a trade union can be established; and (ii) the workers are dissatisfied with the scope of the law, which excludes civil servants. The Committee further notes the concerns raised by the ITUC on a number of provisions of the Law on Trade Union. ***The Committee requests the Government to provide its comments to the issues raised by the ITUC.***

Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations. Section 3 of the LTU: Scope of the law. ***Noting that under this section, the law covers all persons who fall within the provisions of the labour law, the Committee requests the Government to indicate how the judges of the judiciary and domestics or household servants, who are excluded from the scope of the labour law by virtue of its section 1, are fully ensured their rights under the Convention. Moreover, the Committee requests the Government to indicate whether workers in the informal economy fall under the scope of the LTU or how they are ensured their trade union rights under the Convention.***

The Committee recalls that the right to establish and join occupational organizations should be guaranteed for all public servants and officials, irrespective of whether they are engaged in the state administration at the central, regional or local level, are officials of bodies which provide important public services or are employed in state-owned economic undertakings (see General Survey of 2012 on the fundamental Conventions, paragraph 64). The Committee notes the Government's indication that civil servants appointed to a permanent post in the public service are ensured their freedom of association rights through section 36 of the Common Statutes for Civil Servants, and that teachers in particular are ensured these rights through section 37 of the Law on Education. The Committee understands that these provisions refer to the rights of association under the Law on Associations and Non-Governmental Organizations. Following its review of this law, the Committee considers that some provisions contravene freedom of association rights of civil servants under the Convention, by subjecting the registration of their associations to the authorization of the Ministry of Interior which is contrary to the right to establish organizations without previous authorization under *Article 1* of the Convention. Moreover, this law lacks provisions recognizing to civil servants' associations the right to draw up constitutions and rules, the right to elect representatives, the right to organize activities and formulate programmes without interference of the public authorities, or the right to affiliate to federations or confederations, including at the international level. ***Therefore, the Committee must once again urge the Government to take appropriate measures, in consultation with the social partners, to ensure that civil servants – including teachers – who are not covered by the LTU, are fully ensured their freedom of association rights under the Convention, and that the legislation is amended accordingly.***

The Committee is making other comments on the LTU in a direct request and trusts that the Government will address them, in full meaningful consultation with the social partners and taking into account their observations, in order to bring the law into line with the provisions of the Convention. In this regard the Committee recalls to the Government the possibility to continue to benefit from the technical assistance of the Office. Moreover, the Committee requests the Government to report on the implementation of the LTU.

Application of the Convention in practice

Independence of the judiciary. In its previous observation, the Committee requested the Government to indicate any progress on the drafting of a guideline on the operation of the Labour Court and the Labour Chamber, and to provide information on the progress made in their establishment and operation. In its reply, the Government indicates that, with the technical assistance and financial support of the Office, the Law on Labour Procedure of the Labour Court is still in the drafting process. The Government has benefited from experiences from other countries, such as Singapore, Japan and Australia, and expects to consult the social partners on the draft law at the end of the year to reflect the needs for a labour dispute settlement system which is quick, free and fair. ***The Committee trusts that the Government will take all necessary measures to complete expeditiously the adoption of the Law on Labour Procedure of the Labour Court, in full consultation with the social partners, in order to ensure the effectiveness of the judicial system as a safeguard against impunity, and an effective means to protect workers' freedom of association rights during labour disputes.***

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

Ecuador

(Ratification: 1967)

The Committee notes the joint observations of the National Federation of Education Workers (UNE) and Public Services International (PSI), received on 1 September 2016, and the joint observations of the UNE and Education International (EI), received on 7 September 2016, with both trade union communications referring to matters examined in the present observation and the corresponding direct request. The Committee also notes that, in the context of their observations on the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), received on 1 September 2016, the above organizations report police violence in the context of a peaceful demonstration accompanying the adoption on 3 December 2015 of amendments to the national Constitution, and the arbitrary detention of 21 persons, including the President of the Confederation of Workers of Ecuador, Edgar Sarango. ***The Committee expresses concern at these allegations and requests the Government to send its comments in this regard.***

The Committee also notes the observations of the National Federation of Chambers of Industries of Ecuador, received on 2 September 2016, which also refer to matters examined in the present observation and in the corresponding direct request. The Committee finally notes the observations of the International Organisation of Employers (IOE), received on 1 September 2016, which are of a general nature.

The Committee notes the Government's comments in reply to the joint observations of 2015 of the UNE, Public Services International (PSI) and the United Front of Workers (FUT). With reference to the complaint concerning the active role of the Government in the establishment of the National Confederation of Public Sector Workers, the United Central Workers' Organization and the Primary Teachers' Network, the Committee notes the Government's indication that: (i) the State promotes the creation of all types of associations or organizations without favouritism or interference; (ii) it plays an active role in simplifying the procedures for the establishment and registration of labour organizations; and (iii) the Primary Teachers' Network is not a labour or trade union organization, but an educational organization. With regard to the situation of Mery Zamora, former President of the UNE who, according to these trade unions, was subject to criminal persecution by the public authorities, the Committee notes the Government's indication that Mery Zamora was found innocent by the judicial system.

Application of the Convention in the public sector

Article 2 of the Convention. Right of workers to establish organizations of their own choosing without previous authorization. Impossibility of establishing more than one trade union in state bodies. In its previous comments, the Committee examined article 326(9) of the Constitution, which provides that for all purposes relating to industrial relations in state institutions, workers shall be represented by a single organization. Having taken due note of the Government's indication that other provisions of the Constitution (article 326(7)) and of laws do recognize the right of workers in the public sector, without distinction whatsoever, to establish organizations of their own choosing, the Committee requested the Government to take measures to amend article 326(9) of the Constitution so as to bring it into conformity with *Article 2* of the Convention and with the provisions of Ecuadorian legislation referred to above. The Committee notes the Government's indication in its latest report that the objective of article 326(9) of the Constitution is to prevent the disorganized proliferation of labour organizations. The Committee also notes that the PSI and the UNE provide with their observations the text of the Bill to amend the legislation governing the public sector, which is currently under examination by the National Assembly. The Committee notes that the Bill provides that, for the purposes of the exercise of their right to organize, in light of article 326(9) of the Constitution, public servants shall be represented by a "committee of public servants" (CPS), the members of which shall represent at least half plus one of all public servants in the same institution. The Committee observes that: (i) under the terms of the Bill, the CPS would have all the characteristics of a workers' organization, with members, statutes and an executive board; (ii) the CPS would have all the attributes to promote and defend the collective interests of public servants recognized in the Bill (especially the right to social dialogue and the right to strike); (iii) the Bill does not envisage other forms of organization through which public servants could collectively defend their interests and exercise the collective rights referred to above; and (iv) in view of the need to include half plus one of all public servants, there could only be one CPS for each institution. The Committee recalls that, under the terms of *Article 2* of the Convention, workers, whether in the public or private sector, must be able to establish the organizations of their own choosing. In light of the above, the monopoly of organization imposed by the law, whether directly or indirectly, is contrary to the provisions of the Convention, and trade union pluralism should be possible at all times. ***The Committee therefore urges the Government to take the necessary measures immediately to ensure that, in accordance with Article 2 of the Convention, both the Constitution and the legislation fully respect the right of public servants to establish the organizations of their own choosing for the collective defence of their interests. The Committee requests the Government to provide information on this subject.***

Articles 2, 3 and 4. Registration of associations of public servants and their officers. Prohibition of the administrative dissolution of such associations.

Regulations on the operation of the unified information system for social and citizens' organizations (Executive Decree No. 16 of 20 June 2013, as amended by Decree No. 739 of 12 August 2015). In its previous direct request, the Committee observed that Executive Decree No. 16 envisaged broad grounds for administrative dissolution, such as engaging in party political activities (reserved for political parties and movements registered with the National Electoral Board), activities interfering in public policies which prejudice the internal or external security of the State, and activities jeopardizing public peace (section 26(7) of the Decree). The Committee requested the Government to provide information on the applicability of these grounds for administrative dissolution to occupational organizations of public servants and to workers' trade unions governed by the Labour Code. The Committee notes the Government's indication that: (i) Executive Decree No. 16, as amended by Decree No. 739, only applies to social and citizens' organizations self-defined as such, and is not therefore applicable to labour organizations; (ii) the labour legislation in Ecuador establishes a complex procedure for the dissolution of labour organizations, which may be requested by their members, but not at all by the State, or by employers in the private sector; and (iii) associations (of public servants) such as the UNE, which were not registered by the Ministry of Labour, but by the Ministry of Education, are not labour organizations governed by the Labour Code and are therefore covered by the provisions of Executive Decrees Nos 16 and 739.

In this regard, in light of *Article 10* of the Convention, the Committee recalls that, in so far as occupational associations of public servants have the objective of furthering the economic and social interests of their members, irrespective of their classification or legal regulation under the terms of the national law, they are fully protected by the guarantees of the Convention. The Committee recalls in particular that the

defence of the interests of their members requires associations of public servants to be able to express their views on the Government's economic and social policy, and that *Article 4* prohibits dissolution or suspension by administrative authority. ***In light of the above, the Committee urges the Government to adopt the necessary reforms so that occupational associations of public servants are not subject to grounds for dissolution which prevent them from exercising in full their mandate of defending the interests of their members, and are not subject to administrative dissolution or suspension. The Committee requests the Government to provide information on this subject.***

Administrative dissolution of the UNE. In its previous comments, the Committee requested the Government to register the new executive committee of the UNE. In this regard, the Committee notes the observations of the UNE, EI and PSI alleging that: (i) in view of the continued refusal of the authorities to register the executive committee of the UNE, the teachers of the country took the initiative of convening an extraordinary congress on 14 May 2016 to start from zero the process of registering their executive committee; (ii) in July 2016, the Sub-secretariat for Education of the Metropolitan District of Quito, under the terms of Executive Decree No. 16, initiated the process of the administrative dissolution of the UNE; (iii) the Sub-secretariat for Education of the Metropolitan District of Quito declared the dissolution of the UNE in a resolution of 18 August 2016; and (iv) with a view to initiating the process of liquidating the assets of the UNE, the National Police of Ecuador raided and took over the trade union headquarters of the UNE in the cities of Guayaquil and Quito on 29 August 2016. The Committee also notes the Government's indication that: (i) the UNE had been requested since 23 December 2013 to comply with a list of six requirements set out both in the regulations that are in force and in its own statutes; and (ii) the convocation of an extraordinary congress by a number of members of the social organization, who did not have the power to do so, to elect the members of its executive committee is in violation of the provisions of Executive Decree No. 16, as well as clause 18 of the statutes of the organization. Finally, the Committee notes that, in a joint communication of 27 September 2016, the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the United Nations Special Rapporteur on the situation of human rights defenders condemned the use of the national legislation in Ecuador to dissolve the UNE. In light of the above, the Committee is bound to recall once again that the election of the officers of workers' organizations, which include professional associations of public servants, is an internal matter in which the administrative authorities should not interfere and that the administrative dissolution of workers' organizations constitutes a serious violation of the Convention. ***The Committee expresses its deep concern at the administrative dissolution of the UNE and urges the Government to take all necessary measures on an urgent basis to revoke that decision so that the UNE can immediately exercise its activities once again. The Committee requests the Government to report on any progress in this regard.***

Article 3. Right of workers' organizations and of associations of public servants to organize their activities and to formulate their programmes. Prison sentences for the stoppage or obstruction of public services. In its previous comments, the Committee urged the Government to take the necessary measures to amend section 346 of the Basic Comprehensive Penal Code so as not to impose penal sanctions on workers engaged in a peaceful strike. In this regard, the Committee notes the Government's indication that: (i) the prohibition set out in this section refers to the illegal and unlawful interruption of a public service outside the procedures governing the exercise of the right to strike; (ii) the objective of the penal provision is to safeguard the right of citizens to have access to public services without any limitation; and (iii) there is a process to be followed to call a strike in the public sector, and the labour legislation determines a system of minimum services to be provided. ***Recalling that no penal sanctions should be imposed for the peaceful participation in a strike and that such sanctions should only be permissible where violence is committed against persons or property, or other serious violations of penal law, the Committee once again urges the Government to take the necessary measures to amend section 346 of the Basic Comprehensive Penal Code as indicated above and to report any developments in this regard.***

Application of the Convention in the private sector

Article 2. Excessive number of workers (30) required for the establishment of workers' associations, enterprise committees or assemblies for the organization of enterprise committees. The Committee recalls that, since the legislative reform of 1985, which increased the minimum number of members required from 15 to 30, it has been requesting the Government to reduce the minimum number of workers required by law to establish workers' associations or enterprise committees. The Committee notes the Government's indication that the minimum number of 30 members is intended to ensure the representative nature of the enterprise committee and to allow the conclusion of collective contracts which strengthen the union and its members. In this regard, the Committee emphasizes that the requirement of a reasonable level of representativity to conclude collective agreements, which is not contrary to the ILO Conventions on freedom of association and collective bargaining, must not be confused with the conditions required for the establishment of trade union organizations. Emphasizing that, under the terms of *Article 2* of the Convention, workers shall have the right to establish organizations of their own choosing in full freedom, the Committee recalls that it has generally considered that the requirement of a minimum number of 30 members to establish enterprise unions in countries in which the economy is characterized by the prevalence of small enterprises hinders the freedom to establish trade unions. ***The Committee therefore once again requests the Government, in consultation with the social partners, to take the necessary measures to amend sections 443, 452 and 459 of the Labour Code to reduce the minimum number of members required to establish workers' associations and enterprise committees.***

Article 3. Compulsory time limits for the convening of trade union elections. In its previous comments, the Committee noted the allegation by various trade unions that section 10(c) of Ministerial Decision No. 0130 of 2013, regulating labour organizations, is in violation of the independence of trade unions by providing that trade union executive committees shall lose their powers and competencies if they do not convene elections within 90 days of the expiration of their mandate, as set out in the statutes of their organizations. The Committee requested the Government to provide its comments on this subject, as well as information on the application of this provision in practice. The Committee notes the Government's indication that the purpose of this provision is to promote the normal democratic functioning of trade unions. While observing that the promotion through the legislation of the democratic functioning of trade unions is not in itself contrary to the Convention, the Committee recalls that, by virtue of *Article 3* of the Convention, trade union elections are an internal matter for the organizations which should primarily be governed by their statutes. ***The Committee therefore requests the Government to amend section 10(c) of Ministerial Decision No. 0130 of 2013 to ensure that, in compliance with democratic rules, the consequences of any delay in convening trade union elections are set out in the by-laws of the organizations themselves.***

Election as officers of enterprise committees of workers who are not trade union members. In its previous comment, the Committee noted

that new section 459(3) of the Labour Code provides that enterprise committees "shall be composed of any worker, whether or not a union member, who is registered on the lists for such election". The Committee considered that the imposition by law that workers who are not union members may stand for election as officers of the enterprise committee is contrary to the trade union autonomy recognized by *Article 3* of the Convention, and it requested the Government to take the necessary measures to amend this provision of the Labour Code. In this regard, the Committee notes the Government's indication that enterprise committees represent all workers, whether or not they are members of a union. Observing that, under the terms of the Labour Code, the enterprise committee is one of the forms which may be assumed by trade union organizations within the enterprise, and that the officers of the enterprise committee are elected solely by workers in the enterprise who are unionized, the Committee once again emphasizes that it would be acceptable for workers who are not union members to stand for office only if the specific by-laws of the enterprise committee envisage this possibility. ***The Committee therefore once again requests the Government to take the necessary measures to amend section 459(3) of the Labour Code to bring it into compliance with the principle of trade union autonomy, and to provide information on any progress achieved in this regard.***

The Committee observes with deep concern that, despite its reiterated comments, restrictions on freedom of association that are contrary to the guarantees of the Convention are being extended, especially in the public service. The Committee urges the Government to take fully into consideration the content of the present observation both with regard to the legislation that is in force and its application, and in relation to the draft legislation that is currently under examination, and particularly the Bill to reform the administrative legislation. In this regard, the Committee recalls that the Government may have recourse to ILO technical assistance.

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

[The Government is asked to supply full particulars to the Conference at its 106th Session and to reply in full to the present comments in 2017.]

Egypt

(Ratification: 1957)

The Committee notes the observations of the International Trade Union Confederation (ITUC) received on 31 August 2014 and 31 August 2016, which refer to legislative issues already being raised by the Committee, as well as allegations of arrest and harassment of trade unionists. The Committee further notes the observations of several Egyptian trade unions received from the ITUC on 1 September 2016. ***The Committee urges the Government to provide its comments on the serious allegations contained in these communications.*** The Committee takes note of the comments of the Government on the observations from the ITUC of 2013 and the Government's expression of its commitment to comply with Conventions it has ratified. The Committee notes the observations of the International Organisation of Employers (IOE) received on 1 September 2016, which are of a general nature.

The Committee recalls that in its previous comments it noted with interest that the final draft law on trade union organizations and protection of the right to organize was being discussed by the Council of Ministers and was expected to be finalized soon. The Committee expected that the draft would be adopted in the very near future and would ensure full respect for freedom of association rights, and it requested the Government to transmit a copy of the law once promulgated. The Committee notes from the Government's latest report that a draft law on freedom of association was prepared to replace the current Trade Unions Act No. 35 of 1976, was approved by the Council of Ministers and is currently before the House of Representatives *(Majlis Al Nouwab)* for adoption. According to the Government, the draft law takes into account the comments made by the Committee on the need to ensure conformity of national legislation with the provisions of the Convention. The Committee, however, notes with ***concern*** the ITUC's observations that no tangible results have been delivered on the discussions for a new trade union law since 2011 and that the independent trade unions are still awaiting formal recognition.

The Committee further notes the conclusions and recommendations of the Committee on Freedom of Association in Case No. 3025 (375th Report, paragraphs 201–210) in which the Committee expressed its expectation that the draft law on trade union organizations will provide clear legislative protection to the numerous newly formed independent trade unions and ensure full respect for freedom of association rights and requested the Government to transmit detailed information in this regard and supply a copy of the law to the Committee of Experts.

The Committee, therefore, finds itself bound to recall the comments it has been making for several years on the discrepancies between the Convention and the Trade Union Act No. 35 of 1976 as amended by Act No. 12 of 1995 (hereinafter: Trade Union Act), with regard to the following points:

·-the institutionalization of a single trade union system under the Trade Union Act, and in particular sections 7, 13, 14, 17 and 52;

·-the control granted by law to higher level trade union organizations, and particularly the Confederation of Trade Unions, over the nomination and election procedures to the executive committees of trade unions, under the terms of sections 41, 42 and 43 of the Trade Union Act;

·-the control exercised by the Confederation of Trade Unions over the financial management of trade unions, by virtue of sections 62 and 65 of the Trade Union Act;

·-prohibition from joining more than one workers' organization (section 19(f) of the Trade Union Act);

·-the removal from office of the executive committee of a trade union which has provoked work stoppages or absenteeism in a public service or community services (section 70(2)(b) of the Trade Union Act); and

·-the requirement of the prior approval of the Confederation of Trade Unions for the organization of strike action, under section 14(i) of the Trade Union Act.

The Committee requests the Government to transmit a copy of the draft law and trusts that the law will ensure full freedom of association rights under the Convention. The Committee urges the Government to report further progress in this regard.

As regards the comments it has been making for several years on the Labour Code No. 12 of 2003, the Committee notes that the legislative committee set up at the Ministry of Manpower and Migration has finalized the formulation of the new draft Labour Code and

societal dialogue sessions are being held with employers' and workers' organizations, and civil society organizations, to discuss the draft. As soon as the discussions are finished, it will be submitted to the *Majlis Al-Nouwab* for adoption. The Committee recalls in this regard its previous comments in relation to the Labour Code:

·-certain categories of workers excluded from the scope of the Labour Code (public servants in state agencies who do not exercise authority in the name of the State, including local public administrations and public authorities, domestic and similar workers, and workers who are members of the employer's family and dependent upon the latter) do not enjoy the right to strike;

·-legal obligation (accompanied by a penalty) for workers' organizations to specify in advance the duration of a strike (sections 69(9) and 192 of the Labour Code);

·-recourse to compulsory arbitration at the request of one of the parties (sections 179 and 187 of the Labour Code); and

·-excessive restrictions on the right to strike (sections 193 and 194 of the Labour Code), accompanied by penalties (section 69(9) of the Labour Code).

The Committee firmly expects the Government to introduce amendments to the Labour Code taking full account of the above comments. It requests the Government to provide information in its next report on the progress made in this regard and to supply any related amendments proposed or adopted.
[The Government is asked to reply in full to the present comments in 2017.]

Guatemala

(Ratification: 1952)

The Committee notes the observations received on 1 September 2016 submitted, respectively, by the: (i) International Trade Union Confederation (ITUC); (ii) Autonomous Popular and Trade Union Movement of Guatemala; and (iii) the Indigenous and Rural Workers Trade Union Movement of Guatemala (MSICG). ***The Committee notes that these observations refer to matters examined in its present comment and also to denunciations of violations in practice on which the Committee requests the Government to provide its comments.*** The Committee also notes the joint observations of the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF), received on 1 September 2016, referring to matters examined by the Committee in the present observation. Finally, the Committee notes the observations of the International Organisation of Employers (IOE), received on 1 September 2016, which are of a general nature.

Complaint made under article 26 of the ILO Constitution concerning non observance of the Convention

The Committee notes that at its 328th Session (October–November 2016), the Governing Body decided to defer consideration until its 329th Session (March 2017) of the decision to establish a Commission of Inquiry to examine the complaint submitted under article 26 of the ILO Constitution by various Worker delegates to the 101st Session of the International Labour Conference (May–June 2012) concerning non-observance of the Convention by Guatemala. The Committee notes that the Governing Body took special note of the submission to the Congress of the Republic, on 27 October 2016, of two draft legislative initiatives, one relating to freedom of association, and that the Governing Body expressed the firm expectation that it would be informed before its 329th Session (March 2017) of the passage into law of legislation that is fully in conformity with the conclusions and recommendations of the ILO supervisory system and the Convention.

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 105th Session, May–June 2016)

The Committee notes the discussion held in the Conference Committee on the Application of Standards (hereinafter the Conference Committee) in June 2016 on the application of the Convention by Guatemala. The Committee notes in particular that the Conference Committee urged the Government to: (i) investigate, with the involvement of the Public Prosecutor's Office, all acts of violence against trade union leaders and members, with a view to determining responsibilities and punishing the perpetrators, taking the trade union activities of the victims fully into consideration in the investigations as one of the possible motives; (ii) provide rapid and effective protection to all trade union leaders and members who are under threat, increasing the budget allocated to protection schemes for trade unionists so as to ensure that protected individuals do not personally have to bear any costs arising out of those schemes; (iii) submit to the Congress, before September 2016, a draft law respecting the number of workers required to constitute a trade union and the categories of workers in the public sector to ensure the conformity of national legislation with the Convention; (iv) eliminate the various legislative obstacles to the free establishment of trade union organizations and, in consultation with the social partners and with the support of the Special Representative of the ILO Director-General, review the handling of registration applications; (v) disseminate in the national mass media the campaign on freedom of association and collective bargaining supported by the Special Representative of the ILO Director-General, and ensure that there is no stigmatization whatsoever against collective agreements existing in the public sector; (vi) continue to support the work of the Committee for the Settlement of Disputes before the ILO in the area of Freedom of Association and Collective Bargaining; and (vii) continue taking the necessary steps to fully implement the roadmap adopted on 17 October 2013 in consultation with the social partners.

Trade union rights and civil liberties

The Committee ***regrets*** that for a number of years, in the same way as the Committee on Freedom of Association, it has been examining allegations of serious acts of violence against trade union leaders and members, including numerous murders and the related situation of impunity. The Committee notes the Government's indication that: (i) up to now, there have been 14 rulings on the over 70 cases of murder brought before the Committee on Freedom of Association of the International Labour Organization, 11 of which were convictions; (ii) the Office of the Public Prosecutor and the courts have found that the motive for the violent murders subject to these 11 convictions was not based on trade union activity or the defence of the labour rights of the victims; (iii) the perpetrators of the attempted murder of trade unionist Cruz Telón were convicted on 25 April 2016 for attempted murder and robbery with violence; (iv) the Office of the Public Prosecutor, through the Special Investigation Unit for Crimes Against Trade Unionists, has made significant progress in the investigation of another two cases (the

murders of José Ricardo Morataya Lemus and Bruno Ernesto Figueroa, in which cases rulings have not yet been handed down); (v) the Trade Union Committee of the Office of the Public Prosecutor is continuing to meet regularly, with the participation on a monthly basis of trade unions, the Office of the Public Prosecutor, the Ministry of Labour and the Special Representative of the ILO Director-General; (vi) collaboration is continuing with the International Commission Against Impunity in Guatemala (CICIG) relating to the investigation of a list of 12 murders selected by the trade union movement; (vii) the Special Investigation Unit for Crimes Against Trade Unionists has been restructured and is now composed of two agencies; (viii) during the first half of 2016, the Ministry of the Interior granted two personal security measures and 24 security measures covering specific locations for trade union members; (ix) on 18 August 2016, the authorities of the Ministry of the Interior reached agreement with trade union representatives on a draft Protocol for the implementation of immediate and preventive security measures for trade union members; (x) the emergency telephone number 1543 continues to operate for the denunciation of acts of violence or threats against trade union members and human rights defenders; and (xi) in June 2016, a special bonus of 700 Guatemalan quetzals (GTQ) a month was authorized for officers of the National Civil Police so that protected persons do not have to personally cover any cost in that regard. The Committee also notes that, within the framework of the examination by the Governing Body of the complaint made under article 26 of the ILO Constitution, the Government reported the capture and prosecution of the alleged murderer of Brenda Marleni Estrada Tambito, trade union adviser to the Trade Union of Workers of Guatemala (UNSITRAGUA-Historic), who was murdered in June 2016.

The Committee notes that the various national trade union organizations and the ITUC: (i) denounce the persistence of many attacks and threats against members of the trade union movement; (ii) denounce the absence of specific progress in the investigation of the 75 murders of trade union members and the conviction of their murderers; and (iii) particularly regret the absence of convictions or significant progress in the investigation of murders in which evidence of a possible anti-union motive has already been identified. In this connection, the Committee notes that the Autonomous Popular Trade Union Movement of Guatemala indicates that collaboration with the CICIG in relation to 12 murders corroborates the existence of clear evidence relating the murders with the trade union activities of the victims. The representatives of the trade union confederations nevertheless regret that, despite the above, there is still much to do to shed full light on these crimes. The Committee further notes the six-monthly report on acts of violence against trade unionists for January–June 2016, prepared by the Network of Labour Rights Defenders of Guatemala and forwarded by the ITUC. According to this report, 11 threats against trade union members, five physical attacks, including two murders (the death on 24 February 2016 of Silvia Marina Calderón Uribio, member of the Union of Workers of the National Committee for Alphabetization (SITRACONALFA), and the death on 19 June 2016 of Brenda Marleni Estrada Tambito, legal adviser to UNSITRAGUA-Historic) have been recorded during the first half of 2016. The Committee notes the emphasis placed by the CACIF on the persistence of the general climate of violence affecting the country, which is accompanied by a high level of impunity (of the over 20,000 murders in the country in 2012, only 12.77 per cent of cases resulted in a conviction). The CACIF indicates that, although these figures are not an excuse for failing to make progress in the investigation of the violent deaths of trade unionists, they do illustrate the general inefficiency of the application of justice in Guatemala.

The Committee notes with ***deep concern*** the persistent allegations of acts of anti-union violence, including physical aggression and murders. While taking due note of the results achieved by the Office of the Public Prosecutor in the investigation of the latest murder of a member of the trade union movement which occurred in June 2016, the Committee ***regrets*** that it is once again bound to note the overall absence of progress in combating impunity. In the same way as the Committee on Freedom of Association in the context of Case No. 2609 (378th Report, paragraphs 272–325), the Committee expresses its particular ***concern*** at the lack of progress in the investigations of murders in which evidence has already been found of a possible anti-union motive. ***In light of the above, the Committee firmly urges the Government to intensify its efforts to: (i) investigate all acts of violence against trade union leaders and members with a view to determining responsibilities and punishing the perpetrators and instigators of such acts, taking fully into consideration in the investigations the trade union activities of the victims; and (ii) provide prompt and effective protection for all trade union leaders and members who are at risk. In particular, the Committee urges the Government to intensify its efforts to: (i) allocate additional financial and human resources to the Special Investigation Unit for Crimes against Trade Unionists of the Office of the Public Prosecutor; (ii) develop the collaboration initiated between the Office of the Public Prosecutor and the CICIG; (iii) establish special courts to deal more rapidly with crimes and offences committed against members of the trade union movement; and (iv) increase the budget for protection programmes for members of the trade union movement. The Committee requests the Government to continue providing information on all of the measures adopted and the results achieved in this regard.***

Legislative issues

Articles 2 and 3 of the Convention. The Committee recalls that for many years it has been requesting the Government to take measures to amend several legislative provisions.

In this regard, the Committee notes that the Government has provided a copy of a Bill which seeks to bring legislation into conformity with the Convention and which was submitted to the Congress of the Republic on 27 October 2016.

The Committee observes with ***interest*** that the Bill addresses the Committee's previous comments in relation to:

·-the minimum membership requirements set out in section 215(c) of the Labour Code for sectoral trade unions – by replacing the current requirement to affiliate 50 per cent plus one of those working in the sector, with a 90 members minimum membership requirement;

·-the restrictions for election as trade union leader – by allowing up to one-third of the union's executive committee to be composed of foreign nationals, and by allowing, in the same proportion, that former employees of the enterprise, guild or sector of the union concerned be designated by the union's executive committee;

·-the majority required to call a strike – by replacing the requirement of a majority of all workers in the enterprise, with a requirement of the majority of the workers present at the assembly specially convoked for the strike ballot;

·-the imposition of compulsory arbitration in non-essential services in the strict sense of the term – by eliminating such imposition through the amendments of section 4(d) of the Act on Unionization and the Regulation of Strikes of Public Employees (Decree No. 71-86, as amended by Legislative Decree No. 35-96; and

·-the prohibition of solidarity strikes – by eliminating such prohibition through the amendment of section 4(d) of the Act on Unionization and the Regulation of Strikes of Public Employees.

However, the Committee ***regrets*** to note that the provisions of the Bill amending sections 390(2) and 430 of the Penal Code do not resolve the difficulties raised by the Committee in its previous comments. In this respect, the Committee notes that the Bill's proposal revise section 390(2) of the Penal Code imposes imprisonment penalties from one to five years to persons who "carry out acts that result in sabotage, damage or destruction of private property of an enterprise or a public institution, affecting their production or service". The Committee observes that the large breadth of such formulation retains the risk of imposing penal sanctions on workers carrying out a peaceful strike. The Committee further notes the Bill does not address the Committee's concerns as to section 430 of the Penal Code, inasmuch as the amended formulation on the Bill sets out that "civil servants, public employees and employees or dependants of a public service enterprise who abandon their post, work or service, will be liable to imprisonment for a term of six months to two years" and that this sanction will be doubled for the leaders, promoters, or organizers of the massive abandonment or if the abandonment results in damage to the public interest. In this regard, the Committee recalls that no penal sanctions should be imposed with respect to carrying out a peaceful strike and that such sanctions should only be permissible where violence against persons or property, or other serious infringements of penal law have been committed.

Finally, the Committee ***regrets*** that the Bill does not include measures to ensure that various categories of public sector workers (engaged under item 029 and other items of the budget) enjoy the guarantees afforded by the Convention.

In the light of the above, the Committee trusts that all the legislative amendment it has requested for many years will be adopted in the near future in accordance with all the Committee's comments. While welcoming the progress contained in the Bill submitted by the Government, the Committee emphasizes the importance of the Government having recourse as soon as possible to the technical assistance of the Office to ensure that the Bill that is adopted is in full compliance with the guarantees of the Convention. The Committee requests the Government to provide information in this respect.

Application of the Convention in practice

Registration of trade unions. In its previous comment, the Committee expressed deep concern at the obstacles to the registration of trade unions noted by the Committee on Freedom of Association within the framework of Case No. 3042. In this regard, the Committee notes the Government's indication that: (i) there was a significant increase in the registration of trade unions during 2015 (52 registrations) and the first half of 2016 (76 registrations between January and July); (ii) a draft Government Decision to reduce the time required for the registration of trade unions was submitted on 8 September 2016 by the Ministry of Labour and Social Welfare to the Tripartite Committee on International Labour Affairs; and (iii) the submission of the Bill resulted in complete rejection by the workers, thereby preventing genuine consultations. The Committee also notes that both the Autonomous Popular Trade Union Movement of Guatemala and the MSICG continue to denounce cases of hindrance in the registration of trade unions. ***In light of the above, the Committee requests the Government to continue to have recourse to the technical assistance of the Office in order to pursue more in-depth dialogue with the trade unions on the reform of the registration procedure. The Committee also requests the Government to continue providing information on the number of registrations requested and those recorded.***

Conflict resolution on freedom of association and collective bargaining

Settlement of disputes relating to freedom of association and collective bargaining. In its previous comment, the Committee invited the Government to continue strengthening the Conflict Resolution Committee on Freedom of Association and Collective Bargaining (hereinafter the Conflict Resolution Committee). In this regard, the Committee notes that: (i) the Government has provided information on the activities of the Conflict Resolution Committee indicating that progress has been achieved in certain aspects of two cases that are before the Committee on Freedom of Association; (ii) the Autonomous Popular Trade Union Movement of Guatemala indicates that the Conflict Resolution Committee has achieved very limited results, with the partial settlement of a single case, and considers that the terms of reference and operation of the Conflict Resolution Committee need to be reviewed; and (iii) the CACIF emphasizes that only four cases examined by the Conflict Resolution Committee are related to the private sector. ***In light of the above, and with a view to reinforcing the effectiveness and impact of the Conflict Resolution Committee, the Committee requests the Government to undertake, in consultation with the social partners and with the support of the Office of the Special Representative of the ILO Director General, an evaluation of the terms of reference and operation of the Conflict Resolution Committee. Noting the reiterated observations by trade unions alleging a complete absence of judicial protection for freedom of association, the Committee calls for the inclusion in this evaluation of an examination of the complementarity between the Conflict Resolution Committee and the judicial mechanisms for the protection of freedom of association in the country, together with an analysis of their effectiveness.***

Awareness-raising campaign on freedom of association and collective bargaining. In its previous comment, and in light of the commitments made by the Government in the 2013 roadmap, the Committee invited the Government to disseminate in the national mass media the awareness-raising campaign on freedom of association and collective bargaining prepared in collaboration with the Office. In this regard, the Committee notes the Government's indication that: (i) a communication plan has been prepared to pursue the campaign initiated the previous year; (ii) the campaign has been disseminated in the governmental mass media with the support of 13 ministries and other public institutions; and (iii) a workshop on international labour standards for managers of the media, columnists and opinion-formers, especially focusing on freedom of association and collective bargaining, was held on 27 October 2016 jointly with the Office of the ILO Special Representative of the Director-General. The Committee also notes that the various trade unions consider that there is no campaign to promote freedom of association and that, on the contrary, since the middle of 2015, the public authorities have been carrying out, with the support of the mass media, a very aggressive campaign against trade unionism and collective bargaining in the public sector. Expressing its ***concern*** at the allegations made by the trade unions, especially in a context marked by frequent acts of anti-union violence, the Committee considers that these allegations make it even more necessary to disseminate broadly in the national mass media the awareness raising campaign on freedom of association and collective bargaining prepared in collaboration with the Office. ***The Committee therefore once again requests the Government to provide information on the action taken to carry out such broad dissemination.***

The maquila sector. For many years, the Committee has been requesting the Government to intensify its efforts to promote and guarantee full respect for trade union rights in the *maquila* sector. In this connection, the Committee notes the Government's indication that, on the basis of a specific operational plan, the labour inspectorate carried out inspections of 88 enterprises in the *maquila* sector in 2015, focusing on the payment of the minimum wage. The Government also reports the reactivation in June 2016 of the coordinating unit for the apparel and textile

sector. While noting this information, the Committee ***regrets*** to note that the Government has not reported any initiative related specifically to the exercise of freedom of association in the sector. ***Recalling that for many years it has been receiving allegations of violations of freedom of association in the maquila sector and that the impossibility to exercise freedom of association in the sector was one of the five elements contained in the complaint made in 2012 under article 26 of the ILO Constitution, the Committee once again requests the Government to: (i) take specific measures to promote and guarantee full compliance with trade union rights in the maquila sector; (ii) accord special attention to the maquila sector in the context of the awareness-raising campaign; and (iii) report on the exercise in practice of trade union rights in the maquila sector, with an indication of the number of active trade unions and workers who are members of those unions.***

The Committee once again trusts that the Government will take all the necessary measures to resolve the serious violations of the Convention noted by the ILO supervisory bodies and that it will take full advantage of the technical assistance made available to the country by the Office, as well as the resources available through international cooperation, including within the context of the project funded by the Directorate General for Trade of the European Commission.

Kazakhstan

(Ratification: 2000)

The Committee notes the observations on the application of the Convention by the International Trade Union Confederation (ITUC) received on 1 September 2016 and of the Confederation of Independent Trade Unions of Kazakhstan (KNPRK) received on 25 November and 5 December 2016. It further notes the observations of the International Organisation of Employers (IOE) received on 1 September 2015, which are of general nature. In its previous comments, the Committee had also noted the observations of the Confederation of Free Trade Unions of Kazakhstan (CFTUK) (now, the KNPRK), as well as the Government's failure to reply. ***The Committee deeply regrets that the Government still has not provided its comments in reply to these longstanding observations and firmly trusts that it will provide complete comments thereon without delay. The Committee also requests the Government to respond to the more recent observations of the ITUC and the KNPRK referenced above.***

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 105th Session, May–June 2016)

The Committee notes the discussion that took place in the Conference Committee on the Application of Standards (hereinafter the Conference Committee), in June 2016 concerning the application of the Convention. The Committee notes the Conference Committee's request to the Government to: (i) amend the provisions of the Law on the National Chamber of Entrepreneurs in a manner that would ensure the full autonomy and independence of the free and independent employers' organizations in Kazakhstan, without any further delay; (ii) amend the provisions of the Law on Trade Unions, in particular sections 10–15, which limit the right of workers to form and join trade unions of their own choosing; (iii) amend section 303(2) of the Labour Code so as to ensure that any minimum service is a genuinely and exclusively minimum one; (iv) indicate which organizations fall into the category of organizations carrying out "dangerous industrial activities" and indicate all other categories of workers whose rights may be restricted, as stipulated in section 303(5) of the Labour Code; (v) amend the Constitution and appropriate legislation to permit judges, firefighters and prison staff to form and join a trade union; (vi) amend the Constitution and appropriate legislation to lift the ban on financial assistance to national trade unions by an international organization; and (vii) accept ILO technical assistance to implement the above noted conclusions. The Conference Committee considered that the Government should accept a direct contacts mission (DCM) this year in order to follow-up on these conclusions.

The Committee notes the report of the DCM, which visited the country between 19 and 22 September 2016. It further notes the entry into force on 1 January 2016 of the new Labour Code.

Article 2 of the Convention. Right of workers and employers, without distinction whatsoever, to establish and join organizations. The Committee had previously urged the Government to take the necessary measures to amend its legislation so as to ensure that judges, firefighters and prison staff have the right to establish organizations for furthering and defending their interests in line with the Convention.

As regards the judiciary, the Committee notes the Constitutional Council Ruling No. 13/2 of 5 July 2000 providing for an official interpretation of paragraph 2 of Article 23 of the Constitution. According to the Council, in accordance with paragraph 1 of Article 23 of the Constitution, "judges, like all citizens of the State, have the right to freedom of association to further and defend their professional interests, as long as they do not use the associations to influence the administration of justice and to pursue political goals. … The prohibition imposed on judges to become members of trade unions provided for by … the Constitution does not imply the restriction on their right to establish other associations and membership in other voluntary associations". The Committee notes from the report of the DCM, that the Union of Judges, while not a trade union registered pursuant to the Law on Trade Unions, it is an organization which represents the interests of judges and which can raise, and has raised in the past, issues relating to working conditions and pension.

Regarding prison staff and firefighters, the Committee notes from the DCM report that among the employees of the law enforcement bodies, only employees who have a (military or police) rank are prohibited from establishing and joining trade unions (sections 1(9) and 17(1)(1) of the Law on Law Enforcement Service (2011)), and that under the current system, prison staff and firefighters who have the status of officers are ranked. The Committee notes from the DCM and the Government's reports that all civilian staff engaged in the law enforcement bodies can establish and join trade unions and that there were currently two sectoral trade unions representing their interests.

Right to establish organizations without previous authorization. In its previous comments, the Committee had noted that pursuant to section 10(1) of the Law on Public Associations, which the Government had previously indicated was also applicable to employers' organizations, a minimum of ten persons was required to establish an employers' organization, and urged the Government to amend it so as to lower the minimum membership requirement for establishing an employers' organization. The Committee notes from the DCM report that employers' organizations are established as non-commercial entities pursuant to the Law on Non-Commercial Organizations, which allow, under section 20, for an organization to be created by one person, natural or juridical.

The Committee recalls that following the entry into force of the Law on Trade Unions, all existent unions had to be reregistered. The

Committee notes from the DCM report that some of the KNPRK affiliates have encountered difficulties with the (re)registration. It further notes with ***concern*** the most recent ITUC and KNPRK communications, referring to cases of denial of registration. The Committee understands that unregistered or not reregistered trade unions are currently under the threat of being liquidated. ***Noting that the DCM was assured that the Ministry of Justice together with the Ministry of Labour and Social Development would look into this matter and assist the unions, as relevant, the Committee trusts that all the authorities will provide the necessary assistance to the organizations concerned. The Committee requests the Government to provide information on all measures taken in this respect and to reply to the ITUC and KNPRK allegations.***

Right to establish and join organizations of their own choosing. The Committee had previously requested the Government to amend the following sections of the Law on Trade Unions:

·-sections 11(3), 12(3), 13(3) and 14(4), which require, under the threat of deregistration pursuant to section 10(3), the mandatory affiliation of sector based, territorial and local trade unions to a national trade union association within six months following their registration, so as to ensure the right of workers to freely decide whether they wish to associate or become members of a higher-level trade union structure; and

·-section 13(2), which requires a sector-based trade union to represent no less than half of the total workforce of the sector or related sectors, or organizations of the sector or related sectors, or to have structural subdivisions and member organizations on the territory of more than half of all regions, cities of national significance and the capital, with a view to lowering this threshold requirement.

The Committee notes from the DCM and the Government's reports that following the 2016 Conference discussion, the Ministry of Labour and Social Development established a roadmap and held a tripartite meeting to discuss outstanding comments of the Committee of Experts. On the basis of the discussions, a Concept Note on the amendment of the legislation has been prepared and submitted to the Ministry of Justice. The Committee welcomes that pursuant to point 2 of the Concept Note, the adoption of a draft law "stems from the need to improve the legislation in force with the purpose of better regulating social relationships related to trade union activities and complying with international labour standards enshrined in Convention No. 87". The Committee notes that in agreement with all three trade union centres, the Government intends to amend the Law on Trade Unions so as to: (i) lower the minimum membership requirement from ten to three people in order to establish a trade union; and (ii) simplify the registration procedure. Regarding the obligation imposed on a trade union to be affiliated to a higher level structure and the thresholds (sections 11(3), 12(3), 13(2) and (3), and 14(4) of the Law on Trade Unions), the Committee notes from the DCM report that while several actors agreed that this constituted a restriction on trade union rights, it was explained that the current circumstances in the country justified it. The Government considers that by obliging trade unions at the lower level to affiliate to trade unions of a higher level, the system allowed all trade unions to access political and economic decision-making processes and at the same time, engaged responsibility of the higher-level trade union structures towards their member organizations. The Government further considers that the trade union movement should be a system where all parts were linked, especially during the transitional stage, so as to ensure that trade unions become social partners capable of protecting ordinary workers. The Committee notes that the DCM observed that pluralism existed in the country and that there were currently three trade unions at the level of the Republic, 32 sectoral trade unions, 23 territorial trade unions and 339 local trade unions. While taking due note of this information, the Committee once again recalls that the free exercise of the right to establish and join organizations implies the right of workers to freely decide whether they wish to associate or become members of a higher-level trade union structure and that the thresholds requirements to establish higher-level organizations should not be excessively high. ***The Committee, therefore, encourages the Government to engage with the social partners in order to review sections 11(3), 12(3), 13(2) and (3), and 14(4) of the Law on Trade Unions so as to bring it into full conformity with the Convention. It requests the Government to provide information on all measures taken or envisaged in this regard.***

Law on the National Chamber of Entrepreneurs. The Committee had previously urged the Government to take measures to amend the Law on the National Chamber of Entrepreneurs, so as to eliminate all possible interference by the Government in the functioning of the Chamber and so as to ensure the full autonomy and independence of the free and independent employers' organizations in Kazakhstan. The Committee recalls that the Law calls for the mandatory affiliation to the National Chamber of Entrepreneurs (NCE) (section 4(2)), and, during the transitional period to last until July 2018, for the Government's participation therein and its right to veto the NCE's decisions (sections 19(2) and 21(1)). The Committee further notes from the DCM report the difficulties encountered by the Confederation of Employers of Kazakhstan (KRRK) in practice, which stem from the mandatory membership and the NCE monopoly. The DCM noted, in particular, that the KRRK considered that the accreditation of employers' organizations by the NCE and the obligation imposed in practice on employers' organizations to conclude an annual agreement (a model contract) with the NCE, meant, for all intents and purposes, that the latter approved and formulated the programmes of employers' organizations and thus intervened in their internal affairs. While noting with ***regret*** that, according to the information received by the DCM, there are no immediate plans to amend the Law, the Committee welcomes the Government's request for the technical assistance of the Office in this respect. ***In light of the above, and bearing in mind the serious concerns raised during the discussion of the application of this Convention in the Conference Committee, the Committee urges the Government to take measures without delay to amend the Law on the National Chamber of Entrepreneurs with the technical assistance of the Office.***

Article 3. Right of organizations to organize their activities and to formulate their programmes. Labour Code. The Committee had previously requested the Government to indicate which organizations fall into the category of organizations carrying out "dangerous industrial activities" for which strikes were illegal under section 303(1) of the Labour Code by providing concrete examples. It further requested the Government to indicate all other categories of workers whose rights may be restricted, as stipulated in section 303(5) of the Code and to amend section 303(2) so as to ensure that any minimum service is a genuinely and exclusively minimum one and that workers' organizations can participate in its definition.

The Committee notes that section 176(1)(1) of the new Labour Code (previously 303(1)(1)) describes cases where a strike shall be deemed illegal. Under paragraph 1 of this section, strikes shall be deemed illegal when they take place at entities operating hazardous production facilities. The Committee notes sections 70 and 71 of the Law on Civil Protection listing hazardous production facilities, as well as Order No. 353 of the Minister of Investment and Development Order (2014), pursuant to which, determination of whether certain production facilities are hazardous is carried out by the enterprise in question. The Committee notes from the DCM report that the KNPRK pointed out

that legal strikes did not take place in Kazakhstan as almost any enterprise could be declared hazardous and the strike therein illegal. Moreover, requests to conduct a strike were submitted to the executive bodies and were denied in practice. In these circumstances, section 176(2) of the Labour Code, according to which, "at railways, civil aviation … public transport … and entities providing communication services, strikes should be allowed to the extent that the required services were provided on the basis of prior agreement with a local executive body", did not allow for strikes in practice. The KNPRK further pointed out that according to section 402 of the Criminal Code, which entered into force on 1 January 2016, an incitement to continue a strike declared illegal by the court was punishable by up to one year of imprisonment and in certain cases (substantial damage to rights and interest of citizens, etc.), up to three years of imprisonment. The Committee notes that the Government considers that the above provisions of the Labour Code could be made more explicit as to which facilities were considered to be hazardous instead of referring to another piece of legislation. The Committee notes, in particular, that according to the abovementioned Concept Note, "the Labour Code does not specify the conditions under which a strike action at entities operating hazardous production facilities shall be deemed illegal, which restricts the right of workers to freedom of action. Taking into account the implications of a strike action at entities operating hazardous production facilities and possible production process failures and accidents as a result, it is proposed to make the provision more concrete by introducing a prohibition to strike in such facilities in cases where industrial safety is not fully guaranteed." The Committee welcomes the intention of the Government to amend the Labour Code regarding the right to strike and recalls that, rather than imposing an outright ban on strikes in certain sectors, negotiated minimum services may be imposed to guarantee the safety of persons and equipment. ***The Committee expects that the necessary legislative amendments will be made in the near future in consultation with the social partners and technical assistance of the Office so as to address the outstanding concerns of the Committee regarding the right to strike. The Committee requests the Government to provide information on all measures taken or envisaged in this respect.***

Article 5. Right of organizations to receive financial assistance from international organizations of workers and employers. The Committee had previously requested the Government to take steps to amend section 106 of the Civil Code, as well as article 5 of the Constitution, so as to lift the ban on financial assistance to national trade unions by an international organization. The Committee notes from the DCM and the Government's reports that only "direct" financing (for example, payment of salaries of trade union leaders by international organizations, purchase of cars and offices) was prohibited in order to safeguard the constitutional order, independence and territorial integrity of the country. However, there was no prohibition imposed on trade unions to participate in and carry out international projects and activities (seminars, conferences, etc.) together or with the assistance of international workers' organizations. Thus, as noted by the DCM, currently, there was no intention to amend article 5(4) of the Constitution. While noting that all three trade union centres confirmed that in practice, they could benefit from international assistance as long as it was not through a "direct" financing and that there was a general agreement that banning the "direct" financing was necessary, the DCM noted that the legislation could be amended so as to make it clear that joint cooperation projects and activities could be freely carried out. ***The Committee, therefore, requests the Government to adopt, in consultation with the social partners, specific legislative provisions which clearly authorize workers' and employers' organizations to benefit, for normal and lawful purposes, from the financial or other assistance of international workers' and employers' organizations. It requests the Government to provide information on all measures taken or envisaged in this regard.***

C102 - Social Security (Minimum Standards) Convention, 1952 (No. 102)

United Kingdom

(Ratification: 1954)

Parts III, IV, V, VII and X of the Convention. Benefits to be taken into account. The Committee recalls that the system of social protection in the United Kingdom comprises contribution-based and income-based social security benefits, as well as various tax credits and a range of means-tested social assistance benefits, which offer additional protection against poverty. Contribution-based benefits are payable at a flat rate to anyone who has paid the requisite amount of National Insurance Contributions (NICs). Income-based benefits replace or supplement contribution-based benefits and are available to all who meet the eligibility criteria as to their income. In case of sickness, income security is ensured through a mix of measures comprising employer liability provisions, contributory social insurance benefits and non-contributory income-tested benefits, which together seem to offer the level of social protection comparable to that guaranteed by the Convention. According to the Government, the obligation to provide sickness benefit cover is met through a combination of Statutory Sick Pay (SSP) payable to employed workers by their employers, and contribution-based Employment and Support Allowance (ESA), which is available to employed and self-employed earners who are not covered for SSP purposes or whose entitlement to SSP has come to an end after the maximum duration of 28 weeks. SSP can be considered the main benefit covering the majority of persons protected during the whole period of payment of sickness benefit, as prescribed by *Article 18(1)* of the Convention/Code. ESA plays a supplementary role protecting only those who are not covered by SSP. Taken together, the Government believes these benefits ensure the required level of income security for the duration outlined by Part III of the Convention/Code. As regards the role of the income-tested benefits in the case of sickness, they are currently being replaced by Universal Credit (UC), which "is a general anti-poverty benefit available to those at risk of falling into poverty. It is payable to people out of work as well as those in work and on a low income. The UK classifies this as a 'social assistance' rather than a 'social security' benefit … As Universal Credit is a form of social assistance it does not fall within the scope of the Code." Therefore, the Government considers that the United Kingdom's obligation under the accepted Parts of the Convention/Code should continue to be met for the foreseeable future on the force of the NIC-based social security benefits alone.

The Committee takes due note of these important statements. It notes in particular that the United Kingdom wishes to apply Part III of the Code/Convention on the force of the combination of SSP and ESA (Contributory) at the exclusion of income-tested benefits such as income-related ESA and UC. Moreover, the Government insists that non-contributory income-related benefits shall not be taken into account for the purpose of all accepted Parts of the Code/Convention. The Committee observes that a Contracting Party is free to declare on the force of which benefits provided by the national social security system it accepts the obligations of the Code/Convention under each Part covered by its ratification. While respecting the above choice of the Government, the Committee would only partially agree with its statement that social assistance benefits fall outside of the scope of the Code/Convention. Indeed, the Code/Convention does not apply to the discretionary social assistance provided by the local authorities as they deem necessary; it fully applies to non-contributory means-tested social assistance benefits provided to all residents as of right. It is for measuring the adequacy of the rate of such benefits that *Article 67* was included in the Code and Convention No. 102. The preparatory document on Convention No. 102 clearly states that *Article 67* "applies to cases of social assistance under which the benefit may be reduced by part of the income or means of the beneficiary during the contingency. Safeguards are obviously required if social assistance is to be admitted for the purpose of compliance … A Member wishing to comply on the basis of social assistance would therefore have to prove that its maximum benefit, which will be payable to a family without sufficient means, is actually a subsistence benefit and large enough to permit the family to live under tolerable conditions" (Report V(B), International Labour Conference, 35th Session, Geneva, 1952, p. 110).

Part III (Sickness benefit), Article 16 (Calculation of the level of benefit). The Committee notes that the calculation of the replacement level of the SSP and ESA (Contributory) for the standard beneficiary (man with wife and two children) includes Child Tax Credit (CTC) of £117.50 in respect of two children. CTC is a means-tested form of support for low-income families with children who are in or out of work and living in the United Kingdom. Means-tested benefits, according to the Government, are not a form of social security and fall outside the scope of the Code/Convention. Following this logic, CTC, as a means-tested benefit, shall not be included in the calculation of the replacement level of SSP or ESA. Recalculated without CTC, the replacement rate of SSP Week 1–28 stands at 30.25 per cent of the reference wage of an ordinary labourer, of ESA (Contributory) Week 1–13 at 26.50 per cent and for Week 14 onwards at 33.62 per cent. ***The Committee observes that these rates fall much below the minimum rate of 45 per cent guaranteed by the Convention/Code and concludes that social security benefits in case of sickness, as they are understood and conceived by the Government, do not permit the United Kingdom to fulfil its obligations under Part III of the Convention/Code as regards the level of benefit.***

Part IV (Unemployment benefit), Article 22 (Calculation of the level of benefit). The Committee notes that the calculation of the replacement level of the contribution-based Jobseeker's Allowance (JSA) for the standard beneficiary (man with wife and two children) includes CTC of £117.50 in respect of two children and refers the Government to its comments under *Article 16* above. Recalculated without CTC, the replacement rate of JSA Joint Claim stands at 36.75 per cent of the reference wage of an ordinary labourer, which is much below the minimum rate of 45 per cent guaranteed by the Convention. ***The Committee concludes that the United Kingdom does not fulfil its obligations under Part IV of the Convention as regards the level of unemployment benefit.***

Part X (Survivors' benefit), Article 62 (Calculation of the level of benefit). The Committee notes that, according to the data given in the report on Convention No. 102, the weekly rate of widow's benefit together with Child Benefit but excluding CTC will provide a replacement rate of 36.18 per cent, which is below the minimum level of 40 per cent guaranteed by the Convention. ***Referring to its comments under Article 16 above, the Committee concludes that the United Kingdom does not fulfil its obligations under Part X of the Convention as regards the guaranteed level of the survivors' benefit.***

Level of contribution-based and income-related benefits below poverty line. During the last decade, the Committee of Ministers of the Council of Europe has been repeatedly pointing out that, unlike the income-based ESA and JSA, the contribution-based ESA and JSA fell short of the minimum level prescribed by the Code/Convention and do not attain even the lowest EUROSTAT at-risk-of-poverty threshold of 40 per cent of median equivalized income in the United Kingdom and in the European Union as a whole. In its latest reply, the Government states that: (a) "the rates of contributory ESA and JSA are the same as the income-based rates of ESA and JSA respectively"; (b) "the

Government believes that it maintains a strong welfare safety net that is adequate and balances the requirements of a sustainable welfare system with the need to ensure that work pays"; and (c) "the Committee should note that the main rates of Jobseeker's Allowance and Employment and Support Allowance provide a basic standard of living to those who are not in work at a level that does not disincentivise moving into work or back into work when the opportunity arises or their health permits". With respect to these statements, one should first of all note that the Government is not contesting the fact that the level of the said benefits is insufficient in terms of the international standard established by the Code and Convention No. 102 and the at-risk-of-poverty threshold established by EUROSTAT. Instead, it considers this insufficient level "adequate" in terms of internal standard of welfare, and consequently expresses no intention to comply with the United Kingdom's obligation to maintain social security benefits at least at the minimum level guaranteed by these international instruments. In appraising the Government's position from a legal point of view, the Committee is bound to recall some basic rules of conduct of the Contracting Parties with respect to their international obligations freely assumed under the Code and ILO Conventions. Thus, the Vienna Convention on the Law of Treaties 1969 stipulates, in particular, that "every treaty in force is binding upon the parties to it and must be performed by them in good faith" (Article 26: *Pacta sunt servanda*), and that "a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty" (Article 27: Internal law and observance of treaties). With regard to the internal provisions to incentivize sick or unemployed workers moving into work as soon as possible invoked by the Government to justify its failure to guarantee the minimum benefits prescribed by the Code and Convention No. 102, the Committee considers that the policy of keeping the basic standard of living of those who are on benefits and not in work below the absolute poverty line results in using social security as a means of economic compulsion to labour. While such policies were indeed common in Europe in the nineteenth century, in the twenty-first century the international community believes that "basic income security should allow life in dignity" and "secure protection aimed at preventing or alleviating poverty", as it was recently stated in the Social Protection Floors Recommendation, 2012 (No. 202). The policy of keeping the rates of SSP, ESA, JSA and the widow's benefit, contribution-based as well as income-based benefits, below the poverty line stands in direct contradiction to such objectives of the Code as "harmonising social charges in member countries" and "facilitating their social progress", stated in its Preamble. In such situations where national welfare systems are designed in violation of the requirements of the Code, the Committee of Ministers reminds the Contracting Parties, as it has done in the Resolution CM/ResCSS(2016)21 on the application of the Code by the United Kingdom, that common European social security standards may be effective only so much as they are being respected and fulfilled by all and every member State. As, notwithstanding these reminders, the Government apparently remains deaf to the common European and international objectives of social protection, the Committee of Ministers should point out that, in accordance with Articles 66, 67 and 70(3) of the Code, the Government shall accept general responsibility for the due provision of the said benefits at the level which shall be sufficient to maintain the family of the beneficiary in health and decency, and shall not be less than the level calculated in accordance with the requirements of Article 66. To fulfil these provisions in good faith, the Code/Convention requires the Government to take all the necessary measures, including actuarial studies and calculations of the changes in benefits, insurance contributions, or the taxes allocated to covering the contingencies in question. Regretfully, there are no such measures mentioned in the report, which merely indicates that the proportion of expenditure on contributory benefits as a share of gross domestic product (GDP) has remained broadly stable over recent years, from 4.8 per cent in 2008–09 to 5.2 per cent in 2016–17, and forecast to be 4.9 per cent by 2020–21. ***Taking into account that, with these resources, the levels of abovementioned benefits were considered by Resolution CM/ResCSS(2016)21 to be manifestly inadequate in the meaning of Article 66 of the European Code of Social Security as well as in the meaning of Article 12(1) of the European Social Charter, the Committee asks the Government to undertake an actuarial study on the cost, in terms of a share of GDP, of bringing the level of contributory benefits to the minimum level guaranteed by the Code and to assess the capacity of the national economy to maintain them above the poverty line.*** As regards generation of additional resources which may be required for this purpose, the Committee draws attention to the 2010 estimation of the National Institute for Economic and Social Research, mentioned in the Government's report, that extending average working lives by one effective year, which is the purpose of raising the State Pension age from 65 to 66 years by 2020, could increase GDP by around 1 per cent.

In this context, the Committee has also considered the demand of the Government to take into account that contribution-based benefits represent one part of the overall welfare system that includes a mixture of income-related and social assistance benefits, such as housing benefit and tax credits, and that the Government is taking additional steps to incentivize and support people into work. This includes measures such as the introduction of the national living wage, which increases the minimum level of pay per hour for those aged 25 or over; the increases to the personal allowance in income tax which has ensured that workers keep more of what they earn; and the reforms to childcare including doubling the hours of free childcare available for working parents of 3–4 year-olds from 15 to 30 hours and the introduction of tax-free childcare. The Committee, much as it would have liked to take into account social assistance benefits and other measures mentioned above in assessing the overall level of protection ensured by the national social security system, regrets to point out that, following the position firmly expressed by the Government, these measures "fall outside the scope of the Code as they are not a form of social security". Nevertheless, the Committee is ready to enlarge the scope of social protections to be taken into account for the purposes of the Code and Convention No. 102, if the Government would reconsider its position.

C111 - Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Bahrain

(Ratification: 2000)

Article 1 of the Convention. Discrimination on the basis of political opinion. The Committee recalls that at the 100th Session of the International Labour ConferenceJune 2011, a complaint was filed by some Workers' delegates at the Conference concerning the non-observance by Bahrain of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), under article 26 of the ILO Constitution. According to the allegations, in February 2011, suspensions and various forms of sanctions, including dismissals, were imposed on members and leaders, as a result of peaceful demonstrations demanding economic and social changes and expressing support for ongoing democratization and reform. The complaint alleged that these dismissals took place on grounds such as workers' opinions, belief and trade union affiliation. At its 320th Session (March 2014), the Governing Body welcomed a Tripartite Agreement, reached in 2012 by the Government, the General Federation of Bahrain Trade Unions (GFBTU) and the Bahrain Chamber of Commerce and Industry (BCCI), as well as a Supplementary Tripartite Agreement of 2014, and invited this Committee to examine the application of the Convention by the Government, and to follow up on the implementation of the reached agreements. According to the Tripartite Agreement of 2012, the national tripartite committee that had been put in place to examine the situation of those workers that had been dismissed or that were referred to criminal courts should continue its work to ensure the full reinstatement of workers. The Committee notes that under the Supplementary Tripartite Agreement of 2014, the Government, GFBTU and BCCI had agreed to: (i) refer to a tripartite committee those cases which have not been settled which relate to financial claims or compensation and, in the absence of consensus, refer to the judiciary; (ii) ensure social insurance coverage for the period of interrupted services; and (iii) reinstate the 165 remaining dismissed workers from the public service sector and from the major private companies where the Government has shares and from other private companies according to the list annexed to the Supplementary Tripartite Agreement. ***Noting that the Government provides no information in this respect, the Committee requests it to indicate what specific measures have been taken to implement the Tripartite Agreement of 2012 and the Supplementary Tripartite Agreement of 2014 towards the full application of the Convention, and to inform on the current situation concerning the financial claims or compensation; the provision of social insurance coverage and the reinstatement of the 165 workers dismissed during the 2011 peaceful demonstrations.***

Article 1(1)(a) and (3). Grounds of discrimination and aspects of employment and occupation. In its previous comment, the Committee noted that the Labour Law in the Private Sector of 2012 (Law No. 36/2012) does not apply to "domestic servants and persons regarded as such, including agricultural workers, security house-guards, nannies, drivers and cooks" performing work for the employer or the employer's family members (section 2(b)). The Committee further recalls that sections 39 (discrimination in wages) and 104 (termination considered to be discriminatory) of the Labour Law in the Private Sector do not include race, colour (only mentioned in section 39), political opinion, national extraction and social origin in the list of prohibited grounds of discrimination. The Committee notes the Government's indication in its report that section 39 prohibits discrimination in wages in a general and broad manner, and that the term "origin" includes national or social origin, race, or nationality, while the term "ideology" includes political conviction. The Committee further referred to the fact that the Labour Law does not define discrimination, does not appear to prohibit indirect discrimination and covers only dismissal and wages, leaving aside other aspects of employment, such as access to vocational training, access to employment and occupation, and terms and conditions of employment. ***Recalling that clear and comprehensive definitions of what constitutes discrimination in employment and occupation are instrumental in identifying and addressing the many manifestations in which it may occur, the Committee requests the Government to take the necessary measures to include in the Labour Law in the Private Sector of 2012 a definition of discrimination as well as a prohibition of direct and indirect discrimination that covers all workers, without distinction whatsoever, with respect to all grounds provided for in the Convention, including colour, with respect to all aspects of employment, including access to vocational training, access to employment and to particular occupations, and terms and conditions of employment, and to provide information on any development in this regard. The Committee also requests the Government to provide information on the manner in which adequate protection against discrimination on the grounds of national extraction, social origin and political opinion is ensured in practice, including information on any case examined by the labour inspectorate or administrative bodies or the courts indicating sanctions imposed and remedies provided. Noting that Legislative Decree No. 48 of 2010 regarding the civil service does not include a prohibition of discrimination, the Committee requests the Government to take the necessary measures to ensure that public officials enjoy adequate protection in practice against direct and indirect discrimination in employment and occupation with respect to all grounds provided for in the Convention. In this regard, the Committee encourages the Government to consider including specific provisions in Legislative Decree No. 48 providing for comprehensive protection against discrimination in the civil service.***

Sexual harassment. The Committee recalls that it had referred to the need to define and prohibit, expressly, sexual harassment in employment and occupation encompassing both quid pro quo and hostile environment harassment. The Committee notes that the Government refers once again to the Penal Code No. 15 of 1976 which penalizes sexual harassment in the workplace, and to the possibility of submitting complaints of discrimination to the Ministry of Labour. The Government further indicates that it will examine the efficiency of the Penal Code when it will update the Labour Law in the Private Sector in the future. ***Recalling that sexual harassment is a serious manifestation of sex discrimination and a violation of human rights, and that addressing sexual harassment through criminal proceedings is not sufficient due to the sensitivity of the issue, the higher burden of proof, and the limited range of behaviours addressed, the Committee once again urges the Government to take steps to prohibit in the civil or labour law both quid pro quo and hostile environment sexual harassment and to provide remedies and dissuasive sanctions. It also asks the Government to take practical measures to prevent and address sexual harassment in employment and occupation, and to provide detailed information in this regard. The Committee reminds the Government that it can avail itself of the technical assistance of the Office in this respect.***

Article 3(c). Migrant workers. The Committee recalls that the Labour Law on the Private Sector excludes "domestic servants and persons

regarded as such, including agricultural workers, security house-guards, nannies, drivers and cooks" which are, in their great majority, migrant workers, from the coverage of the non-discrimination provisions. The Committee also recalls that it has been raising concerns regarding the particular vulnerability of migrant workers to discrimination, in particular migrant domestic workers. In its previous comments, the Committee referred to sections 2 and 5 of Ministerial Order No. 79 of 16 April 2009 which give migrant workers the right to change employers subject to approval by the Labour Market Regulatory Authority, but noted the Government's indication that the employer generally had the right to include in the employment contract a requirement limiting the approval of a transfer to another employer for a specified period, which the Committee considered as undermining the objective of Ministerial Order No. 79 of 2009. In this regard, the Committee notes the Government's indication that under section 25 of Law No. 19 of 2006 on the Labour Market Regulatory Authority and Ministerial Order No. 79 of 2009, foreign workers may transfer to another employer without the agreement of the current employer. The Government further indicates that, of the requests accepted by the Labour Market Regulatory Authority between the years 2013 and 2014 (which is 84 per cent of the total number of submissions), 43.5 per cent had the approval of the employer, 1 per cent did not have such approval, and the rest (55.5 per cent) were submitted after the termination or expiration of the previous employment relationship. The Committee also notes the Government's indication that the rejections to transfer requests were usually due to errors in the application such as insufficient documentation and that the employers do not have the right to deprive migrant workers from their rights concerning the freedom of transfer from one employer to another. The Committee further notes the various protective measures available to migrant workers, such as individual complaint mechanisms at the Ministry of Labour, the right of migrant workers to advance their claims to the court directly with an exemption of litigation fees, and their right to communicate with direct contact centres at the Labour Market Regulatory Authority to have their work permit status reviewed. It notes the Government's general indication of the existence of awareness-raising measures to inform workers of their rights and duties, as well as the stated aim of the labour inspectorate to detect practices of exploitation of migrant workers in the labour market by employers who have not obtained the necessary permits. ***The Committee requests the Government to provide information on the specific measures adopted to ensure effective protection of all migrant workers, including migrant domestic workers, against discrimination based on the grounds set out in the Convention, including access to appropriate procedures and remedies. The Committee further requests the Government to ensure that any rules adopted to regulate the right of migrant workers to change employers do not impose conditions or limitations that could increase the dependency of migrant workers on their employers, and thus increase their vulnerability to abuse and discriminatory practices. The Committee requests the Government to continue to provide information on: (i) the nature and number of requests received by the Labour Market Regulatory Authority for a transfer of employer without the employer's approval, disaggregated by sex, occupation and country of origin, and on how many were refused and on what basis; and (ii) the specific measures taken or envisaged to raise the awareness of both migrant workers and their employers of existing mechanisms to advance their claims to relevant authorities, as well as information on the number and nature of claims submitted regarding this matter.***

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

Sudan

(Ratification: 1970)

The Committee notes the observations of the Sudanese Businessmen and Employers Federation (SBEF), communicated together with the Government's report.

Articles 1 and 2 of the Convention. Formulation of an employment policy and coordination with poverty reduction. In its previous comments, the Committee invited the Government to provide information on the progress made towards the formulation of an active employment policy, as required by the Convention. The Government indicates in its report that a Labour Force Survey was carried out in 2011 in order to prepare indicators to assist in the formulation of an employment policy. In 2013, a roadmap and seven concept papers were prepared by international experts on a range of topics, including: the creation of job opportunities through small project development; the formulation of a vocational training policy; the social economy; social protection; social dialogue and the dynamics of the labour market; and the informal economy. The roadmap and concept papers were discussed in workshops and at a high-level round table which issued recommendations on the formulation of an employment policy. The Government indicates that a high-level advisory committee, composed of experts and the social partners, was set up in 2014 to formulate an employment policy. The high-level advisory committee has formulated the principal guidelines to be contained in the employment policy. With respect to plans and programmes designed to promote full, productive and freely chosen employment, the Committee notes the information provided by the Government concerning the impact of measures implemented during the reporting period, including the impact of employment measures taken within the National Project for Rural Women Development, as well as various training measures targeting youth. The Committee also notes that a Coordinating Unit for Intensive Employment has been established within the Ministry of Labour and Administrative Reform that will focus on creating sustainable jobs for youth. The Government indicates that a five-year Economic Reform Programme (ERP) 2015–19 was approved, which aims to benefit from value-added results in manufacturing and agricultural industrialization, while focusing on the need to increase the competitiveness of national goods. In its observations, the SBEF refers to the importance of the ERP 2015–19, which includes concrete quantitative goals and indicators, including in relation to the diverse resources available in the country and increasing the competitiveness of national goods. The ERP's objectives include the creation of 1 million jobs in manufacturing industries. The SBEF adds that there is a need for broad government reform so as to promote interest in the real economy, reform the public service and combat corruption. The SBEF is of the view that these are all serious issues that must be addressed to provide jobs, combat poverty and expand productive work. ***The Committee requests the Government to provide further information on the formulation and implementation of an active employment policy, as required by the Convention, and on the implementation of the Economic Reform Programme 2015–19. Please also provide a copy of the text of the national employment policy, once it is adopted. The Committee also requests the Government to continue to provide information on the employment measures taken to promote full, productive and freely chosen employment, and on their results.***

Article 2. Collection and use of labour market data. The Government indicates that data collected through the Labour Force Survey were used in the formulation of the ERP 2015–19. The Committee notes from the data provided that the unemployment rate was 18.5 per cent in 2011, with 16 per cent unemployment in rural areas compared to 22.9 per cent unemployment in urban areas. It further notes the statistical data provided, disaggregated by sex, employment status and by urban and rural areas. ***The Committee requests the Government to continue to provide updated statistical data, disaggregated as much as possible, on the situation and trends of employment, unemployment and underemployment, in both the formal and informal economies.***

Article 3. Consultation with the social partners. The Committee welcomes the information provided by the Government on the establishment of a National Advisory Committee for Labour Standards, composed of representatives of the social partners and of other relevant bodies. The Government indicates that the social partners are seeking to update the National Jobs Charter in order to take new parameters into account and improve implementation of the Charter, so as to maintain existing jobs and create new ones. The social partners are also working with the Government to implement the Paid Training Programme which aims to train approximately 400,000 graduates in all sectors of economic activity. Moreover, efforts are being made to regulate the conditions of workers employed in the informal economy. ***The Committee requests that the Government provide detailed information on the consultations held with the social partners, including within the National Advisory Committee for Labour Standards, on the formulation and implementation of an active employment policy. Please also include information on the consultations held with the representatives of the persons affected by the employment measures to be taken, such as those working in rural areas and in the informal economy.***

Venezuela, Bolivarian Republic of

(Ratification: 1982)

The Committee notes the observations of the Independent Trade Union Alliance (ASI) on the application of the Convention, received on 22 August 2016, the observations of the International Organisation of Employers (IOE) and the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS), received on 30 August 2016, and the observations of the National Union of Workers of Venezuela (UNETE), the Confederation of Workers of Venezuela (CTV), the General Confederation of Labour (CGT) and the Confederation of Autonomous Trade Unions (CODESA), received on 8 and 12 September 2016 and on 12 October 2016. ***The Committee requests the Government to provide its comments on the above observations.***

Follow-up to the conclusions of the Committee on the Application of Standards (International Labour Conference, 105th Session, May–June 2016)

The Committee notes the discussion on the application of the Convention that took place in the Conference Committee on the Application of Standards in June 2016. It notes that in its conclusions, the Conference Committee deplored the social and economic crisis affecting the country and the absence of an active employment policy designed to promote full, productive and freely chosen employment. The Conference

Committee likewise deplored the absence of social dialogue with the most representative organizations of workers and employers with a view to applying an active employment policy. Taking note of the information provided by the Government representative and the discussion that followed, the Conference Committee urged the Government to: with the assistance of the ILO, develop, without delay, in consultation with the most representative workers' and employers' organizations, an employment policy designed to promote full, productive and freely chosen employment; implement, without delay, concrete measures to put in practice an employment policy with a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and underemployment; establish without delay a structured body for tripartite social dialogue in the country and take immediate action to build a climate of trust based on respect for employers' and workers' organizations with a view to promoting solid and stable industrial relations; implement all commitments made in the session of the Governing Body, March 2016, to follow the plan of action for consultation with social partners that includes stages and specific time frames for its implementation; and report in detail to the Committee of Experts on the application in law and practice of Convention No. 122. The Conference Committee concluded with the statement that the Government should accept an ILO tripartite high-level mission before the next Session of the International Labour Conference in order to assess progress towards compliance with these conclusions. ***The Committee notes with regret that the Government has not responded to the recommendation of the Conference Committee that it should accept an ILO tripartite high-level mission in order to assess progress towards compliance with that committee's conclusions before the June 2017 Session of the International Labour Conference, and hopes that the Government will shortly implement that recommendation.***

Articles 1 and 2 of the Convention. Implementation of the employment policy in the framework of a coordinated economic and social policy. Measures to respond to the economic crisis. The Committee notes that in the course of the discussions in June 2016 on the case concerning the Bolivarian Republic of Venezuela before the Conference Committee on the Application of Standards, a Government representative referred to the report submitted in 2015 indicating that the country has a sustained employment policy, namely the Economic and Social Development Plan 2007–13. In that report, reference is made to the Second Socialist Plan for the Economic and Social Development of the Nation, 2013–19, which, according to the Government constitutes a strategic roadmap for the transition towards Bolivarian socialism in the twenty-first century. The Committee notes the information supplied by the Government on the increases in the basic monthly minimum wage and the various decrees on labour immunity implemented since July 2002. The Government indicates that in order to secure a return to growth and reinvigorate the national economy, it has put in place six strategic measures known as the "Bolivarian economic agenda", which includes an enhanced plan to protect employment, wages and pensions. The ASI, for its part, states that the Bolivarian Republic of Venezuela has no employment policy. The IOE and FEDECAMARAS assert that the macroeconomic planning for the country includes no coordinated policy for the joint implementation of employment plans. They indicate that the absence of any coherent employment policy is responsible for an enormous rise in the poverty index, from 53 per cent in 2014 to 76 per cent in 2015. They add that the increase has been even more marked in the extreme poverty index, which rose from 25 per cent in 2014 to 53 per cent in 2015. The employers' organizations further observe that the Bolivarian Republic of Venezuela currently has the highest inflation in the world, with a monthly rate for July 2016 of 23.2 per cent and a cumulative rate by July 2016 of 240 per cent, and with a rate for the year from July 2015 to July 2016 amounting to 565 per cent, which has demolished the purchasing power of Venezuelan workers. A great many production plants are out of operation for lack of raw materials and production is seriously hampered. The trade union organizations UNETE, CTV, CGT and CODESA report that the Government provides no information on the situation, level and trends in employment and that there are no labour market data that could serve as a basis for regular review of the employment policy measures adopted within the framework of a coordinated economic and social policy; nor is there any information on the measures, and their results, adopted in the framework of the Economic and Social Development Plan for 2007–13. The abovementioned organizations further indicate that the Government hides information on trends in youth employment and that there are no measures or policies to promote the lasting integration of young people in the labour market. ***The Committee requests the Government to provide information on the concrete measures taken to develop and adopt an active employment policy designed to promote full, productive and freely chosen employment that fully complies with the Convention, and on the consultations held with the social partners to this end.***

Labour market trends. In its report, the Government states that the economy grew between 2010 and 2015 and that women's participation increased by 9.2 per cent. It indicates that in the second half of 2015, the Bolivarian Republic of Venezuela had an activity rate of 63.4 per cent for an active population of 14,136,349 persons aged 15 years and over, which represents a drop of 1.2 per cent over 2014. The male activity rate was 77.7 per cent as compared to a rate of 49.3 per cent for women in the second half of 2015. It indicates that women's inactivity rate rose by 7.1 per cent in 2014–15. The Government reports a significant drop in the unemployment rate from 8.5 per cent in 2010 to 6.7 per cent in 2015, and indicates that at the close of 2015 the country had a 92.6 per cent employment rate. In its observations, the ASI indicates that employment statistics do not cover underemployment or precarious employment, and asserts that open unemployment, when added to the number of the employed who work 15 hours or less, points to a labour market deficit in the country amounting to 11 per cent. The ASI further reports that in the last 15 years, the figures for unemployment have been the highest ever recorded. Furthermore, average incomes, regardless of occupational category, border on the minimum wage, which reflects the lack of any wage policy linked to productivity levels. It reports that in 2014, households living in poverty reached 48.4 per cent. According to the IOE and FEDECAMARAS, the lack of social dialogue in the country has adversely affected employment levels, and the activity rate in April 2016 is lower than those recorded in 2014 and 2015, and the corresponding inactivity rate is higher. They report a drop in the percentage of workers employed in the formal sector, but also a reduction in the percentage of workers in the informal economy, which they attribute to a fall in the number of employers caused by the negative effects of the economic and employment generating policies that the Government developed without consultation. ***The Committee requests the Government to continue to provide detailed information, including up-to-date statistics, on labour market trends in the country. Please also provide information on the impact of the measures taken to give effect to the Convention.***

Transitional labour regime. The Committee takes note of Resolution No. 9855 of 22 July 2016, adopted under the State of Exception and Economic Emergency declared by the Government, which establishes a transitional labour regime that is compulsory and strategic for the revival of the agro-food sector, and which provides for workers in public and private enterprises to be placed in other enterprises in the sector except in the enterprise that generated the original employment relationship. The IOE and FEDECAMARAS indicate that the Ministerial Resolution provides for the temporary placement of workers in enterprises in the sector, known as requesting enterprises, to which the Government has applied some special measure in order to boost the agro-food industry. Under the Resolution, requesting enterprises may

apply to receive a certain number of workers from public or private enterprises. The employers' organizations indicate that it is not the worker but the requesting enterprise (owned by the State) that determines the transfer of the worker to another enterprise, and assert that this is contrary to the principle of the Convention which requires member States to develop, in coordination with the social partners, an active policy designed to promote full, freely chosen employment. They further indicate that some Government representatives have said that there is an error in the Resolution which will be corrected shortly so as to make it clear that the Resolution applies only on a voluntary basis; however, to date there has been no amendment and the Resolution remains mandatory. The IOE and FEDECAMARAS allege that because of the Resolution staff costs have doubled in enterprises that generated labour relationships. ***The Committee requests the Government to indicate how the principle laid down in the Convention requiring the promotion of full, productive and freely chosen employment is applied under the transitional labour regime established by Resolution No. 9855.***

Youth employment. The Government reports that in 2015, the number of unemployed young persons stood at 304,933, which means that young people accounted for 32.3 per cent of all the unemployed in the country. The Government also provides information showing that the rate of unemployment among workers between 15 and 24 years of age is virtually double the national unemployment average. In 2015, while the national unemployment rate stood at 6.7 per cent, the rate for young people reached 14.7 per cent. The Government refers to the Act for Productive Youth, No. 1.392 of 13 November 2014, which aims to promote entry into the job market for young people and enshrines their right to decent work (section 6). The Government also reports that responsibility for implementing the policy on vocational training and training for work lies with the National Institute for Socialist Training and Education (INCES), which was created, inter alia, to promote vocational training for men and women workers, including training and apprenticeships for young people. The Committee notes the information provided by the Government on the courses and workshops offered by the INCES. In June 2016, a Government representative informed the Committee on the Application of Standards that the INCES would train 50,000 young people in various occupational fields and that under the "Knowledge and Work" mission, over 1 million persons had been integrated into the economic and productive system. According to the Government's report, young people between 15 and 30 years of age account for 35.5 per cent of the country's total population and 51.1 per cent of the unemployed. Furthermore, women have a lower participation rate than men: out of every ten young people in employment, seven are men and three are women. ***The Committee requests the Government to continue to provide detailed information, disaggregated by sex, on trends in youth employment. It also reiterates its request to the Government to provide an evaluation, in consultation with the social partners, of the active employment policy measures implemented to reduce youth unemployment and facilitate the entry of young persons into the labour market, particularly for the most disadvantaged young persons.***

Development of small and medium-sized enterprises (SMEs). The Committee notes that the Government's report contains no reply to its request. ***Consequently, the Committee once again requests the Government to provide information on the measures taken to encourage the creation of SMEs and promote their productivity, and to create a climate conducive to the generation of employment in such enterprises.***

Article 3. Participation of the social partners. In June 2016, a Government representative indicated that in early 2016 the National Council for Productive Economy (CNEP) was created as a forum for tripartite dialogue which deals with the development of strategic economic areas in the country and which has held more than 300 meetings. The Committee notes the observations of the IOE and FEDECAMARAS, indicating that the Government is still in default of its obligation to consult the representatives of employers' and workers' organizations in developing the employment policy, and reporting that FEDECAMARAS, despite its representativeness (a membership of some 300 Chambers), has not been consulted by the Government for 17 years on the formulation or coordination of the employment policy. The employers' organizations further assert that the Government has not met the commitment it made to the ILO Governing Body in March 2016 to implement a plan of action that includes establishing a forum for dialogue and a time frame for meetings with FEDECAMARAS and trade union organizations of independent workers. FEDECAMARAS also indicates that the National Council for Productive Economy appointed by the President in January 2016 has not been convened. The workers' federations UNETE, CTV, CGT and CODESA state that workers' organizations are not consulted about the development of employment policies and that the Government has not taken into account the views of employers' and workers' organizations in formulating and implementing employment policies and programmes. The Committee refers the Government to its General Survey of 2010 concerning employment instruments, in which it emphasizes that social dialogue is essential in normal times and becomes even more so in times of crisis. The employment instruments require member States to promote and engage in genuine tripartite consultations (General Survey on employment instruments, 2010, paragraph 794). ***The Committee again reiterates its request to the Government to provide information that includes specific examples of how account has been taken of the views of employers' and workers' organizations in the formulation and implementation of employment policies and programmes. The Committee takes note of the information provided by the Government in relation to the National Council for the Productive Economy supplied during the discussion held in the Governing Body in November 2016, and requests the Government to provide information on the council's activities that concern the issues covered by the Convention.***

C135 - Workers' Representatives Convention, 1971 (No. 135)

Turkey

(Ratification: 1993)

The Committee notes the observations on the application of the Convention by the Turkish Confederation of Employers' Associations (TİSK), the Confederation of Turkish Trade Unions (TÜRK-İŞ) and the Confederation of Public Employees Trade Unions (KESK) received in January 2016 and transmitted with the Government's report. The Committee notes the numerous allegations of violations of the Convention in practice submitted by the KESK, which refer, in particular, to the cases of dismissal, transfers and disciplinary measures, as well as denial of facilities to worker representatives and ***regrets*** the absence of any reply thereon in the Government's report. ***The Committee requests the Government to provide its comments on the observations made by TÜRK-İŞ and KESK.***

C138 - Minimum Age Convention, 1973 (No. 138)

Zambia

(Ratification: 1976)

Article 2(3) of the Convention. Age of completion of compulsory schooling. The Committee had previously noted that the Education Act of 2011 neither defined the school going age nor indicated the age of completion of compulsory schooling. It had further noted that according to section 34 of the Education Act of 2011, the Minister may, by statutory instrument, make regulations to provide for the basic school going age and age for compulsory attendance at educational institutions.

The Committee notes the Government's indication in its report that the Education Act and Education Policy are undergoing revision. ***The Committee expresses the firm hope that the Government will take the necessary measures to ensure that the revision of the Education Act will define the basic school going age and the age of completion of compulsory schooling of 15 years, so as to link it with the minimum age for employment for Zambia. It expresses the hope that the revised Education Act will be adopted in the near future. The Committee requests that the Government provide information on any progress made in this regard.***

Article 3(2). Determination of hazardous work. The Committee previously noted that the draft statutory instrument on the list of hazardous work was in the process of being approved by the Minister of Justice.

The Committee notes with ***satisfaction*** that the Statutory Instrument No. 121 of 2013 on the prohibition of employment of young persons and children (hazardous labour) has been adopted and that it prohibits the employment of children and young persons under the age of 18 years in hazardous work. Section 3(2) of the Statutory Instrument contains a list of 31 types of hazardous work prohibited to children and young persons, including: animal herding; block or brick making; charcoal burning; explosives; exposure to dust, high levels of noise, asbestos and silica dust, high voltage, lead, toxic chemicals and gases; spraying of pesticides or herbicides; exposure to waterborne diseases and infections; exposure to physical or sexual abuse; excavation/drilling; welding; stone crushing; work underground and underwater; work at heights; fishing; handling tobacco and cotton; lifting heavy loads; operating dangerous machinery or tools; long working hours; night work; and selling or serving in bars. ***The Committee requests that the Government provide information on the application in practice of Statutory Instrument No. 121 of 2013, including statistics on the number and nature of violations reported and penalties imposed.***

Labour inspectorate and application of the Convention in practice. The Committee previously noted that according to the joint ILO–IPEC, UNICEF and World Bank report on Understanding Children's Work (UCW) in Zambia of 2012, although there has been a substantial reduction in the incidence of child labour, over one third of children aged 7–14 years, some 950,000 children were working, of which nearly 92 per cent worked in the agricultural sector.

The Committee notes the Government's information in its report that a number of provinces have active programmes against child labour, such as sensitization of parents, farmers and employers on child labour and hazardous work. The District Child Labour Committees (DCLC) in the Kaoma and Nkeyama districts in the Western Province, in collaboration with Japan Tobacco International (JTI) and Winrock International, are progressively bringing an end to child labour in tobacco growing communities by focusing on education. The Government also indicates that according to the 2015 annual review of the Achieving Reduction of Child Labour in Support of Education project (ARISE), a joint initiative of the ILO, JTI and Winrock International developed with the involvement of national governments, social partners, and tobacco growing communities, about 5,322 children have been withdrawn from child labour and placed in schools; 11,570 community members and teachers were educated about child labour, while 797 households improved their income to take care of their children. The Committee also notes the Government's indication, in its report under the Worst Forms of Child Labour Convention, 1999 (No. 182) that an Inter ministerial National Steering Committee on Child Labour has been established to coordinate various interventions relating to child labour and that more labour officers have been hired in various districts to boost the inspectorate and enhance the enforcement of labour laws. Accordingly, following the inspections carried out by the labour inspectors, it has been identified that hazardous child labour exists in small-scale mining, agriculture, domestic work, and trading sectors, generally in the informal economy. The Committee further notes from the Government's report that according to the findings of the Child Labour Report of 2012, an estimated 1,215,301 children were in child labour, registering an increase from 825,246 children in 2005. The Committee notes with ***concern*** that a large number of children are engaged in child labour, including in hazardous work in the country. ***While taking note of the measures taken by the Government, the Committee urges the Government to strengthen its efforts to ensure that, in practice, children under the minimum age of 15 years are not engaged in child labour. In this regard, the Committee requests that the Government strengthen the activities of the District Child Labour Committees to reduce child labour as well as to strengthen the capacity and expand the reach of the labour inspectorate in monitoring the situation of child labour, especially in the informal economy. It requests that the Government continue to provide information on the measures taken in this regard and on the results achieved.***

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

C144 - Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

El Salvador

(Ratification: 1995)

The Committee notes the observations of the National Business Association (ANEP), received on 4 September 2016 and endorsed by the International Organisation of Employers (IOE).

Article 2 of the Convention. Adequate procedures. Effective tripartite consultations. The Government reiterates the information provided in its 2015 report on the measures taken to ensure that the tripartite consultations required by the Convention are actually conducted. Documents are sent to all the confederations and federations that are active at the time of the consultation, the representatives of employers' organizations who are members of the Higher Labour Council, and the government representatives concerned by the subject under consultation. The Committee recalls that in order to be "effective", consultations must be conducted before a decision is taken, irrespective of the nature or form of the procedures followed; moreover, the representatives of employers and workers must have before them sufficiently in advance all the elements necessary to form an opinion. The Committee further recalls that consultation through written communications should be undertaken only "where those involved in the consultative procedures are agreed that such communications are appropriate and sufficient" (see 2000 General Survey on tripartite consultations, paragraph 71). ***The Committee hopes that the circumstances which have been hindering the operation of the Higher Labour Council for three years will be resolved rapidly. The Committee requests the Government to describe in detail the measures taken, while awaiting the reactivation of the Higher Labour Council, to ensure that the consultations held are effective.***

Article 3(1). Election of representatives of the social partners to the Higher Labour Council. ANEP expresses its concern at the lack of will on the part of the Government to give effect to the Committee's recommendations. It indicates that the Higher Labour Council has not met for over three years, and that there is no sign of any action being taken by the Government for its reactivation. The Government indicates that, as part of its efforts to overcome the impasse resulting from the failure to designate workers' representatives on the Higher Labour Council, and further to the conclusions adopted by the Conference Committee on the Application of Standards in June 2015 on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), it accepted ILO technical assistance. The assistance provided included a mediation process carried out from 1 to 3 February 2016 by an external consultant. In accordance with the mediator's recommendations, in early April the Government initiated a dialogue process, as suggested. As there is no mechanism for determining the representative nature of trade unions, the Government asked the organizations concerned to form a transitional committee to review the rules of procedure of the Higher Labour Council relating to the designation of members from workers' organizations. Some trade unions rejected the proposed solution, indicating that the rules of procedure could only be reviewed in the Higher Labour Council. The Government informed the employers' organizations represented on the Higher Labour Council of the outcome of its efforts. The Committee notes the information provided by the Government concerning the 2016 decision of the Constitutional Chamber of the Supreme Court of Justice in *amparo* appeal No. 951-2013. In that case, the Court set aside the appeal, concluding that the Minister's actions in exhorting the trade unions to put forward a single list of representatives to the Council did not violate the right to freedom of association, and was therefore not unconstitutional. The Court observed that the Ministry of Labour was nevertheless under the statutory obligation to implement and support social partnership and tripartite participation in dealing with situations that posed an obstacle to the functioning of the Higher Labour Council. ***The Committee refers to its comment on Convention No. 87 and reiterates its call for the Government and employers' and workers' organizations to endeavour to promote and reinforce tripartism and social dialogue so as to ensure the operation of the Higher Labour Council. The Committee requests the Government to report any developments in this regard.***

Article 5(1)(b). Tripartite consultations on the submission to the Legislative Assembly of the instruments adopted by the International Labour Conference. In response to the Committee's request for information regarding the tripartite consultations held on the submission of instruments, the Government refers to a meeting held on 7 July 2016 and a workshop on 31 October 2016, in which the scope of the obligation concerned, and the list of instruments pending submission to the Legislative Assembly, were discussed. The Government adds that it plans to: validate the procedure with representatives of the competent institutions in order to examine the possibility of regulating the process; prioritize the instruments to be submitted as soon as possible; continue awareness-raising activities; and submit a report to the ILO describing the progress achieved. ***The Committee hopes that the Government will soon be in a position to report on the results of the tripartite consultations held on the proposals to be submitted to the Legislative Assembly with regard to the submission of the 58 instruments adopted by the Conference between 1976 and 2015.***

[The Government is asked to supply full particulars to the Conference at its 106th Session and to reply in full to the present comments in 2017.]

C182 - Worst Forms of Child Labour Convention, 1999 (No. 182)

Afghanistan

(Ratification: 2010)

Articles 3(a) and 7(2)(b) of the Convention. All forms of slavery or practices similar to slavery and effective and time-bound measures. Compulsory recruitment of children for use in armed conflict and providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. The Committee notes the Government's information that the Law on prohibiting the recruitment of child soldiers which came into force in 2014, criminalizes the recruitment of children under the age of 18 years into the Afghan Security Forces.

The Committee also notes that according to the report of 20 April 2016 of the United Nations Secretary-General on children and armed conflict (A/70/836-S/2016/360) (Report of the Secretary-General), a total of 116 cases of recruitment and use of children, including one girl, were documented in 2015. Out of these, 13 cases were attributed to the Afghan National Defence and Security forces; five to the Afghan National Police; five to the Afghan Local Police; and three to the Afghan National Army; while the majority of verified cases were attributed to the Taliban and other armed groups who used children for combat and suicide attacks. The United Nations verified, 1,306 incidents resulting in 2,829 child casualties (733 killed and 2,096 injured), an average of 53 children were killed or injured every week. A total of 92 children were abducted in 2015 in 23 incidents.

In this regard, the Committee notes the information contained in the *Children Not Soldiers – Afghanistan Factsheet* of May 2016 from the Office of the Special Representative of the Secretary-General for Children and Armed Conflict regarding the following measures taken by the Government:

·-The Government of Afghanistan signed an Action Plan with the United Nations on 30 January 2011 to end and prevent the recruitment and use of children by the Afghan National Security Forces, including the Afghan National Police, Afghan Local Police and Afghan National Army.

·-A roadmap to accelerate the implementation of the Action Plan was endorsed by the Government on 1 August 2014.

·-The Government endorsed age assessment guidelines to prevent the recruitment of minors.

·-In 2015 and early 2016, three additional child protection units were established in Mazar e Sharif, Jalalabad and Kabul, bringing the total to seven. These units are embedded in Afghan National Police recruitment centres and are credited with preventing the recruitment of hundreds of children.

The Committee notes that in February 2016, the Special Representative who visited Afghanistan commended the strong commitment of the Government and the important progress made to end and prevent the recruitment and use of children by the Afghan National Defence and Security Forces (A/70/836-S/2016/360, paragraphs 31 and 32). However, the UN Security Council's Working Group on Children and Armed Conflict, in its conclusions of 11 May 2016 on children and armed conflict in Afghanistan, expressed grave concern over the deteriorating situation of children affected by the conflict, particularly the significant increase in child casualties, the continuing recruitment and use of children in violation of applicable international law, as well as attacks on schools and hospitals, particularly affecting girls' education, by all parties to the conflict (S/AC.51/2016/1, paragraph 4). The Committee expresses its ***deep concern*** at the situation and the number of children involved in armed conflict. ***While acknowledging the difficult situation prevailing in the country, the Committee urges the Government to take immediate and effective measures to put a stop, in practice, to the recruitment of children under 18 years by armed groups and the armed forces as well as measures to ensure the demobilization of children involved in armed conflict. It also urges the Government to take immediate and effective measures to ensure that thorough investigations and robust prosecutions of persons who forcibly recruit children under 18 years of age for use in armed conflict are carried out and that sufficiently effective and dissuasive penalties are imposed in practice. It requests the Government to take effective and time-bound measures to remove children from armed groups and forces and ensure their rehabilitation and social integration. It finally requests the Government to provide information on the measures taken in this regard and on the results achieved.***

Articles 3(b) and 7(2)(b). Use, procuring or offering of children for prostitution and providing the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. The Committee notes from the Report of the Secretary-General on Children and Armed Conflict that concerns remain regarding the cultural practice of *bacha-bazi* (dancing boys), which involves the sexual exploitation of boys by men in power, including the Afghan National Defence and Security Forces' commanders (paragraph 25). It also notes from the UNICEF document of 2015 that according to the 2014 Afghanistan Independent Human Rights Commission's inquiry on *bacha-bazi,* there are many child victims of *bacha bazi,* particularly boys between 10 and 18 years of age who have been sexually exploited for long periods of time. The Committee further notes that the Committee on the Rights of the Child, in its concluding observations of April 2011, expressed deep concern that some families knowingly sell their children into forced prostitution, including for *bacha-bazi* (CRC/C/AFG/CO/1, paragraph 72). ***Noting with deep concern the use of children, particularly boys, for prostitution, the Committee urges the Government to take effective and time bound measures to eliminate the practice of bacha-bazi and to remove children from this worst forms of child labour and to provide assistance for their rehabilitation and social integration. It requests the Government to provide information on the measures taken in this regard and on the results achieved.***

Article 7(2). Clauses (a) and (e). Preventing the engagement of children in the worst forms of child labour and taking account of the special situation of girls. Access to free basic education. The Committee notes the Government's statement in its report that as a result of the past three decades of conflict, insecurity and drought, children and youth are the most affected victims, a majority of whom are deprived of proper education and training. The Committee notes from the UNICEF document of 2015 that Afghanistan is among the poorest performers in providing sufficient education to its population. A large number of boys and girls in 16 out of 34 provinces had no access to schools by 2013 due to insurgents' attacks and threats that lead to closure of schools. The United Nations report of 2016 entitled "Education and Health Care at Risk" further states that in addition to barriers arising from insecurity throughout 2015, anti-government elements deliberately restricted the

access of girls to education, including closure of girls' schools and ban on girls' education. More than 369 schools were closed partially or completely, affecting at least 139,048 students, and more than 35 schools were used for military purposes in 2015. The Committee finally notes that the Committee on the Elimination of Discrimination against Women (CEDAW), in its concluding observations of 30 July 2013, expressed concern at the low enrolment rate of girls, in particular at the secondary school level, and high dropout rates especially in rural areas owing to a lack of security to and from school. The CEDAW also expressed deep concern at the increased number of attacks on girls' schools and written threats warning girls to stop going to school by non-State armed groups (CEDAW/C/AFG/CO/1-2, paragraph 32). ***Recalling that education contributes to preventing the engagement of children in the worst forms of child labour, the Committee urges the Government to take the necessary measures to improve the functioning of the education system and to ensure access to free basic education, including by taking measures to increase the school enrolment and completion rates, both at the primary and secondary levels, particularly of girls.***

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

Democratic Republic of the Congo

(Ratification: 2001)

The Committee notes with ***concern*** that the Government's report has not been received. It is therefore bound to repeat its previous comments.

Article 3 of the Convention. Worst forms of child labour. Clause (a). All forms of slavery or similar practices. Forced recruitment of children for use in armed conflict. In its previous comments the Committee noted that section 187 of Act No. 09/001 of 10 January 2009 establishes a penalty of penal servitude of ten to 20 years for the enrolment or use of children under 18 years of age in the armed forces and groups and the police. The Committee noted that, according to the report of 9 July 2010 of the United Nations Secretary-General on children and armed conflict in the Democratic Republic of the Congo (S/2010/369, paragraphs 17–41), 1,593 cases of recruitment of children were reported between October 2008 and December 2009, including 1,235 in 2009. The report of the United Nations Secretary-General also indicated that 42 per cent of the total number of cases of recruitment reported have been attributed to the Armed Forces of the Democratic Republic of the Congo (FARDC). The Committee also noted with concern that, according to the Secretary-General's report, the number of incidents involving the killing and maiming of children had increased. In addition, a significant increase in the number of abductions of children was also observed over the period covered by the Secretary-General's report, mainly carried out by the Lords' Resistance Army (LRA) but in some cases by the FARDC. The Committee also observed that the Committee on the Rights of the Child (CRC), in its concluding observations of 10 February 2009 (CRC/C/COD/CO/2, paragraph 67), expressed grave concern that the State, through its armed forces, bears direct responsibility for violations of the rights of the child and that it had failed to protect children and prevent such violations.

The Committee notes the Government's indication that children under 18 years of age are not recruited into the armed forces of the Democratic Republic of the Congo. Nevertheless, the Committee notes that, according to the report of 23 April 2011 of the United Nations Secretary-General on children and armed conflict (A/65/820-S/2011/250, paragraph 27), many children continue to be recruited and remain associated with FARDC units, particularly within former units of the *Congrès national pour la défense du peuple* (CNDP) incorporated into the FARDC. The report also indicates that, of the 1,656 children in the armed forces or groups who escaped or were released in 2010, a large proportion had been recruited to the FARDC (21 per cent) (paragraph 37). Moreover, despite the drop in the number of cases of children recruited into armed forces and groups in 2010, the report points out that former CNDP elements continue to recruit or to threaten to recruit children under 18 years of age from schools in North Kivu (paragraph 85). The Committee also notes that no judicial action has been initiated against the suspected perpetrators of forced recruitment of children, some of whom remain in the command structure of the FARDC (paragraph 88).

Furthermore, physical and sexual violence committed against children by the FARDC, the Congolese National Police and various armed groups continued to be a source of serious concern in 2010. The Committee notes in particular that in 2010, of the 26 recorded cases of killing of children, 13 were attributed to the FARDC. In addition, seven cases of maiming of children and 67 cases of sexual violence against children are alleged to have been perpetrated by FARDC elements during the same period (paragraph 87).

The Committee observes that despite the adoption of Legislative Decree No. 066 of 9 June 2000, concerning the demobilization and reintegration of vulnerable groups present within the fighting forces, and of Act 09/001 of 10 January 2009, which prohibits and penalizes the enrolment and use of children under 18 years of age in armed forces and groups and the police (sections 71 and 187), children under 18 years of age continue to be recruited and forced to join the regular armed forces of the Democratic Republic of the Congo and armed groups. The Committee expresses deep concern at this situation, especially as the persistence of this worst form of child labour results in other violations of children's rights, such as murder and sexual violence. ***The Committee therefore urges the Government to take measures as a matter of urgency to ensure the full and immediate demobilization of all children in the ranks of the FARDC and to put a stop, in practice, to the forced recruitment of children under 18 years of age into armed groups. With reference to Security Council resolution 1998 of 12 July 2011, which recalls "the responsibilities of States to end impunity and to prosecute those responsible for genocide, crimes against humanity and other egregious crimes perpetrated against children", the Committee urges the Government to take immediate and effective measures to ensure that thorough investigations and robust prosecutions of any persons, including officers in the regular armed forces, who forcibly recruit children under 18 years of age for use in armed conflict, are carried out and that sufficiently effective and dissuasive penalties are imposed in practice, pursuant to Act No. 09/001 of 10 January 2009. It requests the Government to provide information on the number of investigations conducted, prosecutions brought and convictions handed down against such persons in its next report.***

Clauses (a) and (d). Forced or compulsory labour and hazardous work. Child labour in mines. In its previous comments the Committee noted the statement by the Confederation of Trade Unions of the Congo (CSC) that young persons under 18 years of age are employed in mineral quarries in the provinces of Katanga and East Kasai. It noted that the United Nations Special Rapporteur, in her report of April 2003 on the situation of human rights in the Democratic Republic of the Congo (E/CN.4/2003/43, paragraph 59), noted that military units are recruiting children for forced labour, especially for the extraction of natural resources. The Committee observed that, although the legislation

is in conformity with the Convention on this point, child labour in mines is a problem in practice and it, therefore, asked the Government to supply information on the measures which would be taken by the labour inspectorate to prohibit hazardous work by children in mines.

The Committee notes the Government's indication that action to strengthen the capacities of the labour inspectorate is planned in the context of the formulation and implementation of the National Plan of Action (PAN) for the elimination of child labour by 2020. The report also indicates that the Government has launched consultations with a view to gathering statistics on the application, in practice, of legislation relating to the prohibition on hazardous work in mines for children under 18 years of age. However, the Committee notes the UNICEF statistics included in the Government's report, which indicate that nearly 50,000 children are working in mines in the Democratic Republic of the Congo, including 20,000 in the province of Katanga (south-east), 12,000 in Ituri (north-east) and some 11,800 in Kasai (centre). Moreover, the Committee observes that, according to the information in the 2011 report on trafficking in persons, armed groups and the FARDC are recruiting men and children and subjecting them to forced labour for the extraction of minerals. According to the same document, the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) report of January 2011 reports that a commander of one of the FARDC battalions makes use of the forced labour of children in mines in North Kivu. The Committee expresses its deep concern at the allegations that children under 18 years of age are used, especially by certain elements of FARDC, for the extraction of minerals in conditions similar to slavery and in hazardous conditions. ***The Committee therefore urges the Government to take immediate and effective measures, as a matter of urgency, to eliminate the forced or hazardous labour of children under 18 years of age in mines. 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 penalties are imposed on them in practice. The Government is also requested to provide statistics on the application of the legislation in practice and also requests it to provide information on action to strengthen the capacities of the labour inspectorate planned in the context of the PAN.***

Article 7(2). Effective and time-bound measures. Clauses (a) and (b). Preventing the engagement of children in the worst forms of child labour, removing them from such work and ensuring their rehabilitation and social integration. Child soldiers. In its previous comments, the Committee noted that, according to the report of the United Nations Secretary-General of 9 July 2010, the number of children released in 2009 more than tripled in comparison with 2008, particularly in the province of North Kivu (S/2010/369, paragraphs 30 and 51–58). Between October 2008 and the end of 2009, a total of 3,180 children (3,004 boys and 176 girls) left the ranks of the armed forces and groups or fled and were admitted to reintegration programmes. However, the Committee noted with concern that on many occasions the FARDC denied access to the camps to child protection institutions seeking to verify the presence of children in FARDC units and that the commanders refused to release children. The Committee also observed that there were many obstacles to effective reintegration, such as the constant insecurity and the continuing presence of former recruiters in the same region. The Committee further noted that the CRC, in its concluding observations of 10 February 2009 (CRC/C/COD/CO/2, paragraph 72), expressed concern at the fact that no provision has been made to assist several thousand child victims recruited or used in hostilities with rehabilitation and reintegration and that some of these children have been re recruited for want of alternatives or assistance with demobilization. According to the report of the Secretary-General of 9 July 2010, girls associated with the armed forces and groups (around 15 per cent of the total number of children) rarely have access to reintegration programmes, with only 7 per cent receiving assistance through national disarmament, demobilization and reintegration programmes.

The Committee notes the information provided by the Government concerning the results achieved regarding the demobilization of child soldiers by the new structure of the Unit for the Implementation of the National Programme for Disarmament, Demobilization and Reintegration (UE-PNDDR). It observes that more than 30,000 children have been separated from the armed forces and groups since the launch of the programme in 2004, including nearly 3,000 in 2009 and 2010. Moreover, 6,704 children removed from the armed forces and groups (1,940 girls and 4,764 boys) received support in 2010. However, the Committee observes that, according to the report of 23 April 2011 of the United Nations Secretary-General on children and armed conflict, only 1,656 children recruited to the armed forces or groups escaped or were released in 2010 (A/65/820-S/2011/250, paragraph 37). Of these, the vast majority fled and only a small minority were released by child protection institutions (paragraph 38). The Committee also notes with regret that, according to the aforementioned report, the Government has not been forthcoming in engaging with the United Nations on an action plan to end the recruitment and use of children by the FARDC (paragraph 27). The Committee further observes that, although more than 50 screening attempts were carried out by MONUSCO aimed at demobilizing children under 18 years of age who had been recruited to the FARDC, only five children were demobilized owing to the fact that FARDC troops were not made available for screening by MONUSCO. The Committee also notes that a large number of children released in 2010 stated that they had been recruited several times (paragraph 27) and that some 80 children who had been reunited with their families returned to the transit centres alone in North Kivu during November 2010 for fear of being re-recruited (paragraph 85). ***The Committee therefore urges the Government to intensify its efforts and take effective, time-bound measures to remove children from armed groups and forces and ensure their rehabilitation and social integration, giving special attention to the demobilization of girls. It expresses the firm hope that the Government will adopt a time-bound plan of action in the very near future, in collaboration with MONUSCO, to put a stop to the recruitment of children under 18 years of age into the regular armed forces and to ensure their demobilization and reintegration. The Committee also requests the Government to continue to provide information on the number of child soldiers removed from armed forces and groups and reintegrated through appropriate assistance with rehabilitation and social integration. It requests the Government to provide information on this matter in its next report.***

Children working in mines. The Committee previously noted that a number of projects for the prevention of child labour in mines and the reintegration of these children through education were being implemented, aimed at covering a total of 12,000 children, of whom 4,000 were to be covered by prevention measures and 8,000 were to be removed from labour with a view to their reintegration through vocational training.

The Committee notes the Government's indication that efforts are being made to remove children working in mines from this worst form of child labour. The Government also indicates in its report that more than 13,000 children have been removed from three mining and quarrying locations in Katanga, East Kasai and Ituri as part of the work of the NGOs Save the Children and Solidarity Centre. These children were then placed in formal and non-formal education structures and also in apprenticeship programmes. However, the report also indicates that, in view of the persistence of the problem, much work remains to be done. ***The Committee therefore requests the Government to intensify its efforts to prevent children under 18 years of age from working in mines and to provide the necessary and appropriate direct assistance for their removal from these worst forms of child labour and to ensure their rehabilitation and social integration. It***

requests the Government to provide information on the measures taken or contemplated in the context of the PAN and on the results achieved.

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

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

Libya

(Ratification: 2000)

Articles 3(a) and 7(2)(b) of the Convention. All forms of slavery and practices similar to slavery and effective and time-bound measures. Compulsory recruitment of children for armed conflict and providing the necessary and appropriate direct assistance for their removal from the worst forms of child labour and for their rehabilitation and social integration. The Committee notes from the Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Libya of 12 January 2015 that Libya is facing the worst political crisis and escalation of violence since the 2011 armed conflict. This report documented tens of cases of children injured, killed or maimed as a result of violence, attacks and shelling on hospitals, schools and camps housing displaced persons. The Committee also notes from the Report on the Investigation by the Office of the United Nations High Commissioner for Human Rights on Libya (A/HRC/31/47 and A/HRC/31/CRP.3-detailed findings) of 15 February 2016 (Investigation Report by the OHCHR), that there is information on the forced recruitment and use of children in hostilities by armed groups pledging allegiance to the Islamic State in Iraq and Levant (ISIL). These children are forced to undergo religious and military training (including how to use and load guns and to aim and shoot at targets using live ammunition), and watch videos of beheadings, in addition to being sexually abused. Children are also reported to be used to detonate bombs. This Report, further referring to another report, indicates that the *Islamic State* in Sirte welcomed the graduation of 85 boys below the age of 16, describing them as the *"Khilapha Cubs"* who were trained in conducting suicide attacks. The Committee ***deeply deplores*** the current situation of children affected by armed conflict in Libya, especially as it entails other violations of the rights of the child, such as abductions, murders and sexual violence. It recalls that, under *Article 3(a)* of the Convention, the forced or compulsory recruitment of children under 18 years of age for use in armed conflict is considered to be one of the worst forms of child labour and that, under *Article 1* of the Convention, member States must take immediate and effective measures to secure the elimination of the worst forms of child labour as a matter of urgency. ***While acknowledging the complexity of the situation prevailing on the ground and the presence of armed groups and armed conflict in the country, the Committee strongly urges the Government to take measures as a matter of urgency to ensure the full and immediate demobilization of all children and to put a stop, in practice, to the forced recruitment of children under 18 years of age into armed groups. It also urges the Government to take immediate and effective measures to ensure that thorough investigations and robust prosecutions of all persons who forcibly recruit children under 18 years of age for use in armed conflict are carried out, and that sufficiently effective and dissuasive penalties are imposed in practice. It requests the Government to take effective and time bound measures to provide for their rehabilitation and social integration and to provide information on the measures taken in this regard and on the results achieved.***

Article 7(2). Effective and time-bound measures. Clause (a). Prevent the engagement of children in the worst forms of child labour. Access to free basic education. Following its previous comments, the Committee notes the Government's indication that education is mandatory and free at the primary and secondary level and that training is provided by the vocational training centres established in all parts of Libya. It notes, however, the Government's indication that the number of students who enrolled in the primary level decreased from 1,056,565 in 2009–10 to 952,636 in 2010–11. In this regard, the Committee notes from the Investigation Report by the OHCHR, that access to education in Libya has been significantly curtailed due to the armed conflict, particularly in the east (for example, the Office for the Coordination of Humanitarian Affairs estimated, in September 2015, that 73 per cent of all schools in Benghazi were not functioning). Schools have been either damaged, destroyed, occupied by internally displaced persons, converted into military or detention facilities, or are otherwise dangerous to reach. In addition, in many areas where schools remain open, parents refrain from sending their children to school for fear of injury from attacks, especially of girls being attacked, harassed or abducted by armed groups. Moreover, there are reports that in areas controlled by groups pledging allegiance to ISIL, girls are not allowed to attend school or are permitted only if wearing a full face veil. This report further indicates that children residing in camps for the internally displaced face particular challenges in their access to education. The Committee expresses its ***deep concern*** at the situation of children who are deprived of education because of the climate of insecurity prevailing in the country. ***While acknowledging the difficult situation prevailing in the country, the Committee urges the Government to take effective and time-bound measures to improve the functioning of the education system in the country and to facilitate access to free basic education for all children, particularly girls, children in areas affected by armed conflict, and internally displaced children. It requests the Government to provide information on concrete measures taken in this regard and the results achieved.***

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

REPORT OF THE COMMITTEE ON THE APPLICATION OF STANDARDS

OBSERVATIONS AND INFORMATION CONCERNING PARTICULAR COUNTRIES

International Labour Conference

Record of Proceedings

106th Session, Geneva, May–June 2017

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PART TWO

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

Report of the Committee on the Application of Standards

PART TWO

OBSERVATIONS AND INFORMATION CONCERNING PARTICULAR COUNTRIES

Contents

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A. Discussion of cases of serious failure by member States to respect their reporting or other standards-related obligations, including submission to the competent authorities of the instruments adopted by the International Labour Conference

The Worker members emphasized that this sitting focused on the constitutional obligations, which were the basis of the supervisory system. Governance of the system was based on the requirement for member States to comply with articles 22 and 35 of the Constitution. Cases of serious failure needed to be examined closely, particularly in relation to ratified Conventions. Thanks to ILO technical assistance, 11 countries had made significant progress, but much remained to be done: 43 countries had not replied to observations by the Committee of Experts, with a very high number of comments not receiving a reply; 17 countries had not provided a report for two years; and 12 countries had not provided a first report for two years. This year, 2,239 reports had been requested, 2,303 under article 22 and 236 under article 35. Of those, 39.9 per cent had been received. The previous year, several member States had undertaken to do better, but once again this year a significant number of reports had arrived after the deadline of 1 September. It was not only necessary to fulfil reporting obligations, but also to do so within the time limits. A total of 1,805 reports had been provided to the Office this year, which represented around 71.1 per cent of those requested, compared with the previous year, when 1,628 reports had been sent, representing 69.7 per cent. In the 1980s, the percentage of reports received had been around 90 per cent, and there had therefore been a significant falling off in compliance with reporting obligations. The failures noted above often concealed worrying situations, which the Committee of Experts had indicated in its report that gave grounds for concern. The dialogue between the ILO supervisory bodies and member States was essential for the effective application of ratified Conventions. With regard to the obligation to submit adopted instruments to the competent authorities, there was a notable lack of will to comply. It was also important to emphasize that the failure to communicate reports and information to employers' and workers' organizations under article 23, paragraph 2, of the Constitution prevented the social partners from participating in the effective application of international labour standards. The effective operation of the supervisory system depended on compliance with these constitutional obligations. The Office needed to ensure that countries experiencing difficulties benefited from technical cooperation to help them fulfil their obligations. The initiative taken by the Office since the 105th Session of the Conference in 2016 to send letters to the member States concerned was therefore to be welcomed.

The Employer members recalled that the functioning of the ILO supervisory system was based primarily on the information provided by governments in their reports. Compliance with reporting obligations was crucial for an appropriate and effective supervision of ILO standards. Employer and Worker members were in line on this point. Member States had an obligation to supply copies of their reports to the representative employers' and workers' organizations. Compliance with this obligation was also key for the implementation of tripartism at the national level. Reference was made to information contained in the report of the Committee of Experts on the number of reports requested, received by 1 September, as well as first reports not received. In this regard, reference was made to the fact that 39.9 per cent of reports were received on time, by 1 September, which remained low. The Employer members also noted with concern that 17 countries had not provided reports for the past two years or more. There were also cases where member States had not reported for over ten years. Moreover, the number of serious cases of serious failure to report had increased from last year. This situation was not satisfactory and showed that reporting failures had to be addressed in a more suitable way. The ILO supervisory system could not function without such reports being submitted regularly. The Employer members asked the Committee and the Office to provide information on the concrete measures taken to assist these countries with their reporting obligations. It was suggested to add this question and to explore more effective measures at the next informal tripartite consultations on the working methods of the Committee. The Employer members proposed, as a pilot test, a unified report form for Conventions covering related subjects. Moreover, despite the efforts made in providing technical assistance, there should be some preventive measures to be adopted. The Office should better assist member States in the pre-ratification process. This should involve advising member States of the related reporting obligations and the need to make available the necessary resources. As evidenced in the report of the Committee of Experts, the Office was confronted by a heavy workload. The Employer members therefore asked how many reports were not brought to the attention of the Committee of Experts because of a lack of time and/or resources, and what concrete measures were the Committee of Experts and the Office considering to avoid examining reports with outdated information. It was necessary to focus reporting on essential regulatory issues in ILO Conventions and to consider concentration, consolidation and simplification of the standards system and its supervision as a sustainable way forward. The work of the Standards Review Mechanism was an opportunity to identify standards that were no longer relevant, and would at the same time identify needs for standard setting, and give more visibility to up-to-date standards. With respect to the participation of the social partners in the supervisory system, unfortunately, there were still cases where governments failed to share their reports with the social partners. The Employer members encouraged the Office to do more to encourage governments to respect this obligation. They also trusted the Office would continue to provide technical assistance and capacity building to social partners which was key to make a better use of the supervisory system.

A representative of the Office provided information to the Committee on tailored technical assistance which had been delivered in the Pacific region in February 2017 on reporting obligations in relation to the MLC, 2006. The technical assistance provided resulted in the submission of the Governments of Fiji, Kiribati, Samoa and Tuvalu's first reports on the application of the MLC, 2006.

A Government representative of Angola indicated, with regard to the failure to submit instruments to the competent authorities under article 19(5), (6) and (7) of the ILO Constitution, that efforts were being made to translate the instruments into Portuguese in order to facilitate debate in the national legislative body, which had the authority to decide on the approval of international labour standards. ILO technical assistance was requested as it was necessary to overcome the delays, which were outside the control of the national authorities.

A Government representative of Barbados recalled that the Maritime Labour Convention, 2006 (MLC, 2006), was ratified in 2013. The shipping legislation was being reviewed in order to provide workers with decent work conditions. The report on the application of the MLC, 2006, was to be considered by the Standing Tripartite Committee. The report would be submitted to the ILO before 1 September 2017.

A Government representative of Burundi indicated that the Government had prioritized the process of revision of

the Labour Code and the Social Protection Code, which had started in 2016. The application of the Conventions and Recommendations should be based on those two legislative texts. Based on the current status of the work, the first drafts would be available before the end of the third quarter of 2017. To ensure that the transitional period did not give rise to problems of labour governance, tripartite bodies had been established to discuss any issues. ILO technical assistance was necessary to complete the review process, particularly for those chapters on which the country had no expertise, namely occupational safety and health and vocational training.

A Government representative of the Congo noted that, with regard to the failure to send information in response to the comments of the Committee of Experts, the reports sent to the ILO had contained some replies. It should be noted, however, that some of the replies were not only the competence of the Ministry of Labour, but also of other ministerial technical departments, and efforts were being made to bring the situation up to date. The replies which required further clarity and detail were currently the subject of meticulous work. With regard to the failure to send reports over the previous five years on unratified Conventions and Recommendations, the comments of the Committee of Experts were true and every effort was being made to ensure that the country fulfilled this constitutional obligation. The Congo would draft, in collaboration with the social partners, all of the reports due, which would certainly be sent to the Committee of Experts before September 2017.

A Government representative of Croatia indicated that her Government took its standards-related obligations very seriously. She thanked the Office for the technical assistance provided in 2016. Some reports on ratified Conventions had already been provided, and the remaining reports would be provided in the near future.

A Government representative of the Democratic Republic of the Congo noted that, with regard to the failures for which the country had been invited to the discussion, the comments of the Committee of Experts had been examined before the arrival of the delegation at the Conference and the information would be supplied before the end of the Conference.

A Government representative of El Salvador expressed her country's commitment to submitting Conventions and Recommendations with support and technical cooperation from the ILO. The preparation of a protocol of institutional procedures for the submission of the ILO's Conventions and Recommendations had begun. To that end, an initial document had been drawn up and was being examined by the competent authorities, i.e. the Ministry of Labour and Social Welfare, the Ministry of Foreign Affairs, the legal support unit and the Legislative Assembly.

A Government representative of the United Arab Emirates indicated that his Government would fully cooperate with the Committee. With respect to reports on unratified Conventions and Recommendations, he said that it was a correspondence issue that had been resolved.

A Government representative of Greece said that her Government deeply regretted the failure to submit the total number of reports on ratified Conventions due for 2016, especially since it was the first time in its history as an ILO Member. Ten out of 17 reports due for 2016 had been submitted and the remaining reports would be submitted together with the reports due in 2017 on time for consideration at the next session of the Committee of Experts. She recalled that the Ministry of Labour was currently in a capacity-building process with the support of the ILO, and has recently launched a roadmap to combat undeclared work – an excellent example of tripartite consensus.

A Government representative of Guinea said that the lack of information provided in reply to the Committee of Experts' comments was due to the delay in the Ministry of Foreign Affairs receiving the documents. The Government undertook to rectify the situation in the next few days.

A Government representative of the Islamic Republic of Iran reiterated his Government's commitment to fully cooperate with the Committee. Reports submitted to the Office had all been prepared in consultation with the most representative organizations of employers and workers of the country. Reports had also been communicated to those organizations. He added that the first report on the application of the Maritime Labour Convention, 2006 (MLC, 2006), would be sent to the Office before the deadline.

A Government representative of Jamaica was pleased to inform the Committee that the instruments adopted at the 92nd, 94th, 95th, 96th, 99th, 100th, 101st and 103rd Sessions of the Conference had been submitted to Parliament on 14 September 2016. Additionally, the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), had been submitted to Parliament on 24 January 2017. In accordance with established practice, the ILO Director-General would be informed of the actions taken by Parliament in this regard.

A Government representative of Kazakhstan indicated that his Government was fully committed to complying with its ILO constitutional obligations, particularly in relation to the submission of instruments adopted by the Conference to the competent national authority. His Government would work with the ILO to provide the necessary information as soon as possible.

A Government representative of Kuwait indicated that fulfilling the ILO's constitutional obligations was a priority for his Government. The submission process would be reviewed, and the Office would be informed of the steps taken in the near future.

A Government representative of Libya indicated that his Government was committed to cooperating with the Committee and complying with its constitutional obligations. The Ministry of Labour and the social partners would participate in this process. The situation in his country was responsible for the failure to respect standards-related obligations. Reports would be communicated to the ILO in the near future.

A Government representative of the Republic of Maldives indicated that reports on ratified Conventions had been prepared and would soon be provided to the Office.

A Government representative of Mozambique indicated that the instruments adopted by the Conference in 2015 and 2016, in particular the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204), had been submitted to the Assembly of the Republic on 12 April 2017. Moreover, her Government had also submitted to the Assembly of the Republic, for ratification, the Labour Inspection (Agriculture) Convention, 1969 (No. 129), the Safety and Health in Mines Convention, 1995 (No. 176), and the Protocol of 2014 to the Forced Labour Convention, 1930.

A Government representative of Nigeria indicated that her Government was committed to complying with its constitutional obligations. With respect to its first report on the Maritime Labour Convention, 2006 (MLC, 2006), the competent national authorities had prepared the report and this report would be discussed with the social partners. The report would be provided to the ILO before 1 September 2017. With respect to reports on unratified Conventions and Recommendations, a total of nine reports had been submitted, and the remaining reports would be submitted before 1 September 2017. Technical assistance was requested on standards-related obligations.

A Government representative of the Netherlands indicated that her Government was in contact with the Government of Netherlands – Aruba, which was committed to complying with the constitutional obligations of the ILO.

A Government representative of Pakistan recalled that provincial governments had to submit the instruments adopted by the Conference to their respective competent

authorities. Technical assistance was requested in this regard. Her Government was committed, with ILO technical assistance, to submit all instruments pending submission to the national competent authorities.

A Government representative of the United Kingdom indicated that her Government and the Government of United Kingdom – Bermuda sincerely apologised for not submitting the first report on the Maritime Labour Convention, 2006 (MLC, 2006). The report would be provided by the end of the session of the Conference. Her Government attached great importance to the ILO supervisory system and would ensure that this failure to supply a report did not happen again.

A Government representative of Rwanda reaffirmed his Government's willingness to reply to the observations and comments of the Committee of Experts, along with its commitment to honour its obligations under ILO instruments. With regard to the observations in paragraph 29 of the General Report, a report had been transmitted in May 2017, following the meeting of the Committee of Experts and the publication of its report. It should be pointed out, however, that, during the previous three years, all measures taken to apply ILO Conventions and Recommendations had involved collaboration and participation by representative workers' and employers' organizations, working to reach agreement. With regard to the comments in paragraph 80 of the General Report, it should be recalled that the delegation of Rwanda had reported that a number of Conventions and Recommendations had been submitted to the competent authorities. Ratification of six Conventions had been approved by Parliament in full sitting on 15 May 2017. They were: the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144); the Labour Administration Convention, 1978 (No. 150); the Collective Bargaining Convention, 1981 (No. 154); the Occupational Safety and Health Convention, 1981 (No. 155); the Private Employment Agencies Convention, 1997 (No. 181); and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). Only the legislative procedures for official publication of the instruments of ratification remained, which would be transmitted by September.

A Government representative of Samoa indicated that his Government would initiate the submission process before the Committee of Experts' next meeting. Information had been received from the International Labour Standards Department concerning the submission of instruments adopted by the Conference to the competent national authority. Technical assistance was requested from the ILO Office in Fiji.

A Government representative of Seychelles referred to the serious challenges and constraints that caused non-compliance with the submission obligations, such as limited human resources, technical expertise, the lack of disaggregated data and statistics, gap analysis and research on employment issues in relation to international labour Conventions and Recommendations. Her Government was up to date with the reporting obligations under article 22 of the ILO Constitution. With respect to submission, a Cabinet Memorandum was presented in 2014 on the instrument pending submission to the National Assembly. Consequently, inter-ministerial consultations had been ongoing with the social partners. Consultations would be completed before the end of this year. Submission of all pending Recommendations would be submitted to the National Assembly by the end of 2017 and the pending Conventions and Protocols would be submitted by the end of July 2018. Moreover, her Government intended to ratify the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Work in Fishing Convention, 2007 (No. 188), and the Domestic Workers Convention, 2011 (No. 189). She thanked the ILO for its continued technical support.

A Government representative of Singapore indicated that her Government would respond appropriately to the reporting requests of the Committee of Experts.

A Government representative of Somalia indicated that her Government recognized the failure to submit instruments adopted by the Conference to the national competent authority. A prolonged period of civil war and insecurity in the country had played a role in non-compliance. The situation in the country was improving. The domestic legal framework would be reviewed to ensure compliance with international labour conventions. Technical assistance was requested to help with reporting obligations. She was optimistic that her Government would meet its constitutional obligations in the very near future.

A Government representative of Thailand said that the Ministry of Labour had been dealing with issues relating to understaffing and inter-ministerial staff movements in recent years. Those issues were being addressed by a special working group on ILO reporting obligations. Responses to the observations and direct requests of the Committee of Experts and reports were being prepared and would be submitted to the ILO by September 2017. Technical assistance on reporting obligations was requested.

A Government representative of Zambia indicated that reports on unratified Conventions and Recommendations, requested under article 19 of the Constitution, would be submitted in the future. Technical assistance was requested in this regard.

The Employer members thanked the Office for the technical assistance provided and expressed appreciation for the comments provided by the government representatives which had indicated steps taken to comply with their obligations in the near future.

The Worker members noted the information supplied and the explanations provided by the Government members present, and the specific difficulties encountered in fulfilling the obligation of the submission of instruments. Of the 65 countries invited to the discussion, 21 had been absent, 13 were not accredited and five were not registered, which had denied the Committee the occasion to discuss their situation. It was a matter of deep concern to note the failure to comply with the obligation of the submission of Conventions, Recommendations and Protocols to the competent authorities, as it was important for the effectiveness of standards-related action. The provision of reports on the application of ratified Conventions was a fundamental constitutional obligation for the operation of the supervisory system. The provision of first reports was essential and it was also important to comply with the time limits set for sending the reports. The provision of reports on unratified Conventions was also important as a basis for the assessment carried out in General Surveys. The Worker members welcomed the efforts made by the Office.

Conclusions

The Committee took note of the information provided and the explanations given by the Government representatives who had taken the floor. The Committee noted in particular the specific difficulties referred to by certain Governments in complying with their constitutional obligations to transmit reports and to submit to the competent authorities the instruments adopted by the International Labour Conference. The Committee has periodically recalled that the ILO is able to provide technical assistance to contribute to compliance in this respect. In that regard, the Committee noted the positive results of the technical assistance provided by the Office in relation to reporting obligations, including the tripartite regional workshop held in the Pacific region in February 2017 on reporting obligations in relation to the MLC, 2006.

Concerning the failure to supply reports for the past two or more years on the application of ratified Conventions

The Committee recalls that the submission of reports on the application of ratified Conventions is a fundamental constitutional obligation and the basis of the system of supervision. The Committee also stresses the importance of respecting the deadlines for such submission.

The Committee expresses the firm hope that the Governments of Belize, Comoros, Dominica, Equatorial Guinea, Gambia, Guinea-Bissau, Guyana, Haiti, Republic of Maldives, Saint Lucia, Somalia, Timor-Leste and Yemen will supply the reports due as soon as possible, and decides to note these cases in the corresponding paragraph of its General Report.

Concerning the failure to supply first reports on the application of ratified Conventions

The Committee recalls the particular importance of supplying first reports on the application of ratified Conventions.

The Committee expresses the firm hope that the Governments of Barbados, Equatorial Guinea, Guyana, Republic of Maldives, Nicaragua, Nigeria, Saint Vincent and the Grenadines and United Kingdom – Bermuda will supply the first reports due as soon as possible, and decides to note these cases in the corresponding paragraph of its General Report.

Concerning the failure to supply information in reply to comments made by the Committee of Experts

The Committee underlines the fundamental importance of clear and complete information in response to the comments of the Committee of Experts to permit a continued dialogue with the Governments concerned.

The Committee expresses the firm hope that the Governments of Belize, Cabo Verde, Comoros, Congo, Croatia, Dominica, Equatorial Guinea, Eritrea, Gambia, Greece, Guinea, Guinea-Bissau, Guyana, Haiti, Libya, Netherlands – Aruba, Nicaragua, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Sierra Leone, Singapore, Solomon Islands, Sri Lanka, Swaziland, Syrian Arab Republic, Thailand, Timor-Leste, Vanuatu, Viet Nam and Yemen will supply the requested information in the future, and decides to note these cases in the corresponding paragraph of its General Report.

Concerning the failure to supply reports for the past five years on unratified Conventions and Recommendations

The Committee stresses the importance it attaches to the constitutional obligation to supply reports on non-ratified Conventions and Recommendations.

The Committee expresses the firm hope that the Governments of Armenia, Belize, Comoros, Congo, Democratic Republic of the Congo, Dominica, Fiji, Grenada, Guinea-Bissau, Guyana, Haiti, Kiribati, Liberia, Libya, Marshall Islands, Nigeria, Saint Kitts and Nevis, Saint Lucia, San Marino, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, Tuvalu, United Arab Emirates, Vanuatu, Yemen and Zambia will comply with their obligation to supply reports on non-ratified Conventions and Recommendations in the future. The Committee decides to note these cases in the corresponding paragraph of its General Report.

Concerning the failure to submit instruments adopted by the Conference to the competent authorities

The Committee recalls that compliance with the obligation to submit Conventions, Recommendations and Protocols to national competent authorities is a requirement of the highest importance in ensuring the effectiveness of the Organization's standards-related activities.

The Committee expresses the firm hope that the Governments of Angola, Azerbaijan, Bahamas, Bahrain, Belize, Burundi, Comoros, Croatia, Dominica, El Salvador, Equatorial Guinea, Fiji, Gabon, Guinea-Bissau, Haiti, Jamaica, Kazakhstan, Kiribati, Kuwait, Kyrgyzstan, Liberia, Libya, Pakistan, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, Seychelles, Sierra Leone, Solomon Islands, Somalia, Syrian Arab Republic and Vanuatu will comply with their obligation to submit Conventions, Recommendations and Protocols to the competent authorities in the future. The Committee decides to note these cases in the corresponding paragraph of its General Report.

Concerning the failure for the past three years to indicate the representative organizations of employers and workers to which, in accordance with article 23, paragraph 2, of the Constitution, copies have been communicated of the reports and information supplied to the Office under articles 19 and 22

The Committee recalled that compliance with the obligation of Governments to communicate reports and information, as provided in article 23, paragraph 2, of the Constitution, is a fundamental requirement in order to ensure the participation of employers' and workers' organizations in the ILO supervisory machinery.

The Committee recalled that the contribution of employers' and workers' organizations is essential for the assessment of the application of Conventions in national law and practice.

The Committee expressed the firm hope that the Governments of the Islamic Republic of Iran and Rwanda would comply with this obligation in future. The Committee decided to note these cases in the corresponding paragraph of the General Report.

Overall, the Committee expresses *deep concern* at the large number of cases of failure by member States to respect their reporting and other standards-related obligations. The Committee recalls that Governments could request technical assistance from the Office to overcome their difficulties in this respect.

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

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

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

Malaysia – Malaysia Peninsular (ratification: 1957) Sarawak (ratification: 1964)

A Government representative recalled that, currently, foreign workers were covered under the Workers' Compensation Scheme (WCS) regulated by the Workmen's Compensation Act (WCA) of 1952. The WCS was aimed at providing compensation for work injuries involving temporary disability, total and permanent disability, as well as occupational diseases to foreign workers during working hours. In the event of death, the compensation would be extended to the dependants. A constant attendance allowance was also payable to insured foreign workers who had succumbed to total and permanent disability. Further, ex-gratia payment for fatal accidents was also provided under the WCS during working and outside of working hours. The reason of introducing such ex-gratia payment was to provide additional monetary benefits to foreign workers as well as to their dependants. Over the years, Malaysia had taken proactive efforts to strengthen WCS. In this regard, few internal studies and a series of discussions with relevant agencies had been carried out in order to enhance the benefits provided under the WCS. This was time-consuming as it involved extensive deliberations on national laws, present policies and the economic situation. Insurance panellists appointed under the WCS had been tasked by the Government to revise the current compensation package in terms of quantum and premium chargeable, and suggested several proposals in this respect. The proposals aimed at enhancing the level of compensation submitted to the Ministry of Human Resources for further analysis, and an internal task force was formed to further review those proposals. Upon careful review, the Ministry concluded that the majority of the insurance panellists agreed with the quantum increase on work-related injuries compensation involving temporary, total and permanent disability, deaths and occupational diseases suffered by foreign workers. The Government had also engaged a technical consultation with the ILO Senior Specialist on Social Protection from the Decent Work Technical Support Team in 2016 to seek guidance in improving the social protection of foreign workers, particularly looking into WCS. Foreign workers needed to be covered for both employment and non-employment injuries. No foreign worker should be deprived of such rights. Furthermore, it is the responsibility of every State to protect foreign workers' rights and prevent all forms of discrimination. In this regard, the speaker concluded by observing that Malaysia would comply with the call of the Committee in ensuring the foreign worker's accident compensation guaranteed by the Convention and that the Ministry will hold discussions on the WCS with the social partners for their further consideration on the revised quantum prior to submitting to the Government for approval. The speaker concluded by indicating that such efforts could help the Government to implement the Convention in a fair manner.

The Worker members indicated that the Committee had discussed the application of the Convention in Malaysia on numerous occasions, most recently in 2011, recommending that the Government should consider inviting a high-level advisory mission of the ILO and avail itself of the technical assistance of the Office. A technical consultation was held in 2016 in order to discuss options to address the persistent situation so as to guarantee equal treatment to migrant workers who suffer personal injury due to industrial accidents, or in case of death – to their dependants. There were more than 2 million registered migrant workers and more than 1 million unregistered migrant workers, mostly from Indonesia, Nepal and Bangladesh. Migrant workers constituted around 20–30 per cent of the Malaysian labour force. The demand for migrant labour in Malaysia was increasing steadily. In 2016, Malaysia signed a Memorandum of Understanding to bring 1.5 million Bangladeshi workers into the country. Migrant workers were concentrated in the agricultural sector (70 per cent of the workforce), the construction sector (45 per cent) and the manufacturing sector (30 per cent). Official data from the Department of Occupational Safety and Health compiled in 2014 demonstrated that these were also the sectors with the highest incidences of workplace accidents. The Embassy of Nepal provided records showing that its workers died at a rate of nine per week in Malaysia during the second half of 2014. Given that the official figures only took into account investigated accidents, it was estimated that the real number was even higher. The types of work migrants are usually engaged in were hazardous and, due to the lack of protective equipment and unequal treatment, the risk of accidents was aggravated. While the demand for migrant labour had been increasing, the reverse was true in terms of the protection provided for these workers. Since 1993, the transfer of migrant workers to the Workmen's Compensation Scheme had put them at a serious disadvantage as the Employees' Social Security (ESS) Scheme offered a higher level of protection. Under the ESS Scheme, a permanently injured worker was entitled to a periodical cash benefit of 90 per cent of the "assumed average daily wage", whereas under the Workmen's Compensation Act, the permanently injured worker was entitled to a lump-sum payment of only 62 months' salary or 23,000 ringgits (around €4,800), whichever was less. In the case of an injury, Malaysian workers were entitled to free treatment at any government hospital or clinic and the medical bill was settled by the social security fund. Under the Workmen's Compensation Scheme, the employers of migrant workers were required to pay for the workers' medical expenses. This exposed migrant workers to possible abuse, if employers did not pay for the required treatment. Migrant workers could only claim refunds for medical costs after they had fully recovered and even then, it took several months for them to be refunded leaving them with no means of survival in the meantime. Undocumented migrant workers had no guarantees of safety from arrest while attempting to access medical treatment in the case of workplace accidents. In addition, a Malaysian injured worker who had been certified as unfit for work for at least four days was entitled to temporary disablement benefit equivalent to 80 per cent of his/her wages. Migrant workers suffering temporary disablement were only entitled to half-monthly payments of a third of their monthly wages. Na-

tional laws establishing a differing treatment between foreigners and nationals are not consistent with the Convention. Ratifying States undertook to adopt special arrangements in relation to payments they would have to make abroad and the Government had provided no information on what special arrangements it had undertaken with other member States in relation to the payment of accident compensation for returning migrants. The Government had confirmed that it had been signing memoranda of understanding (MoUs) with eight countries of origin (Bangladesh, China, India, Indonesia, Pakistan, Sri Lanka, Thailand and Viet Nam) in order to regulate the recruitment of foreign workers. However, to the knowledge of the Worker members, none of these agreements addressed the equal treatment of migrants or social protection. Discriminatory treatment in relation to accident compensation was not the only area where the Government has failed to recognize the massive contribution of migrant workers to the country's economic performance. Migrant workers were subject to multiple forms of discrimination and inequalities. The Industrial Court had ruled that migrant workers working under a fixed-term contract could not benefit from the conditions agreed in collective agreements. Migrant domestic workers were in an even worse situation. Though critical to filling the increasing demand for household and caregiving services, domestic workers were excluded from the most basic labour protections, including social security coverage. Malaysia had benefited greatly from the employment of migrant workers in several economically important sectors. During the last two decades, those workers had helped to provide the labour that had fuelled the country's emergence into an upper middle-income country. However, the Government had failed to protect the rights of migrant workers and to treat them equally, specifically in relation to accident compensation. The Government was therefore clearly not fully respecting its obligation under the Convention.

The Employer members recalled that this case dated back to 1993, when foreign workers employed in Malaysia for up to five years had been transferred from the ESS Scheme to the WCS. Ever since, benefits provided under the WCS had been lower than those provided under the ESS Scheme and there had therefore been a clear divergence with the provisions of the Convention which established the principle of equality of treatment between foreign workers and national workers without conditions of residence. Importantly, the Convention required foreign workers to be treated in the same way as national workers and not the other way around. Since 1996, the Committee on the Application of Standards had been continuously requesting that foreign workers be transferred back to the ESS Scheme. The Government had indicated in 2011 that it was considering various options within a technical committee of the Ministry of Human Resources with the involvement of all stakeholders. In its last report, the Government had indicated its intention to extend the coverage of the ESS Scheme to documented foreign workers subject to certain modifications aimed at ensuring administrative practicability of the new arrangements. In 2016, the Government had contacts with ILO social security specialists to evaluate the conformity of the modified scheme with the Convention. Extending the ESS Scheme to foreigners would require overcoming difficulties, notably with respect to the difficulties that led to the introduction of separate treatment between foreign workers and national workers. Referring to the 24 month contributory period for access to employment injury benefits under the ESS Scheme, which does not exist under the WCS, the Employer members observed that foreign workers were not suited for the ESS Scheme since they had generally been contracted for up to two years, in other words less than the qualifying period.

Taking into account the large number of migrant workers concerned and the high incidence of accidents experienced by this group, three main factors needed to be reconciled with a view to achieving the objective of equity. Firstly, the administrative and practical difficulties to ensuring equality of treatment were related to the fact that migrant workers were generally undertaking project work for less than two years and were being repatriated if they had become incapacitated following an industrial accident, which had made compensation an administrative and logistical challenge. Secondly, the question of whether the Convention provided for absolute equality needed to be answered in the light of the requirement of the Convention that migrant workers must receive the same treatment as national workers or whether treatment of equal value would also be acceptable under the terms of the Convention. Finally, there was a need to also determine the actuarial equivalence of the lump sum paid under the WCS to migrant workers and the value of the periodical payments granted under the ESS Scheme to Malaysian workers. The comparison between the value of periodic benefits and that of lump-sum payments was a particularly technical and delicate question. Depending on the answer, the WCS could have been viewed as a suitable and practicable solution for managing employment injury and invalidity benefits for foreign workers in Malaysia; if necessary with certain adjustments to the value of the lump-sum payments. If absolute equality was required, then means must be found to make it operational under separate levels of jurisdiction of the Malaysian Federation. Such problems were faced by other federal States and a lasting solution required taking into account the practicalities mentioned above. The Employer members concluded by requesting the Government to indicate the reasons for which the actuarial equivalence of the lump sum paid under the WCS to migrant workers with the periodical payments granted under the ESS Scheme to Malaysian workers had not been robustly established by the Government since it had been requested three years ago; how compensation had been paid and what compensation had been paid, in the event of an occupational accident or disease of migrant workers; 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 country of residence; progress made towards reconciling the different treatment of workers covered by the ESS Scheme and foreign workers covered by the WCS; the future plans to align the treatment of foreign workers with that of Malaysian nationals in the event of accidents; and complementary information as to any special arrangements concluded with countries of origin in this respect.

The Employer member of Malaysia pointed out that the previous recommendations made by the Committee could not be implemented as quickly as expected. The Malaysian Employers Federation believed that the Government's decision to place foreign workers under the WCA in 1993 was based on valid and practical reasons. Firstly, he explained, foreign workers were contracted to work in Malaysia for an initial period of two years, with a possible extension of up to five years. If such workers were placed under the Social Security Act, they would be required to make contributions for a minimum period of 24 months before they could be eligible for payment under the invalidity pension scheme; whereas under the WCA, such workers were eligible for compensation from the day of commencement of employment, without having to make any contributions. Secondly, under the WCA, the premiums for the insurance were fully paid by the employer and foreign workers were not required to make any payment for insurance coverage. This was not the case under the Social Se-

curity Act, under which employers and employees were required to make monthly contributions to the Scheme. Thirdly, when foreign workers were contracted to work in Malaysia and in the event that such workers suffered workplace injury or were declared invalid, periodical payments would need to be remitted on a monthly basis to the country of origin, which would pose an administrative burden on the administrator. Under the WCA, a lump sum was paid, which was also more practical for foreign workers. He concluded by requesting the Committee to look at the practical aspects of insurance coverage for foreign workers so that, ultimately, it was in the interest and for the benefit of the foreign workers themselves.

The Worker member of Malaysia stated that the Malaysian Trade Union Congress considered that migrant workers in Malaysia should be transferred from the WCS back to the ESS Scheme, as per the Government's promise in 2011. The ILO Review of Labour Migration Policy in Malaysia in 2016 had noted the Government's indication that it would consult with the relevant stakeholders regarding three options for providing accident compensation to migrant workers. However, no steps were taken to that end. Migrant workers in Malaysia were often employed in dangerous jobs without sufficient protective equipment or training. A high incidence of workplace accidents had been documented, with the largest number of injuries and deaths at work occurring in the manufacturing, construction and agricultural sectors, all of which were major sectors of employment for migrant workers. It must be noted, however, that under the 11th Malaysia Plan (2016–20), the Government intended to develop and implement a comprehensive immigration and employment policy for migrant workers, with the Ministry of Human Resources assuming the lead role in policy-making. The Government's engagement with the various stakeholders, including the ILO, was also appreciated. Nevertheless a mere increase in the amount of compensation paid to foreign workers for work-related injuries involving temporary or total and permanent disability, death and occupational diseases would not suffice to place migrant workers on an equal footing with workers under the ESS Scheme. In 2016, a total of 483 complaints of denial of access to medical treatment, uncompensated accidents, hazardous work places, deaths, poor living conditions, deprivation of food, difficulty in seeking health care and long working hours had been reported and investigated by the authorities. It was believed, however, that many cases went unreported by employers to avoid legal and financial liability, in particular, if irregular workers were involved. He called on the Government to take immediate steps to develop and implement a comprehensive Foreign Employment Policy with realistic and workable occupational safety and health provisions. The Policy must regulate recruitment through the ESS Scheme, thereby ensuring that all migrant workers had a legitimate employer, and knew who their employer was, which would assist the Government to document all migrant workers. The policy should also be in compliance with the ILO Fair Migration Agenda and must ensure that in cases of accidents and deaths, the victims or the next of kin received adequate compensation, as provided under the ESS Scheme. These cases must be published and made publicly available to create awareness. In addition, the policy must be consistent with the provisions of the ESS Scheme to ensure the migrant worker's right to paid medical leave and other rights not enjoyed by migrant workers under the WCS. It must put in place a process which would prevent employers from making deductions the wages to reclaim the cost of medical treatment and impose a duty on the employer to report an accident or fatality at the workplace immediately so as to engage the employer's liability and pay the compensation to the migrant worker or his or her family in accordance with the ESS Scheme. Employers who terminated work permits of migrant workers on prolonged sick leave must be reprimanded and obliged to reinstate the work permits so as to ensure that the worker concerned could proceed with the litigation for compensation and enforce the liability of the employer. Finally, the policy must incorporate training of migrant workers on their rights, access to justice, and safety and health. The speaker concluded by stating that the Government should avail itself of ILO technical assistance, and accept an ILO Direct Contacts Mission to meet the Government's objective to develop a comprehensive immigration and employment policy for migrant workers and to put it into immediate effect.

The Government member of Malta speaking on behalf of the European Union (EU), as well as the former Yugoslav Republic of Macedonia, Montenegro, Serbia, Bosnia and Herzegovina, Norway and Georgia, welcomed the initialling in 2016 of the Partnership and Cooperation Agreement (PCA) between the EU and the Government. The PCA further strengthened the bilateral cooperation and encompassed a wide range of areas, including sectorial cooperation on labour and employment. Both parties had signalled that they wished to sign the PCA by the end of 2017. Foreign workers provided much needed skills and made invaluable contributions to Malaysia's social and economic development. They often filled jobs that were considered undesirable by nationals. Yet, their contribution was often not fully recognized, and they remained vulnerable to precarious conditions, abusive practices or unequal treatment, and to increased risks of accidents and health problems. The speaker expressed deep concerns regarding the discriminatory treatment of foreign workers that were not receiving equal treatment as compared with national workers in respect of employment injuries compensation. This long-standing issue persisted since 1993, despite the recurrent calls from the Committee to put an end to this practice. In its last report, the Government had expressed its willingness to extend the social security scheme applicable for national workers to foreign workers. The Government had also held consultations with the Office with a view to initiating internal discussions on the way forward. It was hoped that as a follow-up to these consultations, the Government would take the necessary measures in order to put an end to this discriminatory practice and ensure equal treatment of foreign workers with regard to accident compensation. The EU was available to provide further assistance in that area in the context of the recent meeting between the EU and the Association of Southeast Asian Nations (ASEAN) Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW), in which representatives of the Government had participated actively. The EU remained committed to constructive engagement and partnership with the Government.

The Government member of Thailand speaking on behalf of the Association of Southeast Asian Nations (ASEAN), indicated that the Government had made efforts to address the issues pertaining to the application of the Convention and encouraged the Government to expedite the conclusion of internal studies and the discussions with relevant national agencies. The Government had engaged with the ILO technical specialists to assist in improving the social protection of foreign workers under the WCS. The speaker supported the positive actions taken by the Government, in particular with regard to engaging with the insurance panellists appointed under the WCS to revise and improve the accident compensation scheme. The Committee should consider the foregoing significant efforts of the Government and the progress already achieved.

The Worker member of Singapore recalled that work injury or accident compensation was an important safeguard

for workers to make claims for work-related injuries or diseases, without the need for costly legal action. It was often a quick and effective way to provide social security and protection to workers in times of need. It was thus regrettable that this fundamental protection was subject to discriminatory practices. Despite numerous examinations by the Committee of Experts and the Conference Committee, there had been no practical response from the Government in addressing the disparities between nationals and foreign workers since 1993. As of September 2016, there were 1.85 million foreigners with valid Temporary Employment Passes in the country. The majority of foreign workers came from Indonesia (close to 750,000 workers), followed by Nepal (410,000 workers), Bangladesh (238,000 workers), Myanmar (140,000 workers), India (121,430 workers) and others (194,000 workers). These numbers did not include the vast number of unregistered foreign workers. Most foreign workers were employed in places with high accident risks, such as construction, manufacturing and plantations. She recalled that the Committee of Experts had previously concluded that the Government had "undermined the system of automatic reciprocity in granting equality of treatment to nationals of ratifying States" and that parties to the Convention must implement the principle of equal treatment in respect of workmen's compensation between their own nationals and foreign workers. According to the 2015 World Bank's report, Malaysia had the fourth largest number of migrants and the seventh highest ratio of migrants to total population in East Asia and the Pacific. Immigrant labour played a crucial role in Malaysia's development towards the Government's articulated Vision 2020. As nationals had become more educated, immigrant labour helped to fill in the gaps in the low- and mid-skilled jobs, which represented three quarters of all jobs in Malaysia. She called on the Government to consider the humane aspect of the issue as injured foreign workers may be unable to work when they were repatriated to their home countries, and many were the sole breadwinners in their respective families. The Government needed to recognize that these workers contributed directly to the country's economic growth and thus should be treated without discrimination. She called upon the Government to urgently resolve the differences between the ESS Scheme for nationals and the WCS for foreign workers so as to ensure equitable and adequate protection for every worker.

The Worker member of Australia drew attention to the situation of Nepalese migrant workers working in Malaysia, who were subject to lower accident compensation protection compared to Malaysian workers. Since 1993, only Malaysian citizens and permanent residents were eligible to contribute to the social security system and benefit from financial assistance in the event of an industrial accident. Nepalese migrant workers were only eligible for coverage under the WCA for employment injury compensation. Many employers of Nepalese workers however made no contribution under this scheme. Moreover, the protection offered under the WCA was much lower than that available to Malaysian workers. For example, the claim process under the WCA was complex and a health assessment of the injured worker could take over three months. Under the claims process, an employer could also reclaim expenses incurred for an injured worker's treatment. The fact that most Nepalese workers worked long hours in dangerous occupations in plantations, factories and the mining industry without safety equipment also increased the risk of injury, which in turn amplified the effect of the discrimination. In the case of undocumented workers, no accident compensation was provided under any scheme. Moreover, there were no guarantees of safety from arrest while attempting to access medical treatment for undocumented workers, which had a chilling effect on reporting injuries. It was common practice to repatriate injured workers back to Nepal. The Nepalese embassy reported that, in the last three years, the number of workplace fatalities of Nepalese workers in Malaysia had been 348 in 2014, 461 in 2015 and 386 in 2016, i.e. an average of nine deaths per week. In most cases, the official cause of death was cardiac arrest and no post-mortem examination was carried out. The breaches of the Convention had persisted for many years and the ILO had offered technical assistance to the Malaysian Government for a number of years. He urged the Committee to make strong recommendations which would increase the degree of ILO supervision to continue the engagement of the Government and the technical assistance involving all stakeholders. This should ensure further and urgent steps to strengthen compliance with this Convention to secure equal treatment for Malaysian and foreign workers with regard to accident compensation.

The Worker member of Indonesia emphasized that Malaysia had benefited greatly from the employment of migrant workers in several economically important sectors, while migrant workers had not received fair treatment. Particularly, in respect of the employment injury compensation, migrant workers were provided with a lump sum under the WCS rather than a periodical payment under the social security system. Moreover, this protection did not extend to domestic workers. As a result, they were not provided with any guarantee of compensation in the event of workplace-related injury. In 2006, Malaysia and Indonesia signed an MoU on the employment of domestic workers. However, existing gaps allowed widespread abuse by employers. Due to the high number of complaints received, Indonesia suspended the deployment of domestic workers to Malaysia in 2009, pending a revised agreement. Referring to the case of a Filipino domestic worker who was denied access to proper medical assistance when injured, the speaker stated that the Government had failed its obligation under the Convention regarding the provision of basic labour protection to migrant workers. In this regard, comprehensive measures were needed along with the extension of social protection.

The Government representative reaffirmed that managing the welfare of foreign workers had always been a priority to the Government, as evidenced by the 11th Malaysia Plan (2016–20). In order to achieve the aspirations laid out in that Plan, the Government had undertaken numerous initiatives, including a review of labour laws and regulations, the introduction of the employers' responsibility for workers from their arrival until their return to their countries of origin and the introduction of a guideline on foreign workers' accommodation with basic amenities. The contributions to the WCS were payable only by employers and covered compensation for accidents that occurred not only during working hours but also outside of working hours. In addition, the scheme did not impose any qualifying period to receive the compensation. Thus, foreign workers received the compensation immediately after the incident had taken place. Contribution to the WCS was one of the pre-conditions to be authorized to hire foreign workers. In relation to the statement made on procedural elements pertaining to paid sick leave, reporting of accidents, payment of compensation, and the importance of the safety and health of workers, these elements were already embedded under existing labour laws and regulations. The Government made progressive efforts in order to enhance the benefits available under the WCS. The Government had engaged with insurance panellists to revise the quantum and the benefits of the WCS and would conduct further deliberation with the social partners in due course. He pledged the full and undivided commitment of the Government to the efforts that lied ahead, to ensure that the WCS would be in conformity with the requirements of the Convention.

The Worker members noting the information provided by the Government representative, considered that there remained no doubt that national laws and practices were completely out of line with the Convention and that migrant workers suffered unequal treatment with respect to employment injury protection. This was not a recent problem. However, with the growing number of migrant workers, the consequences of this discriminatory behaviour were escalating. The WCS was less favourable than the ESS Scheme with respect to the duration, level and types of benefits workers received in the case of workplace injury. The Committee on the Application of Standards had recommended on several occasions that the Government take the necessary steps in order to bring its legislation in line with the Convention and had benefited from ILO technical assistance on this matter. The Worker members expressed the hope that the discussion would finally make a difference in ensuring that the Government took urgent steps to remedy the key areas of concerns, in consultation with the country's social partners. Migrant workers were to be reintegrated in the ESS Scheme and were entitled to the same level of accident compensation as Malaysian nationals. Moreover, the Government needed to make sure that special arrangements with other ratifying States where migrant workers come from were negotiated so that migrant workers could benefit from the same level of protection after they return to their country of origin. The necessary measures needed to be taken in order to ensure that undocumented migrant workers did not have to fear arrest and retaliation when they seek medical assistance following workplace accidents. Discrimination in relation to accident compensation was sadly not the only area where migrant workers lacked protection. Even though, a substantive part of the labour force was constituted of migrant workers, Malaysia had failed in providing workers with the necessary protections of their fundamental rights guaranteed under ILO standards. The Worker members expressed the sincere hope that there would be a change of attitude in relation to this category of workers, especially if the Government continued recruiting more migrant workers.

The Employer members thanked the Government for the efforts made in overcoming the difficulties faced in the implementation of the Convention. Equality of treatment was required by the Convention. At the same time, strict equality of treatment should not result in dismantling the protection currently enjoyed by migrant workers under the WCS by subjecting them to qualifying conditions required by the ESS Scheme. Practical solutions were therefore to be explored and the Government needed to provide more information in this respect and a clear statement as to the current development policy for the employment of migrant workers. The Employer members concluded by referring to the Government's indication that it would hold tripartite consultations on these issues in due course, urging it to undertake these consultations soon.

Conclusions

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

Taking into account the discussion, the Committee called upon the Government of Malaysia to take immediate, pragmatic and effective steps to ensure that the Convention's requirement for equal treatment of migrant workers and national workers is met.

The Committee nevertheless called upon the Government to expedite its efforts to address this long-standing issue, as the need for real progress is becoming increasingly urgent. Specifically, the Committee calls upon the Government of Malaysia to, without delay:

- **take steps to develop and communicate its policy for governing the recruitment and treatment of migrant workers;**
- **take immediate steps to conclude its work on means of reinstating the equality of treatment of migrant workers, in particular by extending the coverage of the Employees' Social Security Scheme to migrant workers in a form that is effective;**
- **work with employers' and workers' organizations to develop laws and regulations that ensure the removal of discriminatory practices between migrant and national workers, in particular in relation to workplace injury;**
- **adopt special arrangements with other ratifying member States to overcome the administrative difficulties of monitoring the payment of compensation abroad;**
- **take necessary legal and practical measures to ensure that migrant workers have access to medical care in the case of workplace injury without fear of arrest and retaliation;**
- **avail itself of the technical assistance of the ILO with a view to implementing these recommendations and to develop mechanisms for overcoming the practical issues affecting implementation of the domestic social security scheme to migrant workers.**

Forced Labour Convention, 1930 (No. 29)

MAURITANIA (ratification: 1961).

A Government representative emphasized that Mauritania was appearing for the second successive year before the Committee, which therefore offered the Government the opportunity to share information on the efforts made and the projects implemented to give effect to the recommendations made at the previous session of the Conference. The Government had benefited from ILO technical support and welcomed the establishment of a support project for the implementation of Act No. 2015-031 of 10 September 2015 criminalizing slavery and punishing slavery-like practices (hereinafter the 2015 Act). The four-year project was reinforcing the efforts made by the Government to bring an end to the vestiges of slavery. It covered: public awareness raising and knowledge of the problem of forced labour; the improvement of national policies and legislation on forced labour, their application and evaluation; and access to productive programmes for the victims of forced labour. Following broad dialogue involving all the stakeholders, with the support of the international community, Mauritania had adopted a roadmap in 2014 to combat the vestiges of slavery. The roadmap included 29 recommendations covering three main components: revision of the legal and institutional framework; awareness raising; and economic and social programmes. Responsibility for the implementation of the recommendations had been entrusted to an Inter-ministerial Committee, chaired by the Prime Minister, supported by a technical follow-up commission composed of representatives of the various departments and institutions concerned and other bodies. With regard to the legal component, reference should be made to: the adoption of the 2015 Act and the establishment of three special criminal courts competent in matters relating to slavery (in Nouakchott, Nouadhibou and Nema); the updating of the regulations on legal assistance and the establishment of legal aid offices; the revision of the legal framework respecting private and common land; the adoption of specific follow-up measures to the policy for the enforcement of court rulings for the recovery of damages granted to victims; the adoption of a national gender mainstreaming strategy and the training of NGOs in this field; the formulation of a Children's Code; the general establishment of regional child protection round tables; the formulation of a framework Bill on gender-based violence; the

implementation of a dialogue forum to facilitate the registration of persons without family status documents; the implementation of a National Plan of Action to combat child labour; the reinforcement of the capacities of the labour administration; the adoption of a code of practice for foreign companies operating in Mauritania and the introduction of regular controls in such enterprises; and the revision of the Act on the status of magistrates.

In the field of awareness raising, reference should be made to the awareness-raising campaigns undertaken concerning the rights of targeted persons, those for civil society and those for religious leaders and traditional chiefs; the implementation of a National Communication Strategy to combat the vestiges of slavery; the development of networks and press associations on action to combat the vestiges of slavery; the adoption of a Fatwa de-legitimizing slavery; the dissemination of a code of practice for enterprises; the inclusion of a training module on human rights and action to combat the vestiges of slavery for Imams and in literacy programmes; the broadcast of radio and television programmes on the unlawful nature of slave practices; training and awareness raising for judges and law enforcement officers on the 2015 Act; and the holding of a national day to combat the vestiges of slavery. The final component of the roadmap was devoted to the social and economic fields, with the most tangible action in the fields of education, the establishment of credit lines to facilitate the financing of income-generation activities, targeted vocational and skills training for young persons from adwabas and support to national NGOs for the implementation of development projects for persons affected by the vestiges of slavery. Progress had also been made in the implementation of the recommendations of the October 2016 direct contacts mission. With reference to the qualitative and/or quantitative study intended to "provide a specific and objective basis for the discussions, thereby calming the debate and demystifying the issue at both the national and international levels", its terms of reference were being approved. Effect had also been given to the recommendation to provide the necessary personnel and adequate material and logistical resources for the three special courts, as equipment had been installed and the personnel had received training. With regard to the need to establish a support structure for victims as soon as they registered complaints or were identified, this function was ensured by the Tadamoun Agency for inclusion and action to combat the vestiges of slavery and by civil society organizations, which received State subsidies for that purpose. In the social and economic field, the Tadamoun Agency was continuing its programmes and its budget had been increased to improve the pace of implementation. The mission had also recommended the Government to undertake an evaluation of the implementation of the roadmap. The evaluation had been carried out in April 2017 and the progress achieved had been highlighted above. The last recommendation of the mission referred to the need to involve the social partners in follow-up action to combat the vestiges of slavery. That was now being carried out by the Roadmap Follow-up Committee, which had been expanded to take this function into account. With regard to the presence of the social partners in the governing board of the Tadamoun Agency, the Decree appointing its members would be revised to take into account the need for greater inclusiveness. In conclusion, he recalled the finding of the direct contacts mission that significant progress had been made. All of the information provided demonstrated the efforts made in Mauritania to bring an end to the vestiges of slavery and all forms of exclusion and marginalization. Efforts would be continued to complete the work, guarantee the dignity of all Mauritanian nationals and offer them opportunities for development.

The Worker members reiterated their deep concern at the situation that existed in Mauritania with regard to combating slavery, the worst form of forced labour. The recurrence of the case of Mauritania reflected that concern. One of the key tasks of the Committee was to consider how far international labour standards were being implemented in practice on the ground. In the case of Mauritania, there was a colossal gap between statements of intent and their implementation in practice. The organization of the direct contacts mission in October 2016 had not allayed the Workers' concerns. To follow up the conclusions adopted by the Committee in 2016, the Government should have set up a national statistical inquiry on slave labour in order to have objective data enabling the authorities to grasp the scale of the phenomenon and determine the specific action that needed to be taken. Statistical information of that type would enable a discussion to be held on the basis of detailed and objective data. The adoption of the 2015 Act was testimony to the Government's willingness to tackle the problem of slavery-like practices. Unfortunately, the initial feedback on the practical implementation of the new legislation was not reassuring. The establishment of three special courts signified major progress. However, as pointed out by the Committee of Experts, in addition to the special courts, it was the whole criminal justice system that needed to be reinforced and provided with all the necessary resources to leave no case of slavery unpunished. The creation of a prosecutor's office and a police corps specializing in slavery-related issues might also be a positive step forward. The first ruling handed down by the Special Court in Nema, which had sentenced two persons to five years' imprisonment, of which four were suspended, did not appear in conformity with the provisions of Article 25 of the Convention, which required the Government to ensure that the penalties imposed by law were really adequate. A one-year prison sentence could not be reasonably considered a truly dissuasive penalty and was in no way commensurate with the gravity of the crime of slavery. Such a penalty would not help to eradicate slavery-like practices. The same court had also upheld an amicable settlement between a person guilty of slavery-like practices and the victim, with the latter withdrawing the complaint. That sent out a very wrong message, as it indicated to any persons perpetrating those practices that they could escape criminal prosecution by reaching an amicable settlement with their victims. The Government should also provide statistical data on prosecutions and their outcome so that the progress made in combating slavery-like practices could be assessed. The Government should commit itself fully to implementing in practice the measures adopted to combat slavery and should seize the opportunity offered by the Bridge project, the implementation of which, until September 2019, would provide crucial support to bring an end to slavery-like practices.

The Protocol of 2014 to the Forced Labour Convention, 1930, established the obligation to provide victims of forced labour with protection and access to appropriate recourse and effective remedies, such as compensation. To fulfil that obligation, the Government needed to be able to identify victims. That task was particularly difficult since the situations of dependence were so varied. It was to be feared that a large number of persons in situations of slavery were not even aware of the nature of their situation and did not report it. Awareness-raising campaigns to reach all victims of slavery-like practices were therefore essential. Once the victims were identified, the Government needed to able to guarantee them protection to enable them to take steps to report the slavery-like practices affecting them, without fear of reprisals or social exclusion. The 2015 Act was a partial response to the obligation to provide protection and it would be beneficial if the Government supplied

information on the application in practice of such protection measures and the results achieved. Regarding the roadmap adopted in 2014, the Government affirmed that 70 per cent of the recommendations had been implemented. However, the lack of clear qualitative indicators enabling objective measurement of the changes that had occurred in practice was a major source of concern. Many actors on the ground were in agreement that there were very close links between poverty and education, on the one hand, and the survival of slavery-like practices, on the other. The actions of the Tadamoun Agency were therefore crucial in providing victims with support and enabling them to escape their situations of dependence. The Government needed to continue to provide the agency with the necessary resources so that it could carry out its mission and give priority to assisting former slaves. Representative workers' organizations and civil society bodies should also be able to take part in discussions on policies to combat slavery and the vestiges of slavery. Representative workers' organizations were not represented on the Inter-ministerial Committee responsible for implementing the roadmap or in the Tadamoun Agency. The Worker members expressed their deep concern at the arrest of activists of the Mauritanian Initiative for the Resurgence of the Abolitionist Movement (IRA), who had been sentenced to heavy prison terms. Abolitionist activists Moussa Ould Bilal Biram and Abdallahi Matala Salek had initially been sentenced to 15 years' imprisonment, before the courts had reduced the sentences to three years. It was shocking that the prison sentences imposed on abolitionist activists were heavier than those given by the special courts to the perpetrators of slavery-like practices. The latest arrests of leading IRA members had been on 2 May 2017. The ILO could not tolerate such practices. A demand needed to be addressed to the Government to stop the repression of organizations engaged in combating slavery, to quash the arrests and convictions of activists from these organizations, and to order the immediate release of activists who were still being detained. The Government needed to work in close collaboration with the organizations engaged in combating slavery, instead of suppressing their activities.

The Employer members emphasized that the eradication of forced labour was a requirement under international law, based on a fundamental moral duty of all ILO constituents. The case of Mauritania was being discussed by the Committee for the ninth time in relation to slavery and its vestiges. This year, the examination would focus on the effect given to the Committee's previous conclusions, or in other words the action taken in practice by Mauritania for the definitive eradication of forced labour and slavery, and to punish those responsible and provide support to victims. As emphasized by the Committee of Experts, measures had been taken: the establishment of the Tadamoun Agency; the adoption of a roadmap, with responsibility for its implementation lying with a technical Inter-ministerial Committee; the adoption in 2015 of an Act criminalizing slavery and allowing human rights defence associations to take legal action, as well as an Act establishing a legal aid system; and the establishment of three special courts. In addition to these efforts, which should be encouraged and supported, two recent events were of particular importance. The first was the ratification by Mauritania in March 2017 of the 2014 Protocol, which demonstrated the Government's firm commitment to eradicate all forms of forced labour in practice. The other was the acceptance by the Government of an ILO direct contacts mission, which had been able to note the efforts made and the progress achieved in the eradication of forced labour and the protection of victims. Efforts to change attitudes towards slavery, which was related to historical, cultural and religious factors, required time to bear fruit. Nevertheless, the Mauritanian authorities could not lower their guard, and needed to persevere in the action that was being taken, with the support of the international community.

The Employer members referred to the four subjects addressed by the Committee of Experts in its observation on the basis of the information gathered by the direct contacts mission. With reference, first, to the effective enforcement of the legislation, it was essential for material and financial resources to be allocated to the three special courts. The Government should provide figures on the number of cases dealt with, the compensation granted to victims and the penalties imposed. It was also encouraging to note that the Government was collaborating with local and religious authorities to raise awareness of the new legal protection mechanisms. The Government was also benefiting from technical assistance, particularly through the Bridge project, to reinforce the capacities of a whole series of actors in this field. With regard to the assessment of the real situation concerning slavery, it was important to encourage the Government to seek ILO technical assistance with a view, as emphasized by the direct contacts mission, to conducting a qualitative and/or quantitative study to assess the extent of the phenomenon in 2017, and the activities and populations concerned. In relation to inclusive and coordinated action, the Government indicated that it was engaged in inclusive and open dialogue on the eradication of slavery, and that its efforts were focusing on education, public awareness raising and the development of programmes to combat poverty. The Employer members strongly encouraged the Government to intensify its efforts in this respect, as poverty and ignorance were the bedfellows of abuse. The social partners were aware that they had a role to play in informing and training their members so that they were in compliance with the law. In this regard, national employers' organizations wished to participate in any process established to combat forced labour and slavery. Only a strategy of national union based on objective findings would have any chance of bearing fruit on the ground. Finally, with regard to the identification and protection of victims, the direct contacts mission had noted that the relationship between victims and their masters was multi-dimensional and that the economic, social and psychological dependence of victims varied in its extent, and involved a broad range of situations which required a series of complementary measures. The global and transversal programme to be developed by the Government needed to be aimed at deconstructing the system of dependence in which victims found themselves. The mission had recommended to the Government to provide support to victims as soon as they registered complaints so as to protect them from any social, traditional or family pressure. In conclusion, the Employer members recalled that under no pretext could forced labour be organized at the initiative of a government, public authority or enterprise of any type. If forced labour or slavery practices were discovered, the victims of such practices needed to be identified and protected. The beneficiaries of such illegal practices also had to be identified and, after a fair trial, be subject to effective penalties that were commensurate with the acts committed.

A Worker member of Mauritania drew attention to the various measures taken by the Government, including the adoption of the 2015 Act establishing slavery as a crime against humanity punishable by between ten and 20 years of imprisonment; the creation of three specialized courts; the adoption of the roadmap; the creation of the Tadamoun Agency; and the ratification of the Protocol of 2014. Nevertheless, slavery-like practices persisted, as they were anchored in old customs, and these troubling cases underlined the need to pursue and intensify action against slavery. It would be a long-fought battle, and associations composed of representatives of former victims and former masters needed to carry out sustained campaigns in all social environments in order to imbed the principle of equality for all

in the consciences of everyone. The indifference of the administrative, judicial and law enforcement authorities towards these practices must be challenged and the State must involve citizens in such action. The education system should inform young people about this scourge and foster the development of a new collective awareness about equality, social justice, freedom and responsibility. Decentralized local development programmes must be implemented in rural, urban and semi-urban areas with the active involvement of citizens from all social groups. Radio and television programmes on the vestiges of slavery, that gave a voice to both victims and masters, would enable the public to form their own opinions. It was inadmissible that slavery was still being practiced in Mauritania in the twenty-first century and that the public authorities were burying their heads in the sand rather than implementing radical strategies to eradicate these practices. It was also crucial for development partners to support Mauritania in carrying out inclusive programmes that would develop initiatives for extremely poor communities, thereby enabling former victims of slavery to free themselves from the assistance of their former masters and become independent. The mobilization of civil society, unions and economic and political forces in a national movement to eradicate the vestiges of slavery was a fundamental priority. The Inter-ministerial Committee was not doing enough about this challenge, which required commitment from everyone.

Another Worker member of Mauritania, speaking on behalf of the Union of Workers of Mauritania (UTM) and the inter-union grouping composed of 20 of the 28 federations existing in Mauritania, recalled the enormous progress made, which bore witness to the Government's will to eradicate definitively the vestiges of slavery. One example of such progress was the adoption of the 2015 Act and its implementing regulations. These formed a comprehensive array of legal instruments that took account of the specific features of Mauritanian society and had been drawn up in an inclusive manner. To ensure the application of the Act, welcomed by the whole of civil society and all foreign partners, the authorities had established three special courts covering the whole of the country whose staff had received appropriate training. The vestiges of slavery were essentially related to poverty and lack of education. For that reason, the authorities had set up the Tadamoun Agency, whose programmes targeted the construction of schools, training in health and hygiene, the provision of basic services including water, lighting and roads, and the funding of income-generating activities in adwaba areas, largely inhabited by former slaves. The joint organization with the International Trade Union Confederation (ITUC) of a subregional workshop on contemporary forms of slavery had made it possible to establish a National Plan of Action to combat the vestiges of slavery. Freedom of expression, like freedom of association and free access to information, was a reality in Mauritania. Those undeniable facts were testimony to real political will and progress achieved, which needed to continue with support from the ILO and the ITUC, and with greater trade union involvement in all the structures and programmes concerned, including the Tadamoun Agency. She hoped that this would be cited as a case of progress by the Committee, which would offer encouragement to make further progress.

The Employer member of Mauritania recalled that Mauritania had appeared before the Committee three times since 2015. The inclusion of Mauritania in the list of cases was all the more paradoxical in that it did not appear to take into account the efforts made to give effect to the recommendations of the Committee. Nevertheless, the Government had taken a series of measures, including the criminalization of slavery, the creation of special courts and the establishment of the Tadamoun Agency, which was implementing numerous projects, including in the fields of education and infrastructure, for the benefit of the affected population. Those actions were set out in the roadmap and were also being implemented through the Bridge project coordinated by the ILO. He considered that, in the spirit of common sense, logic and fairness, the Government of Mauritania should be congratulated, or at the very least encouraged and supported, with a view to reinforcing and perpetuating the significant efforts that it was making to eradicate the vestiges of slavery.

The Government member of Malta, speaking on behalf of the European Union (EU) and its Member States, as well as Bosnia and Herzegovina, Montenegro, Norway and Serbia, reiterated his commitment to the universal ratification and implementation of the core ILO Conventions and called on all countries to protect and promote all human rights and freedoms. Compliance with the Convention was essential to Mauritania's commitment under the Cotonou Agreement to respect democracy, the rule of law and human rights. The direct contacts mission had acknowledged positive developments, in particular, the efforts made to enforce the 2015 Act, as well as the establishment of courts in Nema, Nouakchott and Nouadhibou, which were now operational. He welcomed the close cooperation with the ILO and the strengthening of actors, including the police and judicial authorities to identify slavery-like practices. In order to fight impunity and eradicate slavery throughout the country, perpetrators must be effectively prosecuted and sanctions must be sufficiently dissuasive and properly enforced. A precise picture of the slavery situation in the country was essential for the targeting of public interventions. The Government should conduct a study to provide qualitative and quantitative data and analysis on slavery practices. It was also very important that the Government worked with civil society, especially the social partners and religious authorities, in the fight against slavery, and continued to raise public awareness. He called on the Government to ensure protection and assistance for victims so that they could assert their rights and encouraged the implementation of the 29 recommendations of the 2014 roadmap to combat the vestiges of slavery. The Tadamoun Agency also needed to have the necessary means to fulfil its mandate. He noted its work in targeting zones prone to slavery practices, where there was little state presence. He expressed continued readiness to cooperate with the Government to promote development and the full enjoyment of human rights.

The Government member of Switzerland regretted that this case was once again being examined by the Committee. This situation demonstrated the urgency of quickly and effectively combating all forms of slavery. While progress had been made through the establishment of three special courts and the work carried out by the Tadamoun Agency, efforts needed to be continued in collaboration with the ILO. The effective implementation of laws and their strict application were vital elements in comprehensively combating forced labour. It was necessary to encourage the Government to continue its communication and prevention initiatives and its dialogue with the social partners for the involvement of all stakeholders. Lastly, she hoped that the Government would be able to implement protective measures for victims.

The Worker member of Nigeria, also speaking on behalf of the Worker member of Ghana, welcomed the progress made as a result of the work of the Committee and support of the ILO over the years. An Inter-ministerial Committee, headed by the Prime Minister, had been established and the courts had prosecuted some cases of slavery. The Government also intended to conduct research to ascertain the depth of the issue and to measure progress. However, much remained to be done. Slavery was deeply rooted in the social fabric of the country and was complex. The history of Nigeria and Ghana in relation to slavery demonstrates that

tackling such a deep-rooted and socially complex phenomenon required all state and social actors to confront the existence of slavery, delegitimize it and commit to eradicating it altogether. Given the extent of the social legitimacy of slavery in Mauritania, it could not be dealt with as an ordinary criminal matter or social ill. It was possibly unrealistic to expect that slavery would be investigated, prosecuted and remedied with speed and alacrity by institutions that were rooted in its traditions. It was reasonable that victims of slavery, as well as anti-slavery activists, should lack confidence in these institutions. The efforts that were being made by the Government, as the primary duty bearer, should continue, but it was time to call for an independent and inclusive anti-slavery commission with special investigative, prosecutorial and policy advocacy powers to supervise the eradication of slavery and its vestiges in Mauritania. He urged the Government to involve the trade unions and to continue to seek ILO technical assistance to improve the situation.

The Government member of the United States recalled that in recent years the Government had taken some initial steps to address the issue of slavery. In this regard, he recalled the 2014 roadmap, the 2015 Act, and the ratification of the 2014 Protocol were noted. In addition, the Government had accepted the direct contacts mission as a follow-up to the conclusions of the Committee in 2016. These actions were welcome indicators of the Government's acknowledgement of the persistent issue and its role in combating slavery and its vestiges, but efforts to eliminate the practice and prosecute individuals under the law remained inadequate. While three special courts had been established, there had to date been only two convictions of perpetrators of slavery. These courts remained significantly underfunded and understaffed. Reports indicated that the police and judicial authorities had been resistant to investigating or initiating prosecutions. The Government needed to ensure that the competent authorities had the necessary resources to eliminate the vestiges of slavery, while also heightening public awareness raising. Specifically, the Government needed to fully fund and appropriately staff the three anti-slavery courts, effectively investigate and prosecute slavery cases, ensure that all members of Mauritania's civil society were able to peacefully express their support or dissent, particularly anti-slavery activists, desist from launching politically motivated prosecutions of abolitionists, such as the recent trial of 13 IRA members, enable the Tadamoun Agency to pursue its mandate to identify and refer slave owners for prosecution, and provide assistance and rehabilitation programmes for victims of slavery. He urged the Government to take full advantage of the technical assistance provided by the ILO and to make serious strides towards the full eradication of slavery, including its vestiges and its modern forms.

An observer representing the International Trade Union Confederation (ITUC) noted that, although the abhorrent phenomenon of slavery was an affront to the international community, an insult to humanity and a serious violation of human rights, it persisted in Mauritania. The Government of Mauritania continued to denounce, conceal and supress the reality of a whole population who were subjected and condemned to live in exclusion and extreme poverty. This troubling situation destroyed any hopes the victims had of changing their status and participating in active life. Former slaves were confronted with an absence of comprehensive readjustment and reintegration measures. Harassment, intimidation and the expropriation of lands, as well as discrimination in employment, and an absence of opportunities weakened them and maintained their dependence on their masters. The Committee of Experts had referred to the Tadamoun Agency, supposedly created for the economic and social development of the Haratin population. The Agency had three objectives, including combating the vestiges of slavery. However, the State had no intention of taking concrete action, preferring to implement measures to satisfy international opinion. This was the case of the Land Act, which was intended to enable former slaves to have access to land, or the special courts, which were not operational in practice due to the absence of implementing texts. Despite the obvious challenges – the absence of support structures, material assistance or compensation for damages which would allow victims economic independence, and an absence of government will to root out the phenomenon – slaves continued to demonstrate their will to leave their masters. There were many cases, including women domestic workers and victims of trafficking to Saudi Arabia, whose complaints had not been received, including the testimonies of ten former slaves who had left their masters in 2016. He considered that the measures referred to by the Government and the information that it had supplied were not reliable or accurate. He hoped that the recommendations of the Committee of Experts regarding the implementation of the roadmap would be carried out by the Government in practice, in cooperation with all the stakeholders.

The Government member of the Bolivarian Republic of Venezuela welcomed the information provided by the Government representative and emphasized the willingness shown by the Government through its acceptance of a direct contacts mission in October 2016. He referred in particular to the special courts competent for slavery, which were operational and had sufficient staff and resources, and he hoped that they would hand down fair and exemplary sentences. It was also necessary to highlight the technical cooperation that the Office was providing in Mauritania for the application of legislation and the eradication of the vestiges of slavery, and the level of compliance with the recommendations set out in the roadmap to combat the vestiges of slavery. Given the willingness and commitment shown by the Government, he considered that the Committee should bear in mind the positive aspects of the case, adopt objective and balanced conclusions, and continue to encourage and support the Government in its efforts to eradicate forced labour and its vestiges.

The Worker member of Spain emphasized that the existence of slavery was denied by many authorities, which undermined and impeded the action to combat it. The Government should work earnestly with anti-slavery organizations instead of criminalizing and persecuting them and their members. Rather than focusing on complaints from Mauritanians, who included descendants of slaves and former slaves, and who continued to protest at the lack of opportunities, the Government had pinpointed the anti-slavery activists as responsible for the protests. There were a high number of cases of ill-treatment and persecution against these organizations and their members. Biram Dah Abeid, a prominent activist, had recently been released as a result of the major efforts made by groups of human rights defenders, who had secured a victory in the Supreme Court of Justice. There were fears, however, that he would be re-arrested. Amadou Tidjane Diop had been arrested in June 2016, along with 12 other members of the IRA. His arrest was related to a spontaneous protest by the residents of Bouamatou, a neighbourhood where the vast majority of the Harratin people lived, descendants of slaves who had been threatened with eviction in July 2016. Despite the arbitrary searches and raids, the police had not been able to establish a connection between IRA activists and the protest in the Bouamatou neighbourhood. During their detention, the activists had been the victims of torture, ill-treatment and death threats. In 2008, the IRA had requested recognition of its legal personality but, to date, it had been neither recognized nor authorized by the authorities. All IRA activists therefore ran the risk of being charged at any point for belonging to an unrecognized organization. Civil

society organizations and their activists had demonstrated their capacity and determination to be part of the solution. They should be supported, not persecuted.

The Government member of Egypt thanked the Government for providing information on the actions of its authorities to tackle the problem of slavery, including the laws that had been enacted, the establishment of special courts, and the organization of awareness-raising campaigns and training sessions. The Government had developed a strategy to combat the issue. He hoped that the technical assistance requested by the Government would be provided.

The Employer member of Algeria noted with satisfaction that the issue of slavery had been addressed in the national Constitution, which served as the point of reference and legal foundation for subsidiary laws and regulations criminalizing all forms of forced labour. He welcomed this major progress and the efforts made by the Government to bring its legislation into conformity with the Convention, which deserved the Committee's full support and encouragement.

The Government member of Algeria emphasized that, according to the information provided by the Government representative, the measures taken to combat forced labour were practical, effective and being applied in the context of the implementation of the roadmap to combat the vestiges of slavery. In addition to measures to strengthen the legislative and institutional framework, measures to train and raise awareness among the actors concerned had also been adopted, along with the parallel implementation of a monitoring mechanism, with which all stakeholders and civil society were associated. It appeared that many positive results had been achieved, and that there was a collective mobilization to implement measures to combat forced labour. The efforts made by Mauritania were therefore commendable, and the country should continue to receive support to pursue the path ahead.

The Worker member of France, referring to the report of the Committee of Experts, emphasized that "the victims of slavery are in a situation of great vulnerability which requires specific action by the State" and that they "are not aware of their rights and may come under very strong social pressure if they denounce their situation". The Government had ratified the Protocol of 2014, which provided that the effective and sustained suppression of forced labour involved the implementation of measures to ensure that victims were provided with protection and access to appropriate and effective remedies, such as compensation, and the need to identify and protect victims to allow for their rehabilitation, and to give them assistance and support. While this ratification and the legislative efforts made were to be welcomed, it was now essential to implement all of the provisions in order to eradicate slavery-like practices in Mauritania. A very significant number of people were subject to slavery in Mauritania. Those who dared to complain to the authorities faced, in the best case scenario, having their situation trivialized, and in the worst case, being subject to police repression and sent back to their masters. In 2009, the United Nations Special Rapporteur on contemporary forms of slavery had visited Mauritania and noted that the absence of alternative livelihoods, illiteracy, lack of information, and the use of religion helped masters to maintain their control. Anti-slavery organizations offered various types of support for victims, such as shelter, training and literacy programmes, and information on their rights. But their activities were being seriously hampered and active members were prosecuted. Recalling that the Protocol of 2014 affirmed the need to engage and consult with employers' and workers' organizations, she called on the Government to demonstrate commitment, and cooperate with the social partners and civil society to implement the 2015 Act, with the aim of eradicating slavery and ending impunity.

The Government representative thanked the delegates who had contributed to the discussion and, in particular, those who had made an effort to understand the situation and had commended the real progress made by Mauritania in combating the vestiges of slavery and had encouraged it to persevere. The Government was cooperating with international bodies, including the Human Rights Council, and gave effect to their recommendations. This spirit of openness and cooperation added to the Government's willingness to involve all actors concerned by the issue, which related to the vestiges inherited from history. The Government was acting out of a sense of duty and conviction, and not under pressure from anyone. It would take into account the concerns raised by certain speakers, particularly those of Worker members. The programmes currently being implemented already responded to some of those concerns. It was however regrettable to note certain spurious allegations which dismissed the positive developments. Such denial did not help the victims. All efforts should be made and coordinated to respond to the imperative of fully understanding the situation of the victims. Finally, he reaffirmed that the Government was taking action, and would take the concerns expressed into account, particularly regarding the study planned within the framework of the Bridge project.

The Employer members said that they had noted the numerous initiatives taken to prevent all forms of forced labour in Mauritania, to identify and protect victims of slavery, and to punish all slavery-related abuses identified. It should be recalled that it was the collective responsibility of ILO constituents to ensure that, in the twenty-first century, fundamental labour rights were respected by all member States. Any complaints in this regard should be examined seriously by the national authorities, and particularly by competent and independent public officials and judges. The same applied to forced labour, which must be eradicated permanently without delay. While the efforts undertaken by the Government were to be welcomed, the eradication of slavery and its vestiges required an arsenal of permanent preventive and remedial measures. The Government must continue its efforts, and in particular:

– improve the efficiency and build the capacity of all components of the administrative and judicial system;
– periodically collect, analyse, and provide information on the number of cases of slavery reported to the authorities, the number of cases resulting in legal action, and the compensation awarded to the victims and the penalties imposed;
– continue to implement the 29 recommendations contained in the roadmap, particularly those concerning the provision of assistance and compensation to victims, and to combat poverty;
– ensure that the Inter-ministerial Committee evaluated the impact of the measures taken in the framework of the roadmap, by actively engaging all members of civil society, religious authorities and the social partners, including representative trade unions; and
– raise the awareness of civil society in a more effective manner, while taking into account the cultural roots of slavery which ran deep in society and continued to undermine the efforts of the Government.

The Worker members welcomed the political willingness demonstrated by the Government to make the fight against slavery and its vestiges one of its priorities. Nevertheless, the Government needed to show coherence between its declarations and the results of its actions. Accordingly, machinery for the ongoing systematic collection of statistical data on slavery throughout the country needed to be set up in Mauritania. In that regard, the ILO had expertise from

which Mauritania could benefit. The strict application of the 2015 Act was necessary to ensure that investigations were actually conducted into those responsible for slavery-like practices, who should be prosecuted and given sentences commensurate with the gravity of the crime committed, in order to ensure the dissuasive effect of the prosecution system. Any possibility of reaching out-of-court settlements in a slavery-related case must be excluded. The Government was also called upon to establish a prosecution office and a police corps specialized in combating slavery. The justice system needed to be allocated sufficient resources to ensure that prosecutions brought in the three special courts were processed within a reasonable period of time. Training must be provided to the authorities responsible for conducting prosecutions and public awareness of slavery-related offences raised to bring an end to the reluctance of the police and judicial authorities to take action, as noted in the processing of complaints. The effectiveness and success of prosecutions relating to slavery depended on the development and implementation of awareness-raising campaigns targeting the general public, victims of slavery, the police and the administrative, judicial and religious authorities. A further requirement was to provide victims with protection and the means of subsistence, from the time they were identified or a complaint was lodged. In that regard, the Government was called upon to supply statistical information on the prosecutions launched, and on the application in practice of the protection measures prescribed by the 2015 Act. The Government must also develop clear, qualitative, objective indicators for measuring the results achieved in combating slavery-like practices. That was particularly important for the purpose of analysing the results achieved in the context of the roadmap. Moreover, the Tadamoun Agency needed to be given all the necessary resources to achieve the important objectives assigned to it, with a view to supporting communities or persons affected by slavery and making them autonomous. The Government should fully seize the opportunity of the support provided through the Bridge project for the implementation of the recommendations. It was also absolutely essential to involve the social partners and civil society in all initiatives to combating slavery, particularly by enabling them to participate in the work of the Tadamoun Agency and the Inter-ministerial Committee responsible for implementing the roadmap. Finally, the Government must immediately release the IRA members who were still imprisoned and in future refrain from obstructing the work of organizations engaged in combating slavery. Indeed, the Government needed to cooperate with these organizations to increase the chances of successfully eradicating slavery in the country. In order to implement all these recommendations, which largely echoed those made by the Employer members, the Government should request ILO technical assistance.

Conclusions

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

The Committee took note of the Governments stated efforts in the fight against slavery and vestiges of slavery and urged the Government to continue these efforts. However, the Committee expressed deep concern over the persistence of slavery on a widespread scale despite numerous discussions in the Committee. The Committee was disappointed that the Government has prosecuted very few of those responsible for the crime of slavery since the last discussion of this case in the Committee.

Taking into account the discussion of the case, the Committee urged the Government of Mauritania to:

- **strictly enforce the 2015 anti-slavery law to ensure that those responsible for the practice of slavery be effectively investigated, prosecuted and receive and serve sentences that are commensurate with the crime;**
- **provide information on the number of cases of slavery reported to the authorities, the number of those cases which resulted in judicial action, and the number and nature of the convictions;**
- **provide information regarding the remedial action taken in respect of victims;**
- **strengthen the labour inspectorate and other relevant enforcement mechanisms to combat the exaction of forced labour;**
- **establish specialized units in the Office of the Public Prosecutor and the forces of order with the capacity to gather evidence and initiate the corresponding judicial procedures;**
- **ensure that prosecutions at the special courts for slavery crimes are supported and processed in a timely manner, and with public awareness-raising campaigns around the convictions;**
- **develop clear and objective indicators to assess the full implementation of the Roadmap to Combat the Vestiges of Slavery;**
- **conduct a complete analysis in relation to the nature and incidence of slavery as a basis for improving targeted actions to eradicate slavery;**
- **increase the visibility of awareness-raising campaigns for the general public, victims, the police, administrative and judicial authorities and religious authorities ;**
- **ensure the social and economic integrations of victims of slavery by providing access to services and resources enabling them to reconstruct their lives and to prevent a return to slavery;**
- **provide detailed information on the operations, programmes and resources provided to the National Agency to Fight against the Vestiges of Slavery, for Social Integration and to Fight against Poverty, or "Tadamoun";**
- **ensure that victims who identified their situation are protected from retaliatory measures and social pressures, including by unconditionally releasing those who have publicly denounced slavery.**

In this regard, the Committee calls on the Government to effectively pursue ILO technical assistance to address the recommendations and to accept a high-level mission. The Committee also asked the Government to report in detail on the measures taken to implement these recommendations to the next meeting of the Committee of Experts in November 2017.

PARAGUAY (ratification: 1967)

A Government representative said that the country's labour administration authority had undergone significant institutional development since 2013, with the creation of the Ministry of Labour, Employment and Social Security (Ministry of Labour), a body with specific objectives and tasks in social and labour affairs. The new Ministry had needed to address daily challenges related to the important task of organizing a new department that met the high standards required, embarking on a process of modernization and growth, despite budgetary limitations. It had made significant progress in the implementation of the current legislation. It had also formulated amendments to laws and regulations, in line with the recommendations of the Committee of Experts. Social dialogue had been strengthened on various topics through the Tripartite Advisory Council, in accordance with Act No. 5 115/13 establishing the Ministry of Labour. He highlighted the country's increased participation in the ILO, including with respect to paying state contributions, the presence of trade union representatives at the Conference, the submission of reports on Conventions and the technical assistance received from the Office. With regard to the report of the Committee of Experts, he emphasized that various issues that the said Committee had discussed this year had been covered by the Government in

the reports submitted in previous years, and that those reports showed a firm willingness on the part of the State to move forward in the process of combating and preventing forced labour. Referring to the adoption of the National Strategy for the Prevention of Forced Labour 2016–20, adopted by Decree No. 6285 of 15 November 2016, he said that the Strategy had been the result of numerous tripartite meetings with the social partners and sectoral workshops organized around the country. The reasoning set out in the Decree noted that the Executive Authorities were adopting the Strategy in the awareness that there existed a sector of the population who, for various reasons, found themselves in a particularly vulnerable position and, in line with the observations made by the Committee of Experts concerning the alleged existence of debt bondage in the Paraguayan Chaco region, so that, in coordination with the Ministry of Labour, state policies could be formulated with the main aim of identifying instruments and measures to address the problem. The initial objective in the short term was to draw up a protocol of procedures for the public sector that defined the roles, functions and responsibilities of the public bodies involved in implementing the Strategy. The ultimate aim was to ensure coordination among the key bodies, including the Ministry of Labour, the Public Prosecution Service, the national police, the Office of the Public Defender and the judicial authorities. In that regard, a project was being carried out with ILO technical assistance with the aim of submitting an inter-institutional protocol to the Commission on Fundamental Rights at Work and the Prevention of Forced Labour for consideration by the social partners and the Government. It was to be hoped that the protocol would be approved and implemented later in 2017 or early in 2018. The ILO was also supporting the country by providing a training module for labour inspectors on forced labour, and in the planning of activities for 2017–18 under the National Strategy for the Prevention of Forced Labour.

With regard to the measures taken to strengthen the technical unit of the labour inspectorate for the prevention and eradication of forced labour, new labour inspectors had been recruited through public competitions requiring professional university qualifications and had been trained in monitoring and labour inspection by ILO experts. In recognition of the fact that the number of inspectors was still too low, the aim was to increase their numbers and geographical distribution, within available budgetary resources. Concerning the lack of infrastructure and weak state presence in the Chaco region, he said that the region represented a very special case, as it accounted for over 50 per cent of the national territory, but had a very small population of 350,000 people, of whom 40,000 were indigenous. The Ministry of Labour's only offices in the region were located in Teniente Irala Fernández. The short-term aim was to empower the Department of Labour so that it could operate in the town of Filadelfia, closer to groups of indigenous peoples. In that regard, the Government was finalizing the details in preparation to sign an agreement with the regional government in Boquerón to facilitate basic installations. Once the Department had been established there, the next step would be to increase its staffing levels and, if possible, recruit more indigenous advisors on a permanent basis. With reference to the need for information on the judicial rulings handed down in cases in which forced labour practices had been detected, he referred to the reports on Convention No. 29 and the Abolition of Forced Labour Convention, 1957 (No. 105), in which information had been provided on judicial rulings and action by the Public Prosecution Services in cases involving human trafficking and forced labour. He also said that the ILO was training judges from the judicial authorities on the Conventions that the country had ratified. It would take time to see the results. The new Code on the Execution of Criminal Sentences included provisions governing work by detainees in national prisons and replaced Act No. 21 of 1970 on the prison system, in accordance with the judicial interpretation criteria of *lex posterior* and *lex specialis*. In conclusion, he noted that forced labour presented a challenge that his country had taken up responsibly, although under geographical, demographic and budgetary constraints. The future would show sustained and continuous progress towards full compliance with fundamental rights, for which better protection was required for vulnerable population groups, especially indigenous peoples in the Paraguayan Chaco. The ILO was an invaluable ally on that journey, providing the country with significant technical assistance, all of which increased its hope of continuing to make progress in the proper application of Convention No. 29.

The Worker members emphasized that the Committee of Experts had been dealing with the issue of debt bondage imposed on workers from indigenous communities in Paraguay for 20 years. Such practices had also been identified by various official missions of the United Nations Permanent Forum on Indigenous Issues, the Special Rapporteur on the rights of indigenous peoples and various investigations undertaken by the International Trade Union Confederation (ITUC) and several Paraguayan trade unions. The ILO estimated that at least 8,000 workers could be victims of forced labour in the Chaco region of Paraguay, but the number could even be much higher if the serious shortcomings in labour inspection, precarious infrastructure, the size of the region and the indifference of the authorities were taken into account. It could be assumed that the Convention was being violated, with the full knowledge of the authorities, as the use of debt bondage was a habitual practice in livestock farming. Indigenous workers were usually paid far less than the minimum wage and had to take out loans from their employers. Those sums were generally used to build housing, pay school fees or just to buy food or clothing. In reality, however, the majority of their wages went towards paying outstanding debts, leaving them trapped in a situation amounting to forced labour. In the past, large expanses of indigenous lands had been sold to foreign speculators, forcing many indigenous communities to work for large ranches. At present, these ranches were the only source of employment in the Chaco region. Men usually worked in the fields, taking in the harvest or tending livestock. Domestic work was generally performed by indigenous women, or in some cases their children, for ranch owners. Women indigenous domestic workers suffered constant abuse from their employers, and often did not receive wages, working instead only for bed and board. For children, the situation was even worse. In Paraguay, there was the widespread practice of "criadazgo", whereby children worked as servants in exchange for their basic needs, which enabled them to receive an education. As these children had no control over their conditions of employment, in reality they were subject to forced labour. Around 47,000 minors, mostly girls, were employed in Paraguay in domestic service under the "criadazgo" system. According to official census figures, they represented 2.5 per cent of the country's child and adolescent population. The Worker members took note of the creation of an office of the Department of Labour in Teniente Irala Fernández, in the central Chaco region. However, the office was situated 72 kilometres from the city of Filadelfia, capital of the Boquerón region. As indigenous workers had no means of transport, it was impossible for them to cover the distance on foot to submit their complaints. The office currently had only one member of staff, who did not have the proper training and lacked the funds to cover her own travel. Moreover, the Government had not provided information to the trade unions on the activities of the office, nor on the number of complaints of forced labour received and dealt with, nor on

any other violation of labour rights. That being the case, complaints were not being made and the submission of complaints could be detrimental to workers. Blacklists were common among employers in the Chaco region, and the majority of ranch owners required references before assigning work on their ranches. Indigenous workers claimed that making a work-related complaint could have a negative impact on other members of the ethnic group, ruining job prospects for the whole community.

With regard to inspections, the Government had announced the creation of the Department for Indigenous Labour and a technical unit in the labour inspectorate for the prevention and eradication of forced labour, supposedly composed of six labour inspectors. However, according to Paraguayan trade unions, those bodies had ceased to function almost as soon as they had been established. During the brief period when they had been operational, they had never informed the social partners of the fines levied against employers, the compensation awarded to workers or the number of workers who had taken part in training courses. Under Article 25 of the Convention, the exaction of forced labour had to be punished as a penal offence, and the penalties imposed needed to be really adequate and strictly enforced. The Committee of Experts had repeatedly requested the Government to provide information on the number of cases in which the labour inspection services had identified violations of the Labour Code in relation to the protection of wages and the operation of company stores. To date, that information had not been supplied to the ILO. In April 2015, based on the Committee's conclusions, a delegation from the Ministry of Labour, headed by the Minister, had visited the Chaco region to examine the working conditions on agricultural ranches. The delegation had visited only a few workplaces and had been accompanied throughout its visit by representatives of the region's main agro-enterprises. According to information published on the Government's website, the Ministry of Labour had made an appeal to ranch owners and the representatives of enterprise at a meeting held during the visit, saying: "We are not following up biased complaints that originated in the ILO in Geneva, but we need to show that there is no forced labour and we want you to help us. We have to prove this is the case." It was understandable why, at the end of the visit, the Minister had made statements, widely publicized in the press, saying that the mission had been unable to verify the existence of forced labour in the Chaco region. The Committee of Experts, in its 2017 report, had noted with deep concern the operational problems faced by bodies set up to enable indigenous workers who were victims of labour exploitation to exercise their rights, as well as the lack of information on the activities of those bodies. It had also indicated that the national legislation still did not contain sufficiently specific provisions adapted to the national circumstances, meaning that the competent authorities were unable to initiate criminal proceedings against the perpetrators of these practices and punish them accordingly. There had in fact been no judicial rulings relating to forced labour for 20 years. The Worker members took note of the adoption in 2016, with ILO technical assistance of the National Strategy for the Prevention of Forced Labour. However, they noted with concern that trade union organizations had not been properly consulted during the formulation of the Strategy, nor had they been informed of the progress made. Furthermore, the Strategy did not contain specific measures for indigenous communities in the Chaco and Eastern regions. A significant omission in the Strategy was the fact that it did not cover the prohibition of forced labour and penalties for those responsible. Similarly, it made no mention of institutional strengthening for the labour inspectorate, nor of the need for coordination between the inspectorate and the Public Prosecution Services. Those elements were fundamental parts of the Convention and had been raised repeatedly by the Committee of Experts. With regard to prison labour, despite repeated requests from the Committee of Experts, the Government had still not amended the Act on the prison system, under which prison labour was also compulsory for persons subject to security measures in prison. Under the current legislation, those in preventive custody were obliged to work in prison, which was a clear violation of Article 2 of the Convention. The Worker members recalled once again that the ILO supervisory bodies had been examining the case for 20 years. They also observed that the ILO had already provided Paraguay with technical assistance, but it was clear that the Government did not have the political will to make the changes required in law and practice to resolve the recurrent violations of the Convention. Thousands of workers, especially indigenous workers, were still victims of abuse and subject to forced labour at the hands of unscrupulous employers, with the Government's blessing. The technical assistance provided had not been enough to overcome the distrust that existed between the population of the Chaco region and the Government. Finally, in view of the seriousness of the case, the Worker members recommended that the Government should take more aggressive action, in cooperation with the ILO, and including all those involved on the ground.

The Employer members recalled that the present case had already been examined twice by the Conference Committee. Based on the comments of the Committee of Experts, there were three aspects to the case. The first concerned the request made to the Government of Paraguay to take the necessary measures, within the framework of coordinated and systematic action, to respond to the economic exploitation and in particular the debt bondage to which certain indigenous workers were subjected, especially in the Chaco region. On that issue, the comments of the Committee of Experts referred to several measures that demonstrated the Government's commitment to comply with its request, such as the creation of a Commission on Fundamental Rights at Work and the Prevention of Forced Labour, the establishment of a subcommission in the Chaco region, the establishment of an office of the Department of Labour in that area of the country, and the activities undertaken in collaboration with the ILO. They also referred to a series of activities, including some specific activities with indigenous communities, which were all aimed at developing a National Strategy for the Prevention of Forced Labour. The Employer members observed that it was necessary to know whether those measures had been effective. In that regard, one piece of information that might be encouraging was the Government's statement that reports of inspections in 2015 in the Chaco region, although showing evidence of breaches of labour law, had not identified any cases of forced labour. As a result, they endorsed the recognition by the Committee of Experts of the participatory process that had led to the adoption of the National Strategy for the Prevention of Forced Labour and expressed the hope that it would be applied effectively in practice. Second, the Committee of Experts had requested the Government to build the capacities of the law enforcement bodies and to improve the legislative framework against forced labour to ensure that victims had effective access to justice. That point dealt with two issues: the first was the need for effective law enforcement, and the second implied legislative reform. With regard to the effective enforcement of penalties, the Committee of Experts had highlighted the fact that the labour inspectorate had been strengthened through the recruitment of 30 labour inspectors, who had received training in the matters at hand. It had also noted that new courts had been established in the Chaco region. The Employer members considered that both types of action demonstrated the political will of the Government to

give effect to the original objective, which was to take coordinated and systematic action in response to economic exploitation, and particularly debt bondage, affecting certain indigenous workers, especially in the Chaco region. As such, while acknowledging the concern that information was lacking on the activities of the bodies set up to enable indigenous workers who were victims of labour exploitation to exercise their rights, they disagreed with the conclusion of the Committee of Experts concerning the operational problems faced by those bodies, as that conclusion was based solely on information received from trade union organizations, and should be corroborated by further information supplied by the Government on the operation of those bodies. With regard to the lack of information on the need to improve the legislative framework to combat forced labour, the Employer members questioned the need to amend the Paraguayan legislation. Where appropriate, it might be recommended to begin a tripartite consultation process with a view to making the necessary legal reforms. With regard to the third aspect concerning compulsory labour by persons in preventive detention, they endorsed the observation of the Committee of Experts that the law allowing persons subject to security measures in a prison to be made to work was not in conformity with the Convention. However, they understood, as indicated by the Government, that the law had been repealed by subsequent legislation for reasons of incompatibility, and that no specific repeal was needed. In that regard, they requested the Government to clarify the matter and guarantee that work under such conditions was prohibited in Paraguay.

The Worker member of Paraguay said that, while she acknowledged the efforts made by the Ministry of Labour to promote labour policies, they were still inadequate. It was necessary to strengthen the Ministry and increased personnel and resources were needed to adopt a firmer approach to the promotion of fundamental rights, particularly in the Paraguayan Chaco. The approval of a National Strategy for the Prevention of Forced Labour was a step in the right direction. The trade union confederations had participated in the formulation of the Strategy, as well as in meetings of the Commission on Fundamental Rights at Work and the Prevention of Forced Labour with a view to further developing the Strategy. Within the framework of the Strategy, policies and activities needed to be developed to combat forced labour. She emphasized that indigenous communities were particularly vulnerable and needed special protection from the State, especially because the nature of the Chaco region made it difficult for trade union organizations to gain access to them. She observed that members of indigenous communities submitted their complaints to the Paraguayan Indigenous Institute, without recourse to the offices of the Ministry of Labour. She reiterated the commitment of trade unions to continue working to defend labour and trade union rights, without discrimination. The best tool for dealing with forced labour was social dialogue with the social partners in the framework of the relevant tripartite bodies. Several tripartite meetings had been held on the issue, including with ILO participation, for the purpose of developing guidelines for cases of forced labour.

The Employer member of Paraguay, noting the comments of the Committee of Experts in relation to the case, recalled that the Federation of Production, Industry and Commerce of Paraguay (FEPRINCO) was participating in a tripartite round table discussion attended by the Commission on Fundamental Rights at Work and the Prevention of Forced Labour. He expressed the firm commitment of Paraguayan employers to the Convention and to tripartite dialogue and noted the creation of the Tripartite Advisory Council, established by Decree No. 5159 of 2016. He referred to the commitment of the Paraguayan Industrial Union, the Rural Association of Paraguay and the National Chamber of Commerce and Services of Paraguay (CNCSP) to the national campaign to formalize the economy and recalled that they were the main contributors to the compulsory social security system of the Social Insurance Institute. He reported that 19 FEPRINCO representatives had participated in workshops on the implementation of the National Strategy for the Prevention of Forced Labour. They were aware of the difficulties of access in the Chaco region. Employers' organizations, along with the Government and indigenous communities, had participated in regional visits with a view to encouraging the adoption of measures to prevent the forced labour by indigenous peoples. Finally, he indicated that it was strange that the present case was being examined by the Committee, as the Government had adopted measures to combat forced labour. He urged the Committee to adopt a decision commensurate with the situation faced by the country in relation to this problem.

The Government member of Panama, speaking on behalf of the group of Latin American and Caribbean countries (GRULAC), noted the information provided by the Government and the comments of the Committee of Experts, which demonstrated the commitment of the Government and showed that it was working effectively to eliminate forced labour. He emphasized the importance of the adoption of the National Strategy for the Prevention of Forced Labour, which provided a framework for the development of national and local policies and plans, and which was an important step in combating forced labour. He also noted that in recent years the country had worked closely with the ILO. The Ministry of Labour had conducted regular visits and inspections in the Chaco region of Paraguay, and no cases of forced labour had been identified. He reaffirmed the commitment of GRULAC to the eradication of forced labour and expressed appreciation of the role of the labour inspectorate in this regard. He was confident that the Government would continue to move forward in the application of the Convention, and he urged the ILO to continue to collaborate with the country to meet these objectives.

The Worker member of Brazil expressed the solidarity of Brazilian trade unions with Paraguayan workers in their fight against forced labour and recalled that the Committee had already firmly urged the Government of Paraguay to adopt measures against the form of forced labour to which certain indigenous workers were subjected, primarily in the Chaco region. It was to be regretted that the Government continued to turn a blind eye to the exploitation of indigenous peoples, despite having ratified the Convention 59 years ago. The Government continued to commit human rights violations as if workers were objects and not people. Workers' debts to their employers were still used to disguise forced labour. Workers became the hostages of employers, who provided them with food, clothing, sanitary facilities and accommodation. The workers could not pay off their debts at the end of each month, and they were even in many cases passed on to widows and children, who had to work to clear them. He therefore called on the ILO to take measures to ensure that the Paraguayan Government brought an end to these violations. He also emphasized that, if the Government continued to fail to comply with the Convention, other avenues could be explored, such as denunciation to the Inter-American Commission on Human Rights of the Organization of American States.

The Worker member of the Bolivarian Republic of Venezuela expressed the solidarity of Venezuelan trade unions with the Paraguayan federations in their fight to improve the living and working conditions of the working classes in the country. She urged the Government to strengthen tripartite dialogue with a view to bringing an end to the forced labour that afflicted indigenous workers, especially in the Chaco region.

The Government member of Mexico endorsed the statement by GRULAC. He noted that the situation described

was isolated and only occurred in the Chaco region. He expressed satisfaction at the measures taken by the Government with a view to punishing those offences. He encouraged the Government to continue those measures and to pursue coordinated action with the ILO to ensure the application of the Convention.

The Worker member of Argentina noted that the explanations provided by the Government and the measures that it had taken were insufficient. The plans and strategies developed by the Commission on Fundamental Rights at Work and the Prevention of Forced Labour and the structures created lacked the necessary means to eradicate this form of "modern slavery". The distance of the labour administration offices from the areas in which the reported abuses occurred also made it difficult for victims to have access to them, which was the reason for the limited number of complaints. He expressed support for the recommendations of the Committee of Experts regarding the need to repeal the Act on the prison system (Act No. 210 of 1970) and to ensure that prisoners in preventive detention were not obliged to work in prison. He regretted that "modern slavery" was not an isolated occurrence, but was increasingly linked to mafias and organized crime. The fact that forced labour and all forms of economic exploitation constituted human rights violations and undermined human dignity was recognized at the international level. He emphasized that Paraguay had not ratified the 2014 Protocol on Forced Labour and had not established stringent penalties for the perpetrators of such crimes, and did not punish them in any manner. The ILO should therefore plan an extended mission to remedy the situation.

An observer representing the International Trade Union Confederation (ITUC) expressed regret that the Committee once again had to examine the application of the Convention by Paraguay, and that the decisions taken in 2013 had not been sufficient to prevent thousands of workers from falling victim to forced labour. According to the calculations of the country's trade unions and the ITUC, between 30,000 and 35,000 persons living in the three departments of the Chaco region, and also in other Eastern regions of Paraguay, which were largely indigenous, were victims of abusive practices of forced or compulsory labour, within the meaning of Article 2(1) of the Convention. Such human degradation and disgrace arose because of the inaction of the public authorities in Paraguay to combat effectively the use of forced labour for the benefit of private individuals. He recalled the report of the United Nations Special Rapporteur on the rights of indigenous peoples, of 13 August 2015, on the situation of indigenous peoples in Paraguay. The report confirmed that, although Paraguay had a constitutional framework in which the rights of indigenous peoples were recognized, this normative framework had not been translated into the legislative, administrative or other measures needed to ensure that indigenous peoples enjoyed human rights, including labour rights and the right not to be forced to work. As reflected in the report of the Committee of Experts on the case, and despite the indications of the Government representative to the Committee, the views of the ITUC and Paraguayan trade unions regarding the violations in question were accurate. Finally, he recalled the request by the Committee of Experts for criminal penalties to be imposed and strictly enforced on persons found guilty of the exaction of forced labour. He therefore called on the Government to provide information on prosecutions against persons who exacted forced labour, but noted the absence of judicial decisions issued in this regard.

The Worker member of Uruguay expressed support for the statement of the Worker members and of previous speakers who had said that the Government was far from complying with the Convention. He said that the Labour and Social Declaration of MERCOSUR, of which Paraguay was a member, should be taken into account when examining the case. The country's economic model, based on agribusiness, encouraged these violations. He was of the view that the situation in the country had worsened since it had last been examined in 2013. Finally, he denounced the absence of social dialogue in Paraguay.

The Government representative said that the Government was committed to working with the social partners to move forward in the fight against forced labour. He took note of the statements made during the discussion, but rejected some comments as being out of context or outside the agenda. Through the implementation of the National Strategy for the Prevention of Forced Labour, better protection would be achieved for all workers throughout the country. It was also important to strengthen labour inspection and education to prevent crimes such as human trafficking. The Government intended to engage in social dialogue to seek solutions, for example within the framework of the Committee on Fundamental Rights at Work and the Prevention of Forced Labour, and various other dialogue forums on minimum wages, education and health. It had established the necessary consultations to make progress on these issues. Some trade union federations were not participating in social dialogue, and he invited them to do so. With regard to the issue of forced labour in the Chaco region, he reiterated that the territory in question was very vast, with an indigenous population of 40,000 persons. He recalled that the area lay not only in Paraguay, but also covered parts of Argentina, Brazil and the Plurinational State of Bolivia, which was why problems in the region were addressed in cooperation with these countries. He added that the Government was addressing the issue of indigenous peoples in an integrated manner, with the involvement of various institutions under the coordination of the Paraguayan Indigenous Institute. With regard to "criadazgo", the Government had prepared and submitted a Bill in 2016 criminalizing both that practice and the worst forms of child labour. The Bill was currently before Parliament for consideration. The national legislation included definitions of, and penalties for, forced labour, debt bondage and servile marriage, including Act No. 4788/12 on trafficking in persons. The Public Prosecution Services had prosecuted those responsible for these practices, resulting in convictions. In conclusion, he said that the Government would follow up the comments of the supervisory bodies and avail itself of the ILO's continued support.

The Employer members noted with interest the information supplied by the Government regarding the institutionalization of its action to respond in a coordinated and systematic manner to the situation of forced labour, particularly with respect to debt bondage in the Chaco region. However, they remained doubtful of the effectiveness of the measures taken and hoped that they would achieve results in practice. They considered it necessary for the Government, in its next report to the Committee of Experts, which was due in 2017, to provide information on: (1) the operation of the Commission on Fundamental Rights at Work and the Prevention of Forced Labour and the regional subcommission in Chaco; (2) the specific actions taken with indigenous communities to prevent situations of forced labour, in accordance with the National Strategy for the Prevention of Forced Labour; (3) training for labour inspectors; and (4) the entry into force of the Act on the prison system (Act No. 210 of 1970).

The Worker members regretted that, despite 20 years of recommendations by the ILO supervisory bodies and the assistance provided, Paraguay was still failing to comply fully with the provisions of the Convention. The violations ranged from the incapacity of the authorities to receive complaints concerning serious shortcomings in labour inspection, to the lack of criminal penalties and gaps in legislation. Together, these elements had given rise to a culture in which the exploitation of indigenous workers, men,

women and children, was commonplace. No information had been received on the Tripartite Memorandum of Understanding, signed in 2014. They noted the technical assistance provided by the ILO and the National Strategy for the Prevention of Forced Labour. However, given the scale of the challenges and the Government's continued inaction, they called for an ILO direct contacts mission to visit the country. They further urged the Government to: (1) allocate sufficient human and material resources to the offices of the Ministry of Labour in the Chaco region, so that they could receive complaints from workers and reports of forced labour, taking the appropriate steps to ensure that victims were able to have recourse to the competent judicial authorities in practice and were protected; (2) provide the Committee of Experts with information on the judicial proceedings instigated against persons exacting forced labour in the form of debt bondage, and ensure that national criminal law contained sufficiently specific provisions adapted to the national circumstances to enable the competent authorities to initiate criminal proceedings against the perpetrators of these practices and punish them; (3) as a priority, build the capacities of the labour inspectorate so that it could deal effectively with complaints, identify victims and restore their rights so as to prevent them becoming trapped in forced labour situations once again; (4) bring together the social partners, including the most representative organizations, to participate in the development of the National Strategy for the Prevention of Forced Labour, guaranteeing, in accordance with the Indigenous and Tribal Peoples Convention, 1989 (No. 169), that indigenous peoples were consulted on any legislative or administrative measures which might affect them, as social dialogue needed to be effective, and not merely a matter of form; and (5) with regard to the need to amend Act No. 210 of 1970 on the prison system to bring it into conformity with the Convention, take the necessary measures to ensure that the national legislation was in conformity with the provisions of the Convention.

Conclusions

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

The Committee noted the absence of judicial decisions concerning forced labour in the form of debt bondage or otherwise.

Taking into account the discussion of the case, the Committee urged the Government to:

- **allocate sufficient material and human resources to the Ministry of Labour offices in the Chaco region for receiving workers' complaints and reports of forced labour, taking appropriate measures to ensure that in practice victims are in a position to turn to the competent judicial authorities;**
- **ensure that judicial proceedings are launched against persons exacting forced labour in the form of debt bondage;**
- **continue strengthening the capacity of labour inspectors, so as to enable them to deal effectively with the complaints received, to identify victims and restore their rights in order to prevent them from being trapped again in situations of forced labour;**
- **continue including social partners in the process of adoption of the National Strategy for the Prevention of Forced Labour;**
- **develop regional actions plans and priority actions to raise awareness on forced labour, to respond to the situation of vulnerability faced by indigenous workers, and to protect the victims identified;**
- **ensure that the national criminal law contains sufficiently specific provisions to enable the competent authorities to initiate criminal proceedings against the perpetrators of these practices.**

POLAND (ratification: 1958)

A Government representative stated that ensuring conditions for decent and safe work for all employees in Poland was particularly important and that the national policy in that respect corresponded to the policy of the European Union (EU) and of the whole democratic international community. She considered that migrant workers should be particularly protected and believed that regulations in Poland allowed for preventing and combating forced labour, including as a specific form of trafficking in persons. Many institutions were involved in fighting the phenomenon, including the Ministry responsible for internal affairs, the police, the border guard, the Prosecution Office and the National Labour Inspection, and their activities were coordinated by the Inter-Ministerial Team for Combating and Preventing Human Trafficking (Inter-Ministerial Team). Furthermore, the National Action Plan against Human Trafficking was regularly updated, especially its part on the forced labour of migrants. In August 2016, the Council of Ministers had adopted the Plan for 2016–18 providing for the implementation of many activities aimed at securing the needs of Polish and foreign victims of trafficking in persons. Those activities included information campaigns aimed at raising awareness of the phenomenon of trafficking in persons for forced labour and of the associated risks, cooperation with employers' organizations and temporary job placement agencies in terms of combating forced labour, developing the National Intervention and Consultation Centre for victims of trafficking in persons, as well as providing training and handbooks for employees of institutions dealing with the issue of trafficking in persons and forced labour. In 2017, as a result of the work of a group of experts for victim support of the Inter-Ministerial Team, the document "Practices of a labour inspector of the National Labour Inspection in case of suspected forced labour" had been updated and used for the training of labour inspectors. In 2016, in cooperation with the public television, the Ministry of the Interior and Administration had broadcast a prevention advertisement 72 times, and between October and December 2016, it had organized an outdoor information campaign in three cities on trafficking in persons for forced labour. A mobile exhibition entitled "Faces of trafficking in human beings" provided general information about the phenomenon of trafficking in persons, where to seek help, as well as about the forms of exploitation, including forced labour. Its content had been prepared in three language versions – Polish, English and Russian – and the exhibition had been presented in the majority of regions, particularly in regional government offices, schools, universities, bus and train stations and airports. The National Action Plan also provided for the preparation of an analysis of the feasibility of detailing the national provisions to facilitate swifter and more efficient identification of cases of forced labour, a task that had also been included in the National Action Plan for the implementation of the UN Guiding Principles on Business and Human Rights for 2017–20. Apart from that, Poland had also adopted and implemented provisions ensuring equal treatment of foreigners in terms of employment. The number of controls of the legality of employment and working conditions of foreign nationals carried out by the competent authorities increased every year. For example, the National Labour Inspection had conducted 4,257 such controls in 2016, which was 44 per cent more than in 2015 and 90 per cent more than in 2014. She considered that any cases of serious infringements of migrant workers' rights, such as infringements related to forced labour, could only be of a purely incidental nature and under no circumstances could such incidents be considered to occur systematically. However, she explained that Poland was becoming the country of destination for a steadily growing number of labour migrants, especially for short-term employment, and

the Government was aware of the fact that the situation presented numerous challenges, including the need to adjust the existing provisions and to teach institutions which had not had frequent contacts with foreign nationals the practical methods of solving the emerging problems.

Recently, there had been some indications pointing to the employment of workers from the Democratic People's Republic of Korea (DPRK) in Poland, which could have contained elements of forced labour. However, the Government had treated such signals with the utmost seriousness – steps had been taken to verify such allegations and carefully analyse the conditions of employment of DPRK citizens in Poland. Poland was not a party to any bilateral agreement with the DPRK, which would provide for any kind of cooperation in the field of the exchange of workers, and the Polish authorities, including the Embassy in Pyongyang, neither participated in any way in employing DPRK citizens nor carried out any promotional activities in that regard. Employment of DPRK citizens took place only as an activity of individual entities and their numbers in recent years had amounted to a dozen or several dozen a year. Foreign employees were, in principle, subject to the same labour law as Polish citizens and work by DPRK citizens in Poland was thus governed by the current Polish regulations. For a work permit to be issued to a foreign national staying in Poland, the worker must be offered a salary comparable to the salary of other employees in a similar position and the terms included in the agreement must be compatible with those specified in the work permit. The law provided for statutory sanctions for entities which had committed infringements in relation to employing foreigners and the relevant institutions were in charge of controlling, on a regular basis, the legality of the stay and employment of DPRK citizens and other foreign nationals in Poland. The border guard constantly monitored the activities of DPRK citizens and kept the national border guard headquarters informed of the appearance of entities employing DPRK citizens in the region under their jurisdiction and the control measures taken against entities employing DPRK citizens and against those citizens. Given the signals revealed in 2016, controls conducted by the National Labour Inspection and the border guard had in practice covered all entities employing DPRK citizens in Poland. The verifications had not confirmed infringements against DPRK employees related to forced labour and there had been no violations concerning non-payment of wages for DPRK citizens, involving both non-payment or payment of wages lower than those indicated in work permits. Nevertheless, the control authorities had paid attention to the fact that a lack of cooperation between them and the potentially affected DPRK citizens could be observed and could hamper control activities by preventing an objective assessment. She considered such a situation to be challenging and sensitive, especially if actions taken by the host country could pose a threat to the worker or his or her family residing in the country of origin, and expressed an interest in hearing the experience of other countries and the social partners on how to cope with such challenges. She further indicated that control authorities and institutions involved in the issuance of work permits to foreigners had increased their vigilance to worrying signals which could indicate suspected exploitation of DPRK nationals. She also underlined that each entity employing a DPRK national in Poland should be aware of the fact that it would receive attention of the competent institutions and each abuse observed would be punished in accordance with the applicable law. In conclusion, she emphasized that in 2016 and 2017 the Embassy of the Republic of Poland in Pyongyang had not issued any visa for DPRK citizens to seek employment and the only persons currently working in Poland would be those who had been in the country earlier. Therefore, the level of presence of DPRK employees on the Polish labour market, which had already been marginal – below 0.1 per cent of all foreign nationals working in Poland – was gradually decreasing. On 1 January 2017, there had been 400 DPRK citizens in Poland with valid residence permits other than visas, including 368 temporary residence permits and 31 long-term EU residence permits, but not all of them worked in Poland. A general prohibition of arrival and taking up a job would have no basis in the applicable law, either at the national or EU levels. It would constitute discrimination on grounds of nationality and would also raise questions as to the best means of action in the case of countries known to disrespect fundamental civil rights. She questioned whether a total isolation of those countries, including a total prohibition of taking up a job, would be the best solution. Apart from the fact that probably not all the countries would agree to implement such a measure, the question remained as to whether such isolation would have any positive effects from the perspective of civil freedoms in such countries. She concluded by stating that the employment of DPRK citizens was a specific case that should not be generalized in the overall picture of the employment of foreign nationals in Poland, but that such cases should, due to their nature, be considered with particular care, on the basis of well-documented data, while maintaining a certain proportion to the scale of detected abuse.

The Employer members emphasized that Poland had ratified this fundamental ILO Convention nearly 60 years ago, thereby formally undertaking to suppress the use of all forms of forced or compulsory labour immediately and definitively throughout its territory. The national authorities therefore needed to remain proactive and ensure not only that the legislation was in conformity with the Convention, but also that it was enforced effectively throughout the national territory. The authorities needed to show special vigilance in identifying the changing and unknown forms that could be taken by forced labour. The necessary human and financial resources therefore needed to be allocated to the inspection services in order to guarantee the development of the professional competence and legal and ethical independence of the respective officials. It was also necessary to ensure that victims had easy access to justice to denounce any exaction, and that the perpetrators and their accomplices were systematically prosecuted and severely punished. The report of the United Nations Special Rapporteur on the situation of human rights in the DPRK referred to the situation of around 50,000 North Korean workers sent by their Government to work in several countries under conditions that amounted to forced labour. The Special Rapporteur referred to 18 countries, including Poland, which were reported to be implicated in this system of forced labour, without providing indications of the number of victims in each country. However, it appeared that the great majority of such workers were not engaged in Poland. The Special Rapporteur referred to the independent study conducted in 2014 by Shin Chang-Hoon and Go Myong-Hyun, according to which around 500 workers from the DPRK were victims of forced labour in Poland. While this figure had been corroborated by the Independent and Self-Governing Trade Union "Solidarność", which reported several hundred North Korean workers in Poland, it had however been contested by the Government of Poland and the Organization of Polish Employers. The Government indicated that the labour inspectorate had not identified any form of forced labour by migrant workers from the DPRK. No evidence of specific irregularities had been found in the calculation or payment of wages or in the working conditions of DPRK workers in Poland. It was necessary to give credit to the investigations and findings of the labour inspectorate. In this regard, the Committee of Experts had welcomed several positive initiatives adopted by Poland to improve the quality and effectiveness of the

labour inspection services, particularly in relation to the detection of situations of the trafficking of persons for forced labour. The Organization of Polish Employers also considered that the Polish legislation protected migrant workers through the specific obligations placed on employers. In practice, the labour inspectorate was focusing its efforts on the working conditions of Ukrainian migrant workers, who numbered around 1 million in Poland, and several thousand inspections were carried out each year. With regard to forced labour, according to a 2016 inspection report, only ten DPRK workers had been found in an irregular situation in Poland.

The Employer members also considered that the data provided by "Solidarność" relating to DPRK workers discovered in a plantation some ten years earlier did not offer serious grounds for the discussion in the Committee. In view of the lack of clarity in the allegations against Poland, it was rather surprising that such a situation had immediately been given a "double footnote" by the Committee of Experts. Under no pretext should forced labour be organized at the initiative of any government, public authority or enterprise. Nevertheless, in view of the contradictions between, on the one hand, the report of the United Nations Special Rapporteur, corroborated by "Solidarność" and, on the other, the point of view of the Government and Employers of Poland, the Government should be strongly encouraged to continue its investigations and to use all the necessary means to gain a better understanding of the situation experienced by DPRK nationals working in Poland. It was essential to assess fully and objectively whether the living and working conditions of these workers were in accordance with fundamental labour standards. If forced labour practices were detected, the victims would need to be identified and protected. Moreover, beneficiaries of such illegal practices would need to be identified and, following a fair trial, punishments would be imposed that were commensurate with the gravity of the offences. The Employer members finally considered that, if situations of forced labour organized by the Government of the DPRK were found in Poland, one of those principally responsible for such abuses would be the Government of the DPRK itself which, due to the fact that it was not a Member of the ILO, was voluntarily removing itself from international society, including the ILO supervisory machinery.

The Worker members welcomed the ratification by Poland of the Protocol of 2014 to Convention No. 29, which adapted that instrument to modern forms of forced labour. Poland was therefore joining the action taken to combat all forms of forced labour, including trafficking in persons, which was one of the most urgent problems of the twenty-first century. What was necessary in the present case was to assess the application of the Convention in practice and, in particular, the serious difficulties identified by the Committee of Experts relating to the vulnerability of migrant workers to the exaction of forced labour. These difficulties had led the Committee of Experts to insert a "double footnote" in its observation. The case also showed that forced labour was a phenomenon that affected all countries and which therefore required constant and generalized vigilance. In a context of significant migration flows, migrant workers were particularly vulnerable and were at greater risk of forced labour. Poland appeared to be a country of destination for those who exploited labour migrants, and particularly workers sent to Poland by the DPRK. However, migrant workers from other countries were also vulnerable to such practices. Although the Polish State was not directly imposing forced labour on these workers, it nevertheless had the duty and responsibility to prevent, bring an end to, and punish such practices. Inspections targeting establishments employing DPRK nationals had not identified situations of forced labour. That might seem surprising in light of the comments made by "Solidarność" and the United Nations Special Rapporteur concerning a system under which they were sent by their Government to work abroad, including in Poland. The pay of these workers was then largely sent back to the Government of the DPRK. The Polish Government should take measures to reinforce the capacities of the authorities responsible for the enforcement of the law and the labour inspection services, and to ensure that the penalties imposed were really effective and strictly enforced. For many years, the issue of the effectiveness of the resources allocated to combating forced labour had been the subject of repeated comments by the Committee of Experts. The efforts made by the Government up to now were insufficient and needed to be strengthened. It would also be desirable to explicitly criminalize forced labour in the legislation and no longer address the matter solely through the legislation on trafficking in persons. The latter concept did not necessarily cover all forms of forced labour. The Government also needed to continue taking measures to protect the victims of forced labour and to enable them to denounce their situation.

With regard to the possibility for prisoners to work for private employers, the Worker members recalled that the Convention excluded from the definition of forced labour work exacted from any person as a consequence of a conviction in a court of law. Work imposed in this context had to be carried out under the supervision and control of a public authority and the prisoner must not be hired to, or placed at, the disposal of private individuals, companies or associations. However, the Committee of Experts considered that, where the necessary safeguards existed to ensure that the persons concerned offered themselves voluntarily, without being subjected to pressure or the menace of any penalty, such work did not fall within the scope of the Convention. Nevertheless, the context in which such consent was given, namely imprisonment, made it difficult to assess the truly voluntary nature of the consent. That was why real safeguards were required in the legislation. The Committee of Experts had emphasized that conditions of work approximating those of a free labour relationship were the most reliable indicator of the voluntary nature of work. The free consent of workers therefore needed to be assessed in light of the various conditions of work, including the level of wages, social security and occupational safety and health. Polish legislation required prisoners to consent to work, without however requiring such consent to be noted formally. It was therefore essential to adopt provisions guaranteeing that prisoners gave, formally and beforehand, their free and informed consent to such work.

The Worker member of Poland noted that there could be no doubt that DPRK citizens were working in Poland, as reported by journalists and confirmed by inspection reports by the National Labour Inspectorate. However, inspectors had neither been able to confirm the limitations on the movements of DPRK citizens within Poland, nor the transferral of their remuneration to DPRK accounts, since payment of remuneration had been confirmed by the mention of the employees on the payment list. Similarly, in light of the limited information received, labour inspectors were not in a position to confirm that DPRK citizens were indeed supervised by a "guardian" or a representative of the government of their country of origin. While Poland had no legal definition of forced labour, applicable regulations provided for action against illegal work where work was performed under conditions of imprisonment, physical or psychological violence, deprivation of food or withholding of documents. Provisions in Chapter XXVIII of the Penal Code addressed offences against the rights of persons engaged in gainful employment, and relevant provisions were also contained in the Act of 15 June 2012 concerning the effect of employing foreigners residing illegally on the territory of the Republic of Poland (Text No. 769), and the

Act of 10 June 2016 on the posting of workers in the framework of the provision of services (Text No. 868). In extreme cases, the provisions of the Penal Code criminalizing slavery could also apply. Nevertheless, media reports in recent years had pointed to cases of DPRK citizens being subjected to forced labour on Polish territory, including situations in the construction and shipbuilding sectors. The National Labour Inspectorate, while acknowledging possible violations of labour laws in some cases, could not confirm that work had been exacted under the threat of punishment or coercion. Nevertheless, the fate of DPRK workers remained a source of concern that would require continued monitoring. In conclusion, she noted that, while the possibility of the existence of forced labour in Poland could not be denied, the legal confirmation of its existence was difficult. She stated that an international debate on the situation of DPRK workers was needed. At the same time, the Polish Government needed to work on amending the legislation in order to provide for a legal definition of forced labour and, given the scale of DPRK workers' employment in Poland, to provide a sufficient number of Korean sworn translators. Technical assistance by the ILO could help in the development of more effective national regulations and other instruments to support the formal proof of forced labour. The Polish Government was encouraged to seek ILO technical assistance in this area.

The Worker member of the Netherlands stated that the Dutch Federation of Trade Unions (FNV) had closely followed the case of DPRK workers in the EU and in Poland, in particular. In cooperation with the Leiden Asia Centre of Leiden University, research was being conducted into the DPRK's practice of dispatching workers to the EU. Based on reports of the National Labour Inspectorate of Poland, in-depth interviews, company information and other relevant data, clear examples had been found of serious abuse of DPRK workers employed in Poland, which allowed the conclusion that there was reason for concern about forced labour. Given the difficulty encountered by the National Labour Inspectorate to prove forced labour, it was important for the National Labour Inspectorate to have full competence to investigate all aspects and indications of forced labour, and for all officials involved to receive proper training. It was also recalled that the National Labour Inspectorate had been able to report in detail on several cases of forced labour, where workers had been misled, illegally employed and taken advantage of, and had not received proper payment, holiday allowances or holiday leave, and that such infringements had been reported in at least 77 cases. The speaker provided details of one particular case – a fatal accident of a DPRK worker, Chon Kyongsu, in August 2014, in a shipyard in Gdynia – and indicated that the Polish Labour Inspectorate had subsequently looked into the case, and found a number of illegal practices.

In light of the Convention, at least a number of indicators for forced labour were met: DPRK workers, who had been sent from a country labelled by the UN as a country with unprecedented infringements of human rights, were likely targets for abuse of their vulnerability; the Labour Inspection had reported several cases of workers who had been misled or taken advantage of; passports were either kept at the embassy or with the managers; and workers did not know when and how much they would be paid. Considering that Dutch companies were buyers of products produced with the possible use of forced labour, both Dutch trade unions and the Dutch Government had a clear interest in the situation of DPRK workers in Poland and were of the view that companies must take responsibility in the supply chain. The Dutch Minister of Foreign Affairs had also expressed his concern and his intention to follow the situation as well as the measures taken in this regard. She welcomed the timely ratification by Poland of the 2014 Protocol to Convention No. 29 and trusted that efforts to implement the Protocol would lead to better instruments to fight such practices. With a clear definition of forced labour, protection for victims and access to remedies, including compensation, deterrent fines for infringements, and the strengthening of the National Labour Inspectorate, the Government would be in a better position to address forced labour.

The Worker member of Italy indicated that over one million Ukrainians lived in Poland. Most of them had decided to migrate to Poland after the 2014 military conflict in eastern Ukraine, when the currency value had sharply declined and prices had risen. While the Committee of Experts only drew attention to Korean workers, the living and working conditions of migrants coming from nearby countries was also important. These issues were included in the direct request addressed by the Committee of Experts to the Government. The issue was of particular concern in light of the 2016 Global Slavery Index, which estimated that 181,100 people or 0.48 per cent of the total population, lived in conditions of modern slavery in Poland. According to those data, forced labour especially affects migrant populations. Data from the Walk Free Foundation indicated that construction, domestic work, other manual labour and manufacturing were the sectors most affected. Regionally organized crime organizations were implicated in forced begging. Roma mothers from poor communities in the Republic of Moldova and the Ukraine were offered jobs in the sales or care sectors in Poland, but had their passports confiscated upon arrival. Along with their children, they were forced to beg on the streets. According to estimates of the National Bank of Poland, 91 per cent of Ukrainian migrants in Poland had secondary or higher education, but as many as 70 per cent performed manual labour. According to information from the Foundation Nasz Wybór, in charge of helping Ukrainian citizens in Poland, selling fictional jobs was a serious issue, which increased undeclared work and left the labour rights of many workers unprotected. According to estimates of the Halina Nieć Legal Aid Centre, the number of victims of trafficking in persons in Poland reached several hundred every year and included a growing number of Ukrainians. It was difficult to estimate how many cases of modern-day slavery including trafficking for forced labour remained unreported. A 2015 report by the European Union Agency for Fundamental Rights highlighted Poland as one of the EU countries in which workers in the grey economy were most vulnerable to being exploited. The Agency had looked at severe labour exploitation across the EU with particular emphasis on migrant workers. The Polish agricultural sector had been repeatedly mentioned, as no authority in Poland was permitted to monitor working conditions in private farms. According to the same report, Poland was one of the four European countries where less than 1 per cent of all employers were inspected. Immediate and concrete action was needed from the Government, to establish cross-border cooperation to stop trafficking networks, protect migrant workers from abusive practices, identify the victims of forced labour, and guarantee the prosecution of perpetrators.

The Worker member of Norway, speaking on behalf of the trade unions of the Nordic countries, stated that, according to reports from "Solidarność" DPRK workers were being exploited and used for forced labour in Poland. Those observations had been confirmed by reports from various United Nations and EU agencies dealing with human rights, as well as reports by Polish scientists, researchers and the press. A report by academics from the Leiden Asia Centre of Leiden University in the Netherlands claimed that DPRK workers' salaries were paid to managers and sent back to Pyongyang. According to United Nations estimates, the DPRK earned as much as £1.6 billion a year

from workers it sent overseas. Human rights activists further claimed that tens of thousands of DPRK citizens had been sent abroad to work in about 40 countries as "state-sponsored slaves". According to the Leiden report, the workers in Poland received a "minimal livelihood allowance" while often working more than 12 hours a day, six days a week. She also noted that, according to a report by the European Union Agency for Fundamental Rights, Poland was one of the countries where workers in the grey economy were most vulnerable. Several incidents with migrant workers from many countries had been detected, and Poland was one of four EU countries in which fewer than 1 per cent of employers were inspected. It was thus difficult for labour inspectors to control employers or to force them to meet their obligations, with a resulting increase of the risk of abuses, including trafficking in persons. Limitations in the legal capacities of labour inspection were especially apparent in the case of migrant workers, where the employer was a foreign entity not formally operating in Poland. In such cases, the employer's representative was responsible solely for documents confirming the legality of stay and the work permit, while inspectors had limited possibilities to communicate with workers because of restricted access to interpreters. As a result, labour exploitation of migrants could easily go unnoticed. Although there were no legal obstacles for the workers to receive salaries in their country of origin, some countries could use internal legal provisions to carry out deductions. This was a common practice used by the DPRK Government, which deducted so-called voluntary fees as contributions for the socialist revolution. In conclusion, she noted that forced labour was prohibited in Poland and that it was not a common phenomenon, although changes in the law needed to be made when such cases were reported, in order to effectively prevent and protect foreign workers from forced labour and labour exploitation. Awareness should be raised among labour inspectors, enforcement agents, prosecutors, judges and among the public, and the Government needed to improve monitoring of recruitment processes, while ensuring law enforcement.

The Government member of the Republic of Korea indicated that the issue of DPRK overseas workers had been a matter of concern for the international community not only from the standpoint of international labour standards, but also from other perspectives, including human rights and international security. Recent resolutions of the United Nations General Assembly and Human Rights Council had expressed serious concern at the violation of DPRK overseas workers' rights. The United Nations Security Council, through resolution 2321 in 2016, had also voiced serious concern that DPRK nationals were sent to work in other States for the purpose of earning money that the DPRK used for its nuclear and ballistic missile programmes, and had called upon States to exercise vigilance over that practice. While recognizing the measures taken by the Government of Poland regarding the working conditions of DPRK workers, and having full confidence that the recommendations made by the Committee of Experts would be faithfully implemented, it was to be hoped that the Government of Poland and the ILO would continue to make efforts to ensure that the working conditions of DPRK workers in Poland were in accordance with relevant international standards.

The Worker member of Germany noted that the case at hand exemplified the fact that forced labour organized by the DPRK had gained a presence in the EU. There could be no doubt that the DPRK used forced labour to finance its military ambitions and maintain its system of oppression. That type of forced labour was systematically managed through enterprises such as those based in Poland. It should be taken for granted that this system did not only exist in the shipbuilding industry, and that Poland was not the only country in which the DPRK was gaining hard currency through the use of forced labour. She also drew attention to an additional dimension of these human rights violations, noting that the concerned enterprises were certified by NATO and thus eligible to participate in the public procurement of military contracts. At the same time, these enterprises had benefited from public funds, such as the European Regional Development Fund. Client companies of such enterprises that were located in different countries of the EU were also profiting from the particularly inexpensive labour cost.

Given that the prohibition of forced labour was part and parcel of universal human rights norms, and in light of the applicable United Nations, EU and ILO instruments, she noted that the protection of human rights was not only the responsibility of States, but also of companies, which had to ensure that they did not violate human rights in their business operations. In order to ensure that responsibility for the protection of human rights could be properly discharged, it was necessary to guarantee transparency and public access to information. Thus, it was essential for the results of labour inspection to be made accessible and for additional independent investigations to be conducted. Such a process should also be accompanied by the ILO. Furthermore, responsible enterprises and public entities needed to refrain from placing orders with companies associated with the violation of universal and fundamental human rights and should also abstain from participating in state-organized systems of forced labour, such as that established by the DPRK.

The Government member of Norway, also speaking on behalf of the Government member of Iceland, indicated that forced labour was always unacceptable, and that all member States were expected to do their utmost to eliminate forced labour in all its forms. There was concern about the situation of migrant workers from the DPRK, as described in the report of the Committee of Experts, including the information submitted by the Special Rapporteur of the United Nations. Therefore, all receiving countries needed to pay very close attention to the circumstances and conditions under which those workers worked and lived. The monitoring of compliance by the labour inspectorate could often be very difficult. In that context, it was important to promote more transparency in supply chains. Forced labour was a serious violation of fundamental rights. Hence, receiving countries were strongly encouraged to take all the necessary measures in order to prevent its occurrence.

The Worker member of the United States recalled, with regard to the situation of the forced labour of DPRK migrant workers in Poland and other countries, such as Ukraine, the efforts of the United Nations to ensure "safe, regular and orderly" migration. According to documents provided to researchers, such workers were documented and arrived with permits to work in Poland. On the other hand, the process by which the Government of the DPRK mobilized those workers was largely hidden. Independent researchers and the National Labour Inspectorate had documented inconsistencies in the complex chain of employment relationships in production by well-known shipbuilding and maintenance operations, as well as in other sectors at least one of which is certified by NATO and therefore can bid on public contracts using taxpayer money from numerous countries. In Poland, those workers lived and worked in a grey area. While their status as persons authorized to work in Poland was regular, according to Polish and EU rules, the conditions in which they lived and worked there and under which they were paid was less clear. More transparency and accountability all along the supply chains using such workers – from labour recruitment to health and safety issues to wages and conditions – was needed. Regardless of the fact that in their country of origin their rights were not respected, the countries and companies in

which they worked had the obligation to protect and respect those rights. The Leiden report referred to the profit made all along these supply chains. The Government of Poland should take measures to improve the situation. The discussion in the Conference on labour migration should address those issues and should ensure that each worker was recognized as a person entitled to rights, not just as labour.

The Government representative thanked all participants in the discussion and considered that the comments and suggestions from different perspectives were extremely valuable. Having acknowledged that the increasing inflow of foreigners seeking jobs in Poland presented a great challenge in terms of ensuring safe and decent working conditions and, in particular, protecting them against exceptionally severe forms of abuse, she considered that the views expressed could help Poland to comprehensively approach the issue. Poland had always carefully listened to the voice of the ILO and she expressed full commitment to the implementation of the recommendations formulated by the Committee. Furthermore, updated information and well-documented statistical data would be provided in the 2017 report on the application of the Convention.

The Worker members welcomed the information provided by the Government representative, which demonstrated Poland's willingness to continue working to improve the application of the Convention. To this end, the Government would have to:

- strengthen the capacities and competencies of the law enforcement authorities and labour inspection services, with a view to identifying and punishing forced labour practices;
- appoint interpreters, including from Korean;
- place particular emphasis on migratory flows that could result in situations of forced labour;
- pay specific attention to recruitment methods that trapped workers in forced labour situations, and establish control mechanisms to detect and punish abusive practices;
- strengthen the prosecution system to ensure that dissuasive criminal penalties were imposed on perpetrators of such practices;
- explicitly criminalize forced labour, to avoid the issue being addressed solely in the context of trafficking in persons;
- continue to strengthen, in accordance with the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203), protection measures to enable victims to file a complaint with the authorities without fear; it was also important to provide for effective remedies and compensation mechanisms for victims; and
- establish better guarantees to ensure that prisoners working for private associations were able to formally give their prior, free and informed consent.

The Worker members considered that, in order to achieve these objectives, Poland should avail itself of ILO technical assistance.

The Employer members took due note of the many initiatives taken by the national authorities, particularly since 2016, to prevent all forms of forced labour in Poland and to punish abuses. In this context, it was necessary to recall that it was the collective responsibility of the ILO constituents to guarantee the respect of fundamental labour rights in the 21st century in all member States. Any complaint in that area must be thoroughly investigated by the national authorities, in particular by competent and independent officials and magistrates. In that context, forced labour needed to be immediately and permanently eradicated. Poland had shown its commitment to combating forced labour by ratifying the Protocol of 2014 to Convention No. 29 in March 2017. That engagement must be made a reality for all workers in Poland, regardless of their status or nationality. In this regard, national organizations of employers, including in Poland, undertook to assist enterprises to optimize working conditions, and to prohibit any abuse of workers. The Employer members supported the recommendations made by the researchers Shin Chang-Hoon and Go Myong-Hyun in their independent study which had considered that, to end the forced labour of migrant workers from the DPRK, receiving countries needed to monitor their actual working conditions, terminate the employment contracts of those who were subject to forced labour conditions imposed by the authorities of the DPRK, and tighten the controls on bank transactions linked to the payment of wages. However, taking into account the contradictions and lack of information available, it was deplorable that this case had been included on the list of the most serious violations of fundamental labour rights in 2017. Other countries cited by the United Nations Special Rapporteur had been left aside, which did not seem fair. In conclusion, they recommended that the Polish authorities should: (i) intensify efforts to ensure migrant workers were fully protected against abusive practices and working conditions that constituted forced labour; and (ii) provide information on the measures taken to identify situations of forced labour to which migrant workers might fall victim. Furthermore, where situations of forced labour were detected objectively, the authorities should provide information, including statistics, on the situation of DPRK nationals who were victims of forced labour; take immediate and effective measures to ensure that the perpetrators of these practices were prosecuted and dissuasive penalties were imposed on them; and afford adequate protection to the victims. Lastly, with regard to the issues raised in the direct request to Poland, the Employer members considered that these should not be the subject of specific discussions at the present Committee.

Conclusions

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

Taking into account the discussion, the Committee called upon the Government of Poland to:

- **increase its efforts to ensure that migrant workers are fully protected from abusive practices and conditions amounting to forced labour;**
- **provide information on the measures taken to identify cases of forced labour to the Committee of Experts paying particular attention to the situation of workers from the Democratic Peoples' Republic of Korea;**
- **take immediate and efficient measures so that the perpetrators of such practices, if they occur, are prosecuted and that dissuasive penalties are issued;**
- **ensure that identified victims of forced labour have access to adequate protection and remedies.**

Labour Inspection Convention, 1947 (No. 81)

INDIA (ratification: 1949)

The Government provided the following written information.

Tripartite consultation on labour laws amendments/enactment of new laws

India has an elaborate labour legislation system which operates through a federal structure. The country has ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) and tripartite consultations are an integral feature of the labour law reform process. Based on the recommendation of the Second National Commission on Labour, the Government has taken steps to broadly codify the existing 44 central Labour Acts into four Labour Codes, including: the draft Code on Wages; the draft Code on Industrial Relations; the draft Code on Social Security and Welfare; and the draft Code on Occupational Safety and Health, in relation to which drafts have been prepared, except for the Code on Safety and Working Conditions, for which the drafting is at an advanced stage. In accordance with the pre-legislative consultation policy of the Government, the draft Codes were uploaded on the website of the Ministry of Labour and Employment for a period of one month inviting suggestions from the public/concerned stakeholders. Subsequently, these draft Codes were also discussed in tripartite consultation meetings, involving representatives from the central trade unions, employers' associations, state governments and relevant central ministries. The Government has also consulted the ILO on a continuous basis for obtaining relevant technical assistance. It may be noted that the abovementioned Codes have not been adopted yet and are at the consultation stage only. The Government is also continuously engaged in amending important legislations with a view to making labour legislations attuned to the emerging requirements. Tripartite consultations constitute an integral component in formulating the relevant amendments. Some of the major amendments undertaken by the Government during the period 2015–17 with tripartite consultation concerned the Child Labour (Prohibition and Regulation) Amendment Act, 2016, the Maternity Benefit (Amendment) Act, 2017, the Payment of Wages (Amendment) Act, 2017 and the Payment of Bonus (Amendment) Act, 2015. None of the legislation adopted has had any impact on the labour inspection system, or on the principles enshrined in Convention No. 81. The current national laws comply with the principles of Convention No. 81 and there is no intention on the part of the Government to move away from them. India has been taking, and would welcome in the future, technical assistance from the ILO in the legislative reform process.

The free initiative of labour inspectors to undertake labour inspections

As indicated in the last two reports submitted to the Committee of Experts in 2015 and 2016 and the report submitted to the Conference Committee in 2015, it shall be reiterated that no legislative amendments have been carried out to alter any of the existing provisions of the Acts that may dilute the provisions of Convention No. 81. Technology-driven governance reforms have been introduced to strengthen the system, provide for transparency and accountability in the enforcement of labour laws and reduce the complexity of compliance. The web-enabled setup has only provided for the prioritization of inspections in workplaces based on risk assessments. The new setup has not curtailed the powers of inspectors to undertake workplace inspections in case that an inspection is required. Moreover, except for some routine inspections (which do not even make up 10 per cent of the total of inspections) all other inspections are unannounced. In the case of routine inspections, prior notice may be given (at the discretion of the inspector) to enable the employer to produce records for verification. It is reconfirmed that where there is a complaint or information with regard to any labour law violation, the system allows for full discretion/freedom to undertake an inspection of such an establishment at any point in time as well as to initiate the actions prescribed in the corresponding laws. It is submitted for the consideration that the new system has enabled the inspectorates to better manage their inspection system and also to share the inspection information among agencies. A sizeable increase in the number of inspections is also witnessed since the launch of the new system. Details of the enforcement of various labour laws by the Central Labour Enforcement Agencies, including in relation to social security and safety in mines are provided in an annex to this submission. Thus, the new inspection scheme has not affected the role of labour inspectors to undertake labour inspections where they have reason to believe that a workplace is in violation of legal provisions or when they believe that workers require protection. We again reiterate that labour inspectors have complete discretion, in law as well as in practice, to initiate prompt legal proceedings without previous warning, where required.

Annual reports on labour inspection activities, and statistical information on labour inspections

Data is the basis for developing evidence-based policy initiatives. The Government has taken a number of steps over time to improve data on enforcement of labour legislation and labour inspection services. Data collection and reporting is done mainly by the Labour Bureau, a Department attached to the Ministry of Labour and Employment. The Government has also been obtaining technical assistance from the ILO to evaluate the data collection systems with a view to suggesting appropriate measures for improving their coverage and reliability. In fact, as requested by the Ministry, the ILO has undertaken an "Assessment of the Labour Statistics System in India" in 2014–15. The Labour Bureau receives statutory statistics relating to the central and state levels in the form of annual returns under various Labour Acts. In addition to these annual returns, monthly returns are being received on a voluntary basis. These statutory and voluntary returns are received under 11 Labour Acts in relation to which reports have been released by the Labour Bureau in 2013 and 2014. The Labour Bureau collects data on the enforcement of labour legislation in relation to the key legislation, i.e. the Factories Act, 1948, to be submitted through mid-year and annual returns. This data is compiled on an annual basis by the Labour Bureau and published as *Statistics of Factories*. The following statistics are attached to this submission: (1) detailed statistics for 2013, 2014 and 2015 in relation to 31 states/union territories concerning the number of factories inspected (under the Factories Act) and the number of factory inspectors; (2) information on the total number of labour inspectors in 2016 concerning some states; (3) information on the number of labour inspections undertaken in 2014–15, 2015–16 and 2016–17 as well as violations detected (concerning all Acts under the jurisdiction of the states) in relation to the states from which this information was available; and (4) statistics on occupational accidents for 2013, 2014 and 2015 in relation to some states/union territories. The Labour Bureau has undertaken a project concerning the strengthening and modernization of the system for the collection of statistics from the states and establishments through the induction of technology, which is in the development phase. Upon implementation, the system for the collection and compilation of statistics shall be made online to the extent feasible. This will enable the Bureau to collect and compile timely statistics in the future. We take note of the recommendation of the Conference Committee regarding the annual labour inspection report and the registers of workplaces liable to inspection. The Government

is willing to seek the technical advice of the ILO on the matter.

Self-certification and Occupational, Safety and Health (OSH) inspections undertaken by certified private agencies

India has replied in detail to the observations made by the Committee of Experts concerning the self-certification scheme during the 2015 session of the Conference Committee, which has been noted by the Committee of Experts in its latest comments. We again reiterate that the self-certification scheme has been launched by some states, and that in no case has it ever substituted the labour inspection system. It is a scheme to encourage voluntary and simpler compliance, without compromising the rights of workers. Establishments availing themselves of the self-certification scheme are not exempted from the inspection process. Where security deposits are prescribed with the self-certification, the scheme provides for their forfeiture whenever a violation is detected. India does not follow the system of private inspection services. The Government reaffirms its commitment to safeguard the interests of the working class while promoting a conducive working environment for inclusive growth and industrial harmony.

Delegation of inspection powers in special economic zones (SEZs) and statistical information on labour inspections in SEZs

There are seven SEZs zones in the country. In four zones, no powers have been delegated to the Development Commissioners of SEZs, whereas in another zone, which covers ten states, powers have been delegated only by one of these ten states. In two zones, powers have been delegated, while in one of these zones, no powers have been delegated under the Factories Act (which governs OSH regulations). Laws that are administered centrally have not been delegated in any of the zones. The Government has provided detailed statistics to the last Conference Committee and to the Committee of Experts in 2016 on inspections under various labour laws in individual states and SEZs, including on the number of inspectors, the number of units and the workers employed therein. This information is reiterated. The statistics on the enforcement of labour laws in SEZs where powers were delegated to the Development Commissioners is provided in an annex to this submission. In respect of the SEZs, where powers have not been delegated to the Development Commissioners, statistics are included in the inspection statistics of the different states, as no separate statistics are maintained. As recommended by the Conference Committee, the Government, in a tripartite meeting held on 30 May 2017, reviewed with the social partners whether the delegation of inspection powers from the Labour Commissioner to the Development Commissioner in SEZs has affected the quantity and quality of labour inspections. Representatives of the Department of Commerce, the Government of India, officers from the SEZs and state governments were also present in this meeting. Reiterating their commitment for fundamental principles and rights at work, the employer representatives appreciated the single window system for compliance under labour laws and encouraged the Government to promote voluntary compliance mechanisms. The employers' representatives and state governments also expressed satisfaction concerning the present arrangements in relation to the delegation of inspection powers, while workers' representatives, in general, expressed that not only the rights of workers in SEZs, but also in other workplaces should be protected. One workers' representative did not agree with the views expressed by the representatives of the SEZs and the employers that the delegation of powers is working satisfactorily. However, he did not corroborate these statements with any statistics or specific instances. Accordingly, it was decided that the Government will institutionalize a system of regular review of the implementation of labour laws in SEZs. IT and ITES companies are registered under the states' Shops and Establishment Acts and inspections therein are carried out by the state authorities, as the case may be and are included in the overall state's statistics. No separate statistics are maintained for the IT/ITES sectors.

Free access of labour inspectors to workplaces

Reference is made to various labour laws providing for labour inspection powers. These laws provide that denying/preventing inspectors from accessing premises or records is an offence. Section 353 of the Indian Penal Code also provides that preventing public servants from discharging their duties (including denying them access) is a criminal offence. There are no cases in which labour inspectors have not been able to access workplaces for inspections, hence the question of relevant statistics does not arise. The labour inspectors have the authority to avail themselves of assistance by the Police to compel access to workplaces, records or evidence whenever they face any concern. Labour inspectors can also initiate prosecutions in relation to persons denying them access to workplaces. It is reiterated that labour inspectors are guaranteed free access to undertake labour inspections where they have reason to believe that a workplace is in violation of legal provisions or where they believe that workers require protection (Article 12(1)(a) and (b) of Convention No. 81).

In addition, before the Committee**, a Government representative** referred to the constitutional structure of India, consisting of a federal setup and a defined distribution of powers between the centre (that is, the federal government) and the states (that is, the provincial governments), in which the centre and the states had concurrent powers to legislate and enforce labour laws. He said that India had a very elaborate system of labour legislation, which was secured through a system of labour inspection, both at the central level and the level of the states. Reviewing and updating labour laws was a continuous process to bring them in tune with the emerging needs of a globalized and knowledge-based economy, and included tripartite consultations. The issue of the scope and objectives of the legislative amendments and reforms made by the Government had been discussed during the 2015 session of the Committee. In this respect, he wished to reiterate the observations already made that no amendments to the scope of application of any labour laws had been enacted by the Government to exclude workers from the purview of labour laws. In fact, the Committee of Experts had not referred to any specific legislative action that had in any way diluted the provisions relating to labour inspections or the protection of workers, as provided for under the Convention. India followed the process of tripartite consultations in all its legislative reform initiatives. All proposed amendments to labour laws, or proposals for new laws, were discussed in appropriate tripartite forums, and only thereafter were the proposals carried forward. In this respect, he also referred to the written information that had been provided by the Government to the Committee on progress in respect of various laws that had been passed or were currently under consideration. Recalling the intervention made during the 2015 session of the Committee, he wished to add that the proposed Small Factory Bill and the proposed amendments to the Factories' Act were also being re-examined and reviewed by the Government afresh. The Office had provided technical assistance and inputs on the proposed legislative changes, especially on the draft Labour Codes. The Government remained committed and would also welcome future ILO technical assistance. As stated in the written information provided by the Government to the Committee,

none of the legislation that had been adopted had any impact on the labour inspection system, or on the principles of the Convention. Concerning the free initiative of labour inspectors to undertake labour inspections, the Government was committed to the obligations in the Convention that workplaces should be inspected as often and as thoroughly as necessary. Labour inspectors had full discretion in law and practice to undertake inspections of workplaces at any point of time, as well as to initiate the action prescribed in law, without previous warning with respect to statistical information on labour inspection activities, the statistics requested by the Committee of Experts had been provided in the annex to the written submission of the Government to the Committee. He recalled that, in view of the federal structure of the country and the sovereignty of the states, which were mostly responsible for the subject of "labour", there was no statutory mechanism for the states to furnish data to the central government. However, the Labour Bureau collected and compiled data on various labour-related matters from the states on a voluntary basis. In this respect, he referred to the written information provided to the Committee on a project for the strengthening and modernization of the system for the collection of statistics by the Labour Bureau. In relation to the absence of data on inspections in special economic zones (SEZs) by the states and in the information technology and information technology-enabled services (IT/ITES) sector, he explained that the Labour Bureau was currently not in a position to gather such data, but that there was indeed a need to strengthen the collection and compilation mechanism to enable such analyses, and ILO technical assistance in this respect would be welcome. Concerning the self-certification scheme, as already stated during the discussion of the case by the Committee in 2015, this scheme did not entail any relaxation of or substitute for statutory inspections, and workplaces remained subject to inspection, despite having subscribed to the self-inspection scheme. With reference to the delegation of inspection powers in SEZs, he emphasized that there had not been full delegation of labour inspection powers to the Development Commissioners in all SEZs, as further detailed in the written submission of the Government. Moreover, the delegation of powers in the zones in which it had been done had not diluted enforcement in any manner. It should be reiterated that Development Commissioners, who were very senior government officers, were fully responsible for the enforcement of labour laws in the SEZs, and could perform this duty without any conflict of interest. He also emphasized that a tripartite meeting had been held as requested by the Committee of Experts on whether the delegation of powers in SEZs had affected the quantity and quality of labour inspections. In this respect, he also reiterated the information provided in the written statement that the social partners had mostly considered that the delegation of powers was working satisfactorily. As indicated in the written submission, a regular review of the implementation of labour laws in the SEZs would be developed in due course. Working conditions in the IT/ITES sector were regulated by the provisions of the Shop and Commercial Establishment Act of the respective state governments. These establishments were inspected through regular labour inspections like any other establishments. However, as described above, the current data collection system did not permit the extraction of specific data concerning the IT/ITES sector, which was why the Government had been unable to provide such data. Concerning the free access of labour inspectors to workplaces he also reiterated the information provided in the written submission that labour inspectors were granted this right and there had not been any cases where they had not been able to access workplaces for inspection. He concluded that the substantive issues raised in the case had been adequately responded to by the Government in a series of communications since 2015. The last comments made by the Committee of Experts had not concerned non-compliance with the Convention, but had been primarily limited to seeking more information and statistics. In the absence of any substantive issue, he felt that this case should not continue to be examined by the Committee, and should be closed. The Government remained committed to labour welfare and the protection of labour rights and was willing to continue to avail itself of ILO technical assistance to achieve the objective.

The Employer members recalled that the application of the Convention had previously been examined by the Committee in 2015 and on numerous occasions by the Committee of Experts in the last ten years. The examination of this case in 2017 was in fact a continuation of issues that had been dealt with by the Committee two years ago. While cases on the Convention often concerned the total failure of labour inspection, this case was being examined due to the fact that the Government had failed to provide information in reply to the 2015 conclusions of the Conference Committee or to the comments of the Committee of Experts. They understood India's federal structure, with its central and state governments, but this structure did not justify that the procedure to provide the information requested by the Committee. The Employer members therefore recalled each point that had been raised by the Committee in its 2015 conclusions, highlighting that the Government had failed to provide information on almost all of the following points. With respect to detailed statistical information covering, at the central and state levels, all the matters set out in Article 21 of the Convention with a view to demonstrating compliance with Articles 10 and 16, and specifying as far as possible the proportion of routine and unannounced inspections and information in relation to the proportion of routine and unannounced visits in all SEZs. With respect to the arrangements for the verification of information supplied by employers making use of self-certification schemes, no information had been provided by the Government. With reference to the division of the responsibility of labour inspection between the state and central spheres for each law and regulation in question, no information had been provided by the Government. In relation to the requested explanation with reference to the relevant statistics, the extent to which the number of labour inspectors at the disposal of central and state government inspectorates were sufficient to ensure compliance with Articles 10 and 16 of the Convention, no information had been provided by the Government. With respect to detailed information on compliance with Article 12 of the Convention regarding access to workplaces, records, witnesses and other evidence, as well as the means available to require such access, no information had been provided by the Government. With reference to health and safety inspections undertaken by certified private agencies, including the number of inspections, the number of violations reported by such agencies, and compliance and enforcement measures taken, no information had been provided by the Government. Furthermore, in relation to the review, with the social partners, of the extent to which the delegation of inspection authority to Development Commissioners in SEZs had affected the quantity and quality of labour inspections, the Government had submitted information on a relevant tripartite meeting that had been held in May 2017. The Employer members recalled that the information provided had in fact been requested two years ago. With respect to ensuring that amendments to the labour laws, in consultation with the social partners, undertaken at the central or state level, complied with the provisions of the Convention, making full use of ILO technical assistance, the Government had indicated that this matter was in progress. The Government had now provided detailed statistics, but the

information provided by the Government in its written submission had been received late. The Employer members emphasized that inclusion on the shortlist of cases to be discussed at the Committee should not have to be necessary to ensure the provision of the information requested by the Committee. When the Committee requested a Government to supply information, it expected to receive this information in a timely manner. They concluded that the Committee had started its session with the discussion of cases of serious failure by member States to respect their reporting obligations. The case of India appeared to be a similar case, as information had been requested two years ago and not provided in time. While there seemed to have been progress and the case could be closed, they called on the Government to continue to avail itself of ILO technical assistance with respect to the legislative reform.

The Worker members recalled that the Committee had last discussed the case in 2015, following the Government's proposal to radically reform the labour inspection regime, to end the so-called "Inspector Raj". In its conclusions, the Committee had requested detailed information, including labour inspection statistics, to better assess the efficacy of the labour inspection system. The written information provided by the Government to the Committee did not meet the requests made by the Conference Committee and the Committee of Experts. The Worker members aligned themselves with the comments made by the Employer spokesperson and the lack of information provided by the Government of India. They therefore requested the Government once again to explain its actions, which significantly weakened rather than strengthened the labour inspection regime, in clear violation of the Convention. They emphasized that only a committed, systematic effort by an expanded labour inspectorate could make a difference with regard to the widespread violations of labour laws in the country, including the very large number of child labour, forced labour, working time, occupational safety and health, and equality issues. The Worker members congratulated the Government of India on its recent ratification of the child labour Conventions, although this had not automatically been translated into concrete changes on the ground for working children. The Labour Inspectorate had an important role in changing the practice of employing children, and in ensuring that the new standards are in fact implemented. This required the strengthening of the Labour Inspectorate.

The Worker members reiterated their concerns as to the adoption of the legislation which had been pending for a long time, including the draft Small Factories Bill, 2015, the draft Labour Code on Wages, and the draft Labour Code on industrial relations. Those reforms would undermine the independence of inspectors in carrying out their duties and remove the potential for free access to workplaces without prior notice, which was essential for proper scrutiny of workplace conditions. They remained concerned that labour inspectors no longer had the power to decide which workplaces to inspect since the computerized system (the Shram Suvidha Portal) randomly determined the workplaces to be inspected based on information gathered from risk assessments. Employers were notified in advance of some categories of inspections (so-called optional inspections). Penalties could only be imposed after an inspector had issued a written order and given the employer additional time to comply. The Government's explanation that emergency inspections were immediately carried out in the event of fatal or serious accidents and mandatory inspections were carried out in the two years following such accidents, merely served to highlight the failure of the inspection regime to prevent those accidents from occurring in the first instance. Labour inspectors needed to have free access to workplaces without prior notice and be able to administer adequate penalties for violations of the legal provisions or for the obstruction of inspectors in the performance of their duties. There should be detailed records of instances denial of access or obstruction.

The Worker members expressed their concern at the rights of workers in SEZs, where working conditions were quite poor, especially as trade unions remained largely absent because of anti-union discrimination practices. The situation had worsened following the delegation of enforcement powers to Development Commissioners in several states, under the SEZ Rules, 2006. That represented a clear conflict of interest in light of their central function to attract investment. The legal framework in SEZs allowed the zone authorities rather than the Labour Commissioner to enforce the law. There had been an increase in violations of labour legislation, without the more effective safeguards of enforcement powers by state authorities. Accordingly, they urged the Government to effectively reform the labour inspection system in SEZs to ensure that workplaces were inspected in line with the provisions of the Convention. The Worker members also remained concerned that the labour inspectorate was extremely understaffed. According to the latest available statistics of the Directorate General Factory Advice Service and Labour Institutes, which dated from 2011, for a total of 325,209 registered factories there were only 743 inspectors and the number of injuries stood at 29,837, of which 1,433 has been fatal. Child labour and other abuses of workers' rights remained endemic in the garment sector, especially where factories were outsourced components of a global supply chain. It was clear that the labour inspection regime was incapable of protecting workers in all states and all industries. They urged the Government to hire an appropriate number of inspectors for the size of the workforce, and to ensure that they received the adequate training and the tools necessary to carry out inspections effectively. The Government's reliance on self-inspection as a means of law enforcement was also a matter of concern. The very purpose of the labour inspection regime was subverted, as there was no mechanism for the verification of the information supplied. Yet self-assessments were among the primary sources of information used by the Central Analysis and Intelligence Unit, which monitored employers' compliance with labour standards. There should be an independent means of verification by public inspectors, as opposed to self-certification by employers, who clearly had no incentive to report. They supported the call of the Committee of Experts for the Government to provide information on how self-certificates were verified by the labour inspectorate, as the written information provided to the Committee had not provided a response to that question. Regarding coverage of workplaces by inspectors, in line with the 2015 conclusions of the Conference Committee, and as requested by the Committee of Experts, the Worker members also called for proper scrutiny of occupational safety and health (OSH) inspections which were undertaken by certified private agencies. The function of OSH inspections should remain with the public authorities to secure effective recourse when violations occurred. Proper scrutiny also meant that the Government should provide statistics on the number of inspections, the number of violations reported by such private agencies, and the compliance and enforcement measures taken. The lack of information prevented the Committee of Experts from assessing the capacity of the inspection regime to ensure the effective application of the legal provisions concerning the protection of workers through an adequate number of labour inspectors and labour inspections. Unfortunately, the evidence showed that the labour inspection system was inadequate to achieve this purpose. There was a need for a discussion with the Government on the expansion of the Labour Inspectorate. Inadequate statistical information meant that it was not possible to determine accurately

whether inspections were being carried out, whether workers had access to a remedy and whether employers were sanctioned when appropriate. The Worker members called on the Government to fully implement the conclusions and provide the requested information to the Committee Experts in time for its next report.

The Employer member of India explained that the Indian labour market was characterized by widespread informality, many medium-sized and small enterprises, and a Start-up Hub which was the largest in the world. At the same time, governance of work was traditionally jarred by rigid labour laws and a cumbersome regulatory regime. Recent legislative decisions (including a complete ban on child labour, the increase in the number of weeks of paid maternity leave and initiatives in relation to the payment of wages) were an indication of the country's commitment to protect and promote labour rights and welfare. Care was also taken to provide for formal employment.

Indian employers wished to indicate that the initiatives taken by the Government in recent years had basically been undertaken to address certain needs. First, to overcome the problem of the multiplicity of labour laws, the Government had proposed the consolidation of labour laws into four codes to cover: (a) wages; (b) industrial relations; (c) social security; and (d) occupational safety and health. Tripartite discussions had already been held with regard to wages and industrial relations, and the corresponding legislative procedure was under way. The views of the social partners on the draft code on social security had also been obtained. Second, to address the issue of compliance costs and create a conducive environment for business growth. Complex and cumbersome filing procedures and documentation had been simplified through digitization, including the creation of a digital platform known as the "Shram Suvidha portal", the reduction in the number of returns and records to be maintained and the promotion of online transactions. The governance reforms, in turn, had incentivized workplaces to adhere to the compliance regime more scrupulously. The Government had already provided detailed statistics regarding the labour inspections carried out under the new regime. The Government's submissions on the issue of labour law compliance in SEZs deserved particular attention. The primary objective of SEZs was to promote industrial activity which could generate huge investments, as well as large-scale employment. The tripartite review in May 2017 of the effectiveness of labour governance in SEZs had found that the system worked satisfactorily. The limited delegation in SEZs had in no manner created an escape route for employers from fulfilling their obligations towards workers. The self-certification scheme for voluntary compliance together with strict monitoring was a progressive step towards promoting responsibility and ethics among employers. In the understanding of the Indian employers, self-certification had not substituted sovereign labour inspections. Moreover, in their understanding, there had not been any legislative decisions to dilute any labour inspection provisions. Indian employers had always contributed to the tripartite consultation process and appreciated the efforts of the Government to find the optimum solution to all issues which were discussed. The Committee was requested to take note of these facts, and set aside the case.

The Worker member of India noted the Government`s submission and recalled that the world of work had been changing at an unprecedented speed. Conventional employment was already outdated, and the speed of technological evolution limited the life span of an industry and resulted in demographic shifts in production. While the world had seen tremendous economic progress, this had not always resulted in an equitable share of benefits, and had led to widening inequalities, a rise in informality and the loosening of labour market institutions. In addition, the extremely elaborate legislative framework, and its implementation, had created a gap in the realization of workers' rights. While noting the information provided by the Government on inspection services and staff, and its willingness to engage with the ILO for technical assistance, limitations in the availability of data persisted. Although acknowledging the importance of creating an environment conducive to economic development, the spirit of the Constitution revolved around principles of social justice and non-discrimination, and labour rights were non-negotiable. He noted the information provided on the issue of enforcement and the compliance of SEZs with labour laws, as well as the Government's intention to organize a tripartite consultation to review the situation in SEZs. He further welcomed the institutionalization of a monitoring mechanism in SEZs to ensure compliance. The Government should continue to hold tripartite consultation, recognizing the long history of trade unions in India and their noteworthy contributions to shaping its labour policies. Partners who contributed to the growth of India demanded their rightful share, and he requested the Committee to take note of the information provided by the Government in a positive manner.

Another Worker member of India expressed growing concern at workplace safety and health violations that had resulted in numerous deaths. The Government had not only refused to follow up on the conclusions of the Committee in 2015, but, had continued to elaborate a computerized system to generate inspection schedules. Through its circular of 25 June 2014, the Central Labour Commissioner had set up a Central Analysis and Intelligence Unit responsible for a computerized inspection system, which did not include OSH inspections and was based on self-certification, the receipt of complaints and a list of defaulters. Labour inspectors were now redesigned as "facilitators" and contrary to the indications made by the Government, trade unions had not been part of any tripartite consultation mechanism; moreover they no longer had a role in labour inspection. The written information provided by the Government had not been made available to the social partners prior to its submission, and they had therefore not been consulted on the information provided. Inspection in the SEZs had been virtually abolished. In many SEZs, labour authorities had been divested of their powers in favour of Development Commissioners under the Ministry of Commerce, rather than the Ministry of Labour. On 30 May 2017, a tripartite meeting had been called to ease ILO pressure. During the meeting, a report had been presented that revealed that Development Commissioners in one year had only undertaken 14 inspections in an SEZ employing 251,000 workers. The statement in the written information provided by the Government that only one worker had been critical of the devolution of powers to Development Commissioners did not reflect the truth. Indeed, the Government had refused to consider documents that had been presented by the Worker member during the meeting. Development Commissioners had been actively refusing the registration of trade unions on the basis of self-invented laws. They also passed on information about initiatives that had been taken to form trade unions, enabling the owners in SEZs to harass workers involved in those initiatives. Contrary to the Government's statement, the Shops and Establishment Act had not been extended to the IT and ITES sectors, nor had any labour inspections yet been established covering these sectors. As the Committee had unsuccessfully encouraged the Government to comply with the Convention, it was necessary to investigate the real situation on the ground.

The Government member of the Islamic Republic of Iran thanked the Government for the information provided on the latest situation concerning the application of the Convention. A number of legislative reforms were ongoing to

create an enabling environment for economic growth and job creation. In this respect, it was positive that the Government was working closely with the ILO to ensure that the legislative reforms were consistent with ILO Conventions. Moreover, the Government had provided detailed information and statistics on the labour enforcement system, both at the central and state levels. The Government was encouraged to continue availing itself of ILO technical assistance. He called on the Committee to give due consideration to the information and clarifications provided by the Government.

The Worker member of Malaysia indicated that Indian workers continued to be vulnerable to precarious conditions, including occupational health and safety issues, and remained victims of labour law violations. Effective application of labour laws depended on effective labour inspection, yet, to this day, there were workers that were excluded from labour inspection, for example those working in agriculture, the informal economy, health care services or workers not categorized as teaching staff in teaching institutions, one of the largest sectors of the Indian economy. The Government had manipulated labour inspection in SEZs, such as Noida in the state of Uttar Pradesh, where the Labour Office had closed, and issues have since been managed by Development Commissioners, who had only performed 17 inspections per year in a sector with 352 industries. The Labour Office had reopened for just one year following the comments made by the ILO supervisory bodies, but was again closed in 2016. Given that the IT sector fell within the scope of the Shops and Establishments Act, no labour inspections had been carried out in the sector. Noting that the Government reiterated that no legislative amendments had been carried out to alter legal provisions that might dilute the application of the Convention, the speaker stated that this information was incorrect. Labour inspection was already watered down, and completely unavailable in several sectors. The Government's planned codification of 44 labour acts would exclude workers employed in establishments with less than 40 workers from the 16 laws related to trade unions, and therefore from labour inspection. Noting that such thresholds were not supported by the Committee of Experts, she called on the Committee of Experts to address expediently this matter by investigating the real situation on the ground, and urged the Government to walk the talk by complying with the Convention.

The Government member of Sri Lanka indicated that since the examination of the application of the Convention by India in the Committee in 2015, the Government had complied with the comments of the Committee of Experts and had provided detailed information on the steps it had taken to give full effect to the provisions of the Convention in law and practice. In this regard, the Government had taken steps to broadly codify 44 central labour acts into four labour codes. However, those initiatives were still at the consultation stage. The Government had followed a proper consultative process in this regard in the form of social dialogue, giving effect to the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). She was of the view that codifying labour Acts into simplified forms and giving full effect to national labour laws and ILO Conventions that India had ratified would help to promote employment generation and also to address effectively the issues of compliance. Moreover, there seemed to be no negative impact on the labour inspection system as a result of legislation that had been adopted. She considered that the Government of India had adequately responded to the substantive issues that had been raised, thus giving effect to the principles enshrined in the Convention.

The Worker member of Australia stated that there were workplaces in India where labour inspection either did not occur or occurred rarely. In order to increase foreign direct investment by multinational corporations, SEZs were consciously structured to promote the non-implementation of labour laws. Domestic labour standards, including the labour inspection requirements of the Factories Act 1948, did apply inside SEZs, where labour inspection was almost entirely absent in practice. Entrusting the implementation of labour laws to the Development Commissioner within each SEZ rather than the Labour Commissioner of the Factories Act, 1948, permitted a regime free of labour inspection. Moreover, state governments had empowered the Development Commissioner to entrust the function of labour law compliance to a delegated person. For example, the Uttar Pradesh Government had empowered the Development Commissioner to call for inspection by any external agency for the safety and health of workers in any SEZ premises. As the primary role of Development Commissioners was to drive production within in the SEZ under its responsibility, the health and safety of workers within them might be considered a conflicting and lower priority. Examples also showed that the labour department was actively dissuaded from conducting inspections in SEZs, such as in the state of Andra Pradesh. The fact that entry into the zones was restricted in practice made the prospects of an unannounced inspection very unlikely. The separate administration of labour law within SEZs effectively meant that they were unregulated by labour inspection, which had dire consequences for workers. In this respect, he referred to a number of examples concerning unsafe and unhealthy working conditions in SEZs, and the consequences for the workers.

Taking into account the continued failure of the Government to provide adequate information on labour inspection in SEZs, and the fact that this matter had been before the Committee on a number of occasions, to the speaker stated that a direct contacts mission was necessary.

The Government member of Turkey welcomed the efforts made and the measures taken by the Government with a view to simplifying practices and reducing the regulatory burden through tripartite consultations on labour inspection. He appreciated that the Government had provided detailed information and statistics on labour inspections under various laws and regulations regarding working life. He encouraged the Government to continue working closely with the ILO to establish an institutionalized inspection system which would facilitate the regular supply of information. Taking into account the information that had been provided, and noting that the Government was ready to accept ILO technical assistance, he was of the view that the Committee should not continue to examine this case.

The Worker member of Brazil expressed concern at the seriousness of the case, which showed how important it was for the international trade union movement to be united and to work together. Furthermore, she deplored the Government's failure to provide the information needed for the Committee and the supervisory mechanism to function properly. The information supplied by the Government in Document D.9 should be examined with care. The document had not been shared with the unions and had been drafted without prior tripartite consultation, and was therefore questionable. Moreover, the lack of statistics in Document D.9 meant that there was no basis for comparison. In that regard, she encouraged the Government to hold tripartite consultations and to provide the information requested by the Committee of Experts. However, the real problem lay in the fact that there was no effective labour inspection system. The basic function of labour inspection was to avoid accidents at work by preventing, and restricting practices that endangered the life and health of workers. The introduction of a computerized system to select workplaces at random for inspection was very problematic, as it undermined the freedom of action of inspectors. Moreover, it used a flawed and limited database that did not include

all workplaces, which meant that, if a factory was not included in the database, it would never be selected for inspection.

She therefore considered that the Government was in violation of the Convention, which should be reflected in the Committee's conclusions.

The Government member of Bangladesh welcomed the progress made by the Government in complying with the Convention. He appreciated the process of labour law reforms initiated in order to ensure the protection of workers as well as to promote investment and generate quality employment opportunities. Tripartite consultation had been an integral part of the process of legislative reform, in compliance with ILO Conventions. The initiatives taken by the Government did not aim to curtail the authority of the labour inspectorate, but to make the inspection mechanism more transparent and accountable. Inspection mechanisms based on a computerized system would make inspections more objective and targeted. He welcomed the decision taken by the Government to establish an institutionalized system to review the enforcement of labour laws in SEZs. The ILO should continue providing development cooperation and assistance to the Government to complete the ongoing reform process and to further promote labour standards in line with the Conventions, particularly Convention No. 81. Finally, he called on the Committee to take into account the significant efforts made by the Government to address the issues raised by the Committee of Experts.

The Government member of the Russian Federation had studied the Committee of Experts' observation on the application of the Convention in detail and thanked the Government for its submission. Recalling that the Government of India was a founding member of the ILO, he noted the continued commitment of the Government to labour standards and its efforts to encourage tripartite dialogue. He welcomed the Government's coordination and cooperation with the ILO with regard to legislative reform, and he noted its openness to address the comments of the supervisory bodies. Explanations and clarifications had been provided by the Government, and it was therefore to be expected that regular information would be received in the future and that the Government was committed to working in this way.

The Government representative made observations in relation to the different comments raised during the discussion. With regard to the observations made on the non-availability of statistics, he wished to refer to the reports sent in 2015 and 2016 containing the statistics as required by the Convention. Moreover, the reports that the Government provided to the Committee of Experts had been circulated to all the social partners. That report contained much statistical data, including on the number of labour inspectors in many states, the number of labour inspections undertaken, and the number of labour inspections in SEZs. With reference to the labour law reforms, he explained that Indian labour laws dated back to the 1920s and therefore had to be updated to meet current requirements and developments in the world of work. The social partners were part of the consultations on this legislative review and it was expected that, based on the recommendations made during the review, the labour laws would be strengthened. While many comments had been made in relation to these drafts, violations of the Convention was simply not possible at the current stage, as the labour laws were still under review. He emphasized that labour inspection was a public function in India and that no private inspections had been introduced at the central level or the level of the states. Regarding the verification of the information supplied through the self-certification scheme, it should be clarified that self-certification was different from inspection, and that self-inspection was by no means a form of private inspection or replaced labour inspections in any way. The self-inspection scheme only provided statements by employers on the compliance with provisions of labour laws, and in some cases were accompanied by a security deposit. Workplaces would continue to be subject to the normal labour inspection system and self-certification was only an additional mechanism for compliance. In relation to SEZs, he wished to indicate that in the reports provided by the Government to the Committee of Experts, statistical information had been provided in relation to particular SEZs. He reiterated that there were seven economic zones, of which four zones had not delegated inspection powers. Normal inspections would continue in these four economic zones. Moreover, in the zones in which inspection powers had been delegated to the Development Commissioner, OSH inspections continued to be undertaken by the inspection services of the states. At the moment, only minimal delegation had taken place, and it would be seen in future how such delegation worked. The Government had undertaken the tripartite reviews as suggested by the Committee of Experts and it would continue to ensure that in the future the rights of workers were ensured. Finally, in relation to the issues relating to OSH, it followed from the statistics provided in 2015 and 2016 showed that industrial accidents were decreasing. He concluded that the Government remained committed to the principles of the Convention so as to ensure the protection of workers and compliance with labour standards. Moreover, the Government endeavoured to promote labour welfare through enhanced social security, and to undertake labour reforms through appropriate tripartite consultation. It would continue to work closely with the ILO to ensure conformity with international labour standards.

The Worker members recalled that, on 2 September 2016, over 100 million workers across India had participated in a national strike to protest against the Government's anti-worker policies. Their demands included the strict enforcement of all basic labour laws. The system as presented by the Government representative seemed perfect. For rights to be exercised, they needed to be protected through an efficient public labour inspection system, and information on inspections had be published regularly and made readily available, as provided for by the Convention. However, the Government was not complying with these obligations, and the labour inspection system was in a state of transition in the wrong direction. It was therefore important for the Committee to issue firm conclusions so that the Government had political guidance, with a preventive approach. The Government could start by implementing the technical assistance provided regarding the draft Small Factories Bill, 2015, the draft Labour Code on wages, and the draft Labour Code on industrial relations.

The Government should also adopt the following measures: ensure effective labour inspections in all SEZs, and provide detailed information on the number of routine and unannounced visits, as well as on the dissuasive fines imposed in the event of violations; promote collaboration between the officials of the labour inspectorate and employers and workers or their organizations, in particular with respect to inspection reports; ensure draft legislation in conformity with the Convention; provide information on the measures taken to ensure the discretion of labour inspectors to initiate prompt legal proceedings without previous warning; provide information on the verification by the labour inspectorate of the information provided by employers through self-certification, in particular in relation to health and safety inspections; provide information explaining the division of responsibilities for labour inspection between the state and central governments for each law and regulation in question; provide information explaining, by reference to the relevant statistics, on the extent to which the number of labour inspectors at the disposal of central and state government inspectorates was

sufficient to ensure compliance with Articles 10 and 16 of the Convention, and submit the information to the Committee of Experts; and continue to avail itself of ILO technical assistance in relation to those recommendations.

The Employer members recalled that there were various reasons why a Government could be called before the Committee, even in cases where it had not provided information on the application of the Convention in time, which was the main reason why this case had been selected. The discussion covered a wide range of issues, many of which went beyond the scope of the Convention. It was expected that the discussion of the case would, in future, encourage the Government to provide timely information in response to any requests made by the Committee. They suspected that the same conclusions would be reached by the Committee, but that the conclusions adopted would be stronger than in 2015. They urged the Government to provide detailed and reliable information, as requested, including on the various aspects of labour inspection and the ongoing labour law reform.

Conclusions

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

Taking into account the discussion, the Committee called upon the Government of India to:

- **ensure that effective labour inspections are conducted in all SEZs, and provide detailed information about the number of routine and unannounced visits as well as the dissuasive fines imposed against infractions;**
- **promote the collaboration between officials of the labour inspectorate and employers and workers or their organizations, in particular when it comes to the implementation of inspection reports;**
- **increase the resources at the disposal of the central and state government inspectorates;**
- **ensure that draft legislation is in conformity with the Convention.**

The Committee requested the Government to provide detailed information, including statistical information, to the Committee of Experts on:

- **the measures taken to ensure that labour inspectors have the discretion to initiate prompt legal proceedings;**
- **how the information submitted by employers through self-certificates is verified by the labour inspectorate, in particular in relation to health and safety inspections;**
- **the division of the responsibility of labour inspection between the State and central spheres for each law and regulation in question.**

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

Labour Inspection Convention, 1947 (No. 81)
Labour Inspection (Agriculture) Convention, 1969 (No. 129)

UKRAINE (ratification: 2004)

The Government has provided the following written information.

Since 1 January 2017, the Act concerning the fundamental principles of state supervision and monitoring of economic activity has been focusing on state supervision and monitoring of labour and employment legislation. The Act provides for state supervision and monitoring in accordance with the procedures in the Act and taking into account the features of legislation in other sectors and relevant international treaties, notably those relating to state supervision (monitoring) of civil aviation.

Changes introduced to section 34 of the Local Government Act delegate the exercise of state monitoring, including the power to impose fines for violations of the labour and employment legislation, to the local government authorities. Local labour inspectors will also be entitled to establish infringement reports on administrative offences and impose fines for breaches of labour and employment legislation. Cabinet of Ministers Decision No. 295 of 26 April 2017 on the application of section 259 of the Labour Code and of section 34 of the Local Government Act approved the procedure for state monitoring of labour legislation (hereinafter monitoring procedure) and the procedure for state supervision of labour legislation (hereinafter supervision procedure). Once Decision No. 295 will enter into force, the state supervision of labour legislation will be conducted by the National Labour Inspectorate (hereinafter Gostruda) including its regional branches, and by the local authorities (the executive bodies of councils in regional urban centres and in integrated rural and semi-rural territorial communities).

The Decision establishes a new approach to relations between the State and businesses, according to which the main priorities of inspection are prevention and the provision of advice to employers. The monitoring procedure enables employers to request regular information and awareness campaigns by state inspectors concerning the most effective ways to comply with labour regulations, thereby avoiding or remedying violations of labour and employment rights. At the request of employers, so-called "audits" of labour and employment legislation may be undertaken, but the Decision also recommends that state action should be taken only if the employer refuses to address violations. At the same time, the monitoring procedure establishes an effective mechanism for detecting undocumented workers, as the next step in the Government's battle against money laundering by individual citizens and unscrupulous enterprises. The drafting of the Decision took into account the opinions of ILO experts regarding conformity with the requirements of the Conventions, and regulations were prepared in close collaboration with the social partners.

Reply to direct request

Articles 4 and 5(a) of Convention No. 81 and Articles 7 and 12 of Convention No. 129 (Organization of the State Labour Service (SLS))

Structure of the Gostruda

Pursuant to the Regulations on Gostruda approved by Decision No. 96 of the Cabinet of Ministers of 11 February 2015, the main tasks of Gostruda are to:

(1) implement the national policy on industrial and occupational safety and health and the handling of explosives; conduct state supervisions in the mining sector; and conduct supervision and monitoring of labour and employment legislation and compulsory insurance concerning the entitlements to benefits of insured persons;
(2) provide integrated management of industrial and occupational safety and health at the national level;
(3) ensure state regulation and monitoring of activities at highly hazardous facilities;
(4) organize and enforce state supervision (monitoring) of operations in the natural gas market relating to the sound technical conditions of the system, assemblies and gas metering equipment and ensure the safe and reliable operations of the plant used by the national transmission system.

Gostruda performs a total of 55 functions in relation to the responsibilities assigned to it. It has 3,636 staff members, of whom 158 work at its central office and 3,478 in its regional branches. About 80 per cent of staff are labour inspectors directly involved in conducting controls. Gostruda has 24 regional branches (including regions, districts, and towns). Its technical units, which are state enterprises under the authority of Gostruda, conduct expert assessments of working conditions and the operation of highly dangerous equipment, and provide other services to ensure occupational safety and the proper functioning of equipment. The main research and guidance centre of Gostruda provides distance-learning material on occupational safety and health to staff and experts; the National Scientific Research Institute for Industrial and Occupational Safety and Health ensures scientific back-up for the national policy; and the magazines *Occupational safety and health* and *Technopolis*, publish articles on measures taken, including by Gostruda, to ensure appropriate levels of industrial and occupational safety and health.

Article 5(b) of Convention No. 81 and Article 13 of Convention No. 129 (Collaboration of the labour inspection services with employers and workers or their representatives)

On 22 June 2016, Gostruda and the Federation of Trade Unions of Ukraine signed a cooperation agreement to collaborate on joint information and awareness campaigns and monitoring measures. In accordance with the existing legislation, the following bodies have been established within Gostruda:

– the social council, consisting of 26 members representing civil society institutions, is a provisional consultative and advisory body set up with the aim of promoting civil involvement in the formulation and implementation of state policy;
– a board of 17 members, representing workers' and employers' organizations at the national level as well as from the central Government, set up as a consultative and advisory body tasked with reaching consensual agreement on matters within the responsibility of Gostruda;
– expert working groups of variable size, established for the purpose of preparing new draft laws and regulations and introducing amendments to existing standards.

At the national level, the main labour administration body concerned with social dialogue is the National Tripartite Social and Economic Council, which was set up as a consultative and advisory body to enable participation of workers, employers and government representatives in formulating and implementing national economic and social policy and in regulating labour, economic and social relations.

Article 6 of Convention No. 81 and Article 8 of Convention No. 129 (Status and conditions of service of labour inspectors)

State labour inspectors are public employees governed by the terms and conditions in the Civil Service Act. Therefore, the working conditions and remuneration of state labour inspectors are in accordance with the State Budget Act, sections 50 to 53 of the Civil Service Act and the Cabinet of Ministers Decree No. 15 of 18 January 2017, on "matters concerning the remuneration of workers in governmental institutions".

Article 7 of Convention No. 81 and Article 9 of Convention No. 129 (Training of labour inspectors)

In the context of the 2016–19 Decent Work Country Programme for Ukraine, the ILO is implementing a project to strengthen labour inspection systems and social dialogue mechanisms. Currently, a systematic training programme for state labour inspectors is being prepared. By the end of 2017, it is envisaged to launch a pilot version of the programme, to be followed by a review and then full implementation in early 2018.

Articles 10, 11 and 16 of Convention No. 81 and Articles 14, 15 and 21 of Convention No. 129 (Material means and human resources to achieve an adequate coverage of workplaces by labour inspection)

As mentioned above, Gostruda has 3,636 employees, including 158 at its central and 3,478 at its regional level. About 80 per cent of its employees are labour inspectors directly involved in conducting controls. In 2017, the actual number of labour inspectors empowered to carry out controls of compliance with labour and employment legislation is 542, and the official number is 765. Gostruda and its regional branches hold regular competitions to fill vacant posts, in accordance with the requirements of the Civil Service Act; they are announced in the relevant publications.

Article 14 of Convention No. 81 and Article 19 of Convention No. 129 (Notification of industrial accidents and cases of occupational diseases to the SLS)

Ukraine has committed itself, under the Ukraine–European Union Association Agreement, to improve its public health service and the safety of working conditions. This will involve a gradual adaptation to the legislation, standards and practices of the European Union (EU) Member States. A modern approach to problem-solving in the sphere of occupational safety and health is required, owing to the poor performance of the existing system. Many countries worldwide now indicate that their principal mechanism for ensuring industrial and occupational safety at the national and regional, individual plant and workplace level, is a monitoring system geared towards the assessment and management of risks to the life and health of workers. The current national legislation on occupational safety and health does not require employers to introduce a risk-oriented approach to their occupational safety and health management. The basic occupational safety and health laws and regulations are provided for in the Code of Labour Laws. Therefore, representatives of Gostruda have participated in a working group attached to the National Supreme Council (Rada) on matters of social policy, employment and pension, as part of the amendment process for the second reading of the draft Labour Code. This draft, in addition to introducing the requirements of the main EU Directive on safety and health (the "Framework Directive" 89/391/EEC), also proposes to implement a number of EU regulations. Once the new Labour Code is adopted, there will remain the considerable task of amending the other laws and regulations governing occupational safety and health.

Articles 20 and 21 of Convention No. 81 and Articles 26 and 27 of Convention No. 129 (Annual report on labour inspection)

Gostruda will prepare and submit an annual report on labour inspection, in accordance with the requirements of Article 20.

In addition, before the Committee, **a Government representative** confirmed that in 2015, at the legislative level, labour inspections in Ukraine had been totally suspended. However, new legislation regulating labour inspection had now been adopted and had entered into force on 1 January 2017. In addition, the Government adopted two important pieces of legislation, namely: (i) the Procedure on State Control over Compliance with Labour Laws; and (ii) the Procedure on State Supervision over Compliance with Labour Laws, which entered into force on 16 May 2017. The Government was concerned to promote the effective functioning of the labour inspection services to ensure compliance with legislation on occupational safety and health (OSH), wages and other matters. Labour inspections could be initiated on the basis of several grounds, including: notification of labour law violations; a claim from an individual with whom employment relations were not duly formalized; a court decision; information obtained from State supervision and monitoring bodies, law enforcement agencies and the labour inspectorate; a trade union organization; or state authorities. The new regulations enabled labour inspection services to operate independently, giving them the right to undertake inspections at any hour of the day, in all types of workplaces that use hired labour. A new system had been established to overcome violations. Employers could not be held liable if they had undertaken steps to rectify a violation following the issuing of a compliance notice, except in cases where they had been using undocumented workers and failed to pay the national minimum wage or did not pay wages on time and in full.

The Government was interested in establishing effective labour inspection services to ensure compliance with the new legislation on the national minimum wage, which had doubled in January 2017, a decision taken in agreement with the organizations of employers and workers, which was also used to strengthen efforts aimed at facilitating the transition from the informal to the formal economy. The ILO's technical assistance in reforming the labour inspection services had been very welcome. Labour inspection was now also the responsibility of local authorities and could be conducted by public inspectors appointed by trade unions. In this context, it was important that labour inspectors received adequate training enabling them to carry out their work in an appropriate manner. The Government representative of Ukraine thanked the country's social partners, namely trade unions, for having repeatedly raised the issue of labour inspection and thanked the Conference for having brought this issue to public attention.

The Worker members recalled that labour inspection had been one of the ILO's primary concerns from the very beginning. This issue was one of the general principles set out in the Treaty of Versailles. It was evident that, without an efficient inspection system, the effectiveness of social norms was left to chance. It would be of no avail to formulate and adopt laws, if there were no inspection body responsible for ensuring their effective application and explaining their substance to the various actors. With regard to the case of Ukraine, the Committee of Experts had made a number of particularly worrying comments on the labour inspection services, which had recently been reorganized. The Government had communicated an organizational chart on the central structure, but had not provided any information on their regional structure. Nevertheless, Conventions Nos 81 and 129 highlighted the importance of labour inspection being placed under the direct and exclusive control of a central authority to ensure its independence in relation to local authorities and to facilitate the development and implementation of a uniform policy throughout the country. It was also essential for the inspection services to be effectively present at the regional and local levels. The presence of labour inspection at the regional level and effective monitoring by a central authority were complementary. The Worker members welcomed the technical assistance provided by the ILO within the framework of the reform of the labour inspection system and called on the Government to avail itself of such assistance as much as possible. With regard to cooperation between the inspection services and employers and workers, the Government's approach regarding the involvement of the social partners in labour inspection issues should also be welcomed. However, the Government had not provided any information giving a clear idea of the arrangements for such cooperation. Labour inspection could not achieve its objectives without the effective collaboration of employers and workers. In particular, it was essential to guarantee and protect the right of workers to bring violations of the legislation to the attention of the labour inspectorate. The Worker members expressed concern at the establishment of a moratorium on labour inspections from January to June 2015, and the preparation of new texts with a view to the adoption of a further moratorium. In 2010, the Committee of Experts had already noted the adoption of a similar measure. A moratorium on inspections was a serious violation of the Convention and sent a particularly negative signal, as it implied that the enforcement of labour legislation was a minor concern. The Government should therefore be applauded for having abandoned this measure.

The resources allocated to the labour inspection services and labour inspectors reflected the importance attached to the standards and legislation that they were responsible for enforcing. If inspectors did not enjoy an appropriate status and conditions of service, the position of inspector would be less attractive and there would be a reduction in their numbers, as had happened in Ukraine, and their independence and impartiality would also be compromised. Particular attention should also be paid to the indication that labour inspectors in the country were being assigned duties other than those related to labour inspection. It was admittedly true that the Conventions did not prohibit the assignment of other functions to labour inspectors. However, it was imperative to have a clear idea of the volume of work that such functions involved, and to ensure that they did not interfere with the main duties of labour inspectors. The Government should supply detailed information in this regard, and provide the necessary guarantees. Nobody could dispute the fact that Ukraine was faced with a complex situation, due to the armed conflict in part of its territory and the implementation of austerity policies, which were weighing heavily on the country, with a view to securing financing from the International Monetary Fund. Nevertheless, these difficulties should not result in the sacrifice, in the name of austerity, of social justice and the means for its achievement, and particularly labour inspection. Austerity measures that affected such an essential institution were likely to have an even more negative impact on the overall balance of society. In this regard, it was important to recall the section of the Preamble of the ILO Constitution covering universal peace and harmony, and the Declaration of Philadelphia, which affirmed that labour was not a commodity. Nor had the Government provided information on the progress made in the implementation of a national action plan on OSH, particularly regarding the notification of work-related accidents and occupational diseases. It had also failed to supply information on the up-to-date register of workplaces liable to inspection, which allowed for the development of targeted inspection plans and the inclusion of relevant information in annual inspection reports. It was also important to emphasize in this respect that the preventive mission of the labour inspectorate was of particular significance to the economic and social health of the community as a whole, as poor working conditions inevitably

led to conflict and difficulties in the workplace, and an increased number of social security claims, particularly for work-related accidents and occupational diseases. The Government was therefore invited to provide the information requested by the Committee of Experts on this subject. The Worker members were convinced that, in challenging times, the best approach was to move towards social justice by enhancing the means for its achievement. This was the only solution to combat poverty and despair.

The Employer members recalled that in 2010, the Committee of Experts had referenced the observations made by the Federation of Trade Unions of Ukraine (FTTU) regarding restrictions and limitations to the supervisory function of labour inspectors, and had noted that several legislative provisions (in particular Act No. 877-V concerning the fundamental principles of state supervision in the area of economic activity adopted on 5 April 2007, as well as the provisions of Cabinet Order 502) violated the Convention. The Committee had also noted that legislation was contemplated to remedy the situation. In 2011, the Committee of Experts noted that the Government had not provided relevant information and requested information on measures taken to ensure compliance with obligations under the Convention. In its 2013 observations, it again requested measures to ensure that Act No. 877-V be amended and requested information on the application of labour inspection in agriculture. Most recently, the Committee noted progress made in 2016, in its joint comments on Conventions Nos 81 and 129, noted with interest the technical assistance provided by the ILO to support the labour inspection reform initiated in 2014. Specifically, the Committee had noted that the ILO had undertaken a needs assessment of the labour inspection system in response to a Government request, and a number of recommendations had been made. The Committee had also positively noted the ILO project on "The strengthening of the effectiveness of the labour inspection system and social dialogue mechanisms" undertaken in September 2016. The Employer members noted with interest the information provided by the Government that new legislation had entered into force in May 2017, which had had an impact on state supervision and labour inspection. They also welcomed information provided on what may trigger inspections, and the organization and feedback on engagement with the ILO, particularly the training of labour inspectors. The Government was also encouraged to continue to accept technical assistance to ensure that new and any existing legislation reflected the provisions of the Convention, in particular, the requirement that labour inspectors be public officials, independent of changes in Government and any external influences. In this regard, improper external influences in the recruitment should be eliminated and measures to ensure qualifications and adequate training for inspectors to perform their duties were encouraged. Reports that the Government had appointed local self-government staff in the role of labour inspectors was noted with concern. The Government was requested to provide information to the Office so that training and qualifications of labour inspection staff could be assessed. The moratorium was an issue that had been raised by the Committee of Experts. The Employer members had noted that the moratorium had now expired and had not been extended. The suspension of labour inspections contravened obligations under the Convention. Information from the Government on the moratorium, including confirmation that it had been lifted was requested. Taking into account the difficult circumstances in the country, they urged the Government to continue to avail itself of ILO technical assistance in order to ensure compliance in law and practice.

The Worker member of Ukraine recalled that, for seven years, the Committee of Experts had been raising issues concerning Ukraine's compliance with its obligations under Conventions Nos 81 and 129. The Committee of Experts had confirmed the views expressed by the FTUU in 2010 that a number of provisions in Act No. 877-V concerning the fundamental principles of state supervision in the area of economic activity, adopted on 5 April 2007, and the Cabinet Decree providing for temporary restrictions on state supervision and monitoring until the end of 2010 were not in conformity with the Conventions. The Cabinet of Ministers had acknowledged the violations and proposed amendments, but they had not been adopted. In 2015, the authorities had introduced a moratorium on labour inspections. In view of the serious situation concerning workers' rights, the FTUU, together with the other most representative workers' organizations, had once again made observations. More than 4 million workers were working illegally without contracts, and more than 100,000 workers were affected by delays in the payment of wages. During the moratorium, the number of complaints submitted both to Gostrud and to trade union organizations had significantly increased. The Government had taken specific steps to improve the situation in terms of monitoring compliance with labour legislation and preventing violations, including the adoption of new legislation, the repeal of the moratorium and the significant increase in the level of fines. The trade unions had supported the request of the Government for ILO technical assistance in reforming the labour inspection services. Many issues remained, including the inadequate number of labour inspectors, the insufficient qualification of inspection team leaders and the paltry wages of labour inspectors, which left them open to corruption. In fact, the Government standard of 3,636 labour inspectors for more than 1.2 million workplaces employing workers was insufficient to guarantee workers' rights. According to Gostrud, in 2016, of 2,610 vacant positions, only 594 had been filled through new recruitment. Frequent changes to national legislation required systematic training for labour inspectors, including in the use of new technology.

In view of the need to enhance employer compliance with legislation on OSH, labour and employment and social insurance, in 2016 a cooperation agreement had been concluded between the trade unions and the State Labour Service (SLS) to complement State inspections with inspections by trade unions. This had been made possible by the adoption of Decision No. 295 in April 2017, which provided that labour inspections could be carried out on the basis of information received from trade unions, as well as individual workers. However, just days before the start of the 106th Session of the International Labour Conference, the Verkhovna Rada had seen the introduction of a new Bill to amend several laws to avoid excessive pressure on economic entities, including through labour inspection. It had been drafted by some 20 members of Parliament who were lobbying for the interests of enterprises. This was yet another attempt to introduce restrictions to labour inspection and weaken sanctions for employers in violation of labour legislation. One of the innovations was the proposed introduction of administrative liability for persons submitting unfounded complaints of violation of labour legislation. This was a direct breach of Convention No. 81, which provided that labour inspectors should be prohibited from revealing the source of complaints. The Bill particularly affected workers in the informal economy, who were not unionized and were afraid to approach the labour inspection services for fear of losing their jobs. The drafters of the Bill were deliberately trying to scare workers. The Bill also proposed fines ranging from about 850 to 1,700 hryvnia, which might even more than double in the case of repeat offenders. The Federation of Trade Unions of Ukraine (FTUU) had made a very negative assessment of the Bill

to parliamentary parties but had received no reply. He requested the Committee to warn the Verkhovna Rada not to adopt the Bill, so as to avoid a negative impact on the application of Conventions Nos 81 and 129. He concluded by stating that further technical assistance was needed.

The Employer member of Ukraine noted that the moratorium in 2015 and the temporary restrictions on inspections in 2010 had been imposed to eliminate corruption in numerous government institutions, and did not only concern the State Labour Service (SLS). At that time, the moratorium had been supported by the national employers' associations and had had a positive effect on business activity: 100,000 workplaces had been created, including many green workplaces, mostly small and medium-sized enterprises. As the moratorium had been brought to an end, there was no violation of the Conventions. However, some violations of the Conventions had occurred with the adoption of recent changes to the national legislation. Act No. 1774 (6 December 2016) amending section 34 of the Local Government Act had empowered local authorities to monitor compliance with labour and employment legislation within their territorial jurisdiction, to conduct inspections and to impose penalties. This was not in conformity with the Conventions: labour inspectors should be public servants, and labour inspection should be conducted under the supervision and control of a central authority; appropriately qualified technical experts and specialists should be involved in inspections, and labour inspectors should receive continued training. In reality, in Ukraine the activities of the local self-government officials endowed with the powers of labour inspectors did not meet the requirements of the Conventions. Local self-government officials were neither controlled by, nor accountable to, the central competent authority (SLS). Moreover, there were often conflicts and confrontation in determining the limits of the powers of the local and central inspectors. Local self-government officials did not undergo the relevant qualification selection and were not under the coordination and methodological support of the SLS. Nor were local self-government officials independent: they were under the influence of local elites and often could not be impartial. It was therefore impossible to appeal against the actions of the local self-government officials or to hold them responsible for misconduct. He noted that the changes had also created duplication of the powers of SLS regional branches and the local authorities. This had imposed double inspections by two different bodies on employers. He concluded by insisting on the need to repeal the mentioned provisions of the national legislation which in his view contradicted the provisions of the Conventions and unreasonably extended discretionary powers of the labour inspectors, defined by these Conventions, to the officials of local self-government incapable of effectively performing such state functions.

The Government member of Malta, speaking on behalf of the European Union (EU) and its Member States, as well as Albania, Bosnia and Herzegovina, Georgia, Montenegro, Norway, the former Yugoslav Republic of Macedonia, and Turkey, emphasized the commitment to the EU-Ukraine Association Agreement with its Deep and Comprehensive Free Trade Area (DCFTA), and welcomed the results of the EU-Ukraine summit held in November 2016. The speaker noted with interest the reform initiated by the Government in 2014 to strengthen labour inspection services, and expressed support to the development of the SLS with an important technical assistance project to be implemented by the ILO. Recalling the considerable drop in the number of inspections and significant rise in number of complaints concerning labour law violations when the moratorium was introduced in 2015, he welcomed the lifting of the moratorium for unplanned inspections and strongly encouraged the Government to seek further modernization of its labour inspection system. Recalling the highly politicised debate on the draft Labour Code, he strongly encouraged the Government to pay due regard to the comments provided by the Office, particularly in the area of working conditions, occupational health and safety and mining. Government intentions to include appropriate clauses on non-discrimination in the Labour Code in line with the Association Agreement were welcomed. It was expected that following these consultations, the Government would take the necessary steps to bring national legislation and practice related to labour inspection in conformity with ILO Conventions and that it would continue to avail itself of ILO assistance. The speaker reiterated his commitment to close and constructive engagement and partnership with the Government.

An observer representing the International Trade Union Confederation (ITUC) indicated that recent reforms to the labour inspection system had in fact resulted in the loss of many qualified labour inspectors. Only 3,500 remained to cover 1.2 million enterprises, making it difficult to monitor OSH effectively. Ukraine's mines were the most dangerous in the world from a technical point of view, with deep shafts and high gas concentrations, among other hazards. Inspections carried out following a fatal accident in March 2017 had revealed thousands of breaches of OSH legislation in mines across the country. Nothing had been done to rectify the situation. The limited possibilities for labour inspections and the high level of corruption meant that tens of thousands of miners risked their lives and health every day. In 2016, the ILO had begun providing support to improve OSH and labour inspection, and a number of measures had been taken with international assistance, but this was not enough. The right of labour inspectors to carry out their duties not only in the event of an accident but also with a view to identifying violations proactively, as provided for in ILO Conventions, should finally be restored in law and practice. Draft amendments to the Labour Code had been examined with the Office, which had identified a number of discrepancies with ILO Conventions; however, so far only 22 of them had been removed. Further consideration of the draft Code was urgently needed, as subsequent amendments proposed had introduced further incompatibilities.

The Worker member of the United States recalled that, in this year's General Survey, the Committee of Experts had noted that the national OSH programme in Ukraine had included a number of specific measures and targets relating to the mining sector. While this was positive, there was serious concern regarding labour inspection, including considerable reductions in the number of labour inspections and even occasional moratoriums. In the course of one year, the mining authority had performed inspections in only 2.7 per cent of production facilities. Ukraine was second only to China in mining and other industrial accident rates. There were violations of health and safety norms, insufficient preventive measures, and lack of individual security equipment. In March 2017, eight miners had died in the Stepnaya mine, and around 30 had been hospitalized, despite the specific prescriptions that had been issued by the labour inspectors who had visited the mine in November 2016. After that tragedy, the Government had decided to inspect many mining workplaces, discovering more than 2,500 violations. However, nothing had yet been done to correct these situations. The labour inspectorate had to be fully empowered, with a mandate, a budget and the capacity to impose and collect meaningful fines, and corruption had to be addressed. It was vital to resume unannounced workplace inspections and cease current efforts to weaken and suspend inspections in law and in practice simply to

present a more "business-friendly" environment. Moreover, the lack of regular and broad inspections had had an impact on social protection schemes and workers' rights. According to the Ukrainian Parliament Commissioner for Human Rights, this had led to a situation in which a third of the workforce was employed illegally, and about 40 per cent of the wages in the country were paid unofficially without paying taxes or a single social contribution, causing huge losses to the State, pension and other funds of compulsory social insurance. As much as freedom of association was the enabling right for workers to claim their rights, labour inspection was the government function and responsibility that allowed it to fulfil so many of its other obligations to protect and respect rights of workers and citizens.

The Worker member of Sweden speaking on behalf of the Nordic Trade Unions, indicated that the case under discussion fitted well into the context of the debate on the 2017 General Survey concerning occupational health and safety. Compliance with the requirements of the Conventions on labour inspection was not possible when labour inspections were subject to a moratorium. Ukraine had ratified the Conventions only in 2004, and the ratification of a Convention created obligations. Ukraine had reportedly imposed the moratorium on labour inspection to increase its competitiveness and attractiveness. However, that was not an acceptable justification for non-compliance with ratified standards. Labour inspection was not just a formality, but an efficient means for ensuring compliance with applicable standards, and thus fair competition, and to secure a safe and healthy work environment. She therefore expected that Ukraine would bring its national legislation into conformity with the Conventions, and that it would not introduce restrictions and limitations on labour inspection.

An observer representing IndustriALL Global Union stated that occupational health and safety in the majority of enterprises, particularly in state-owned and small and medium-sized enterprises, was close to an emergency-like situation. Despite having ratified Convention No. 81, many bureaucratic obstacles had hindered appropriate implementation, proving that there was inadequate funding and capacity for labour inspection. A systematic lack of financial support had led to the huge deficit of skilled health and safety specialists in all responsible State bodies, including the labour inspectorate. Thanks to the trade unions, some 2,946 health and safety violations had been registered in Ukrainian coal enterprises in 2016. Some 485 accidents in Ukrainian mines had occurred in 2016 alone, which had resulted in the death of 12 miners. Health and safety was chronically underfunded. A joint mission by IndustriALL and the ITUC to Ukraine had taken place in March 2017, whereby concern was expressed about the lack of real social dialogue. She expressed support for the concerns and demands of the Federation of Trade Unions of Ukraine (FTUU), particularly for the Bill passed in May 2017, and urged the Government to fund and give priority to setting up proper programmes to implement health and safety measures, including solid and competent health and safety bodies with highly skilled staff in 2017 and in subsequent years.

The Government member of Switzerland recalled that in recent years, and according to available information, the number of labour inspections in Ukraine had decreased. The role of labour inspection was essential in ensuring protection for workers and the Government was encouraged to ensure the application of labour legislation by means of inspections, in accordance with its obligations under Convention No. 81. Effective and functional inspections contributed not only to decent working conditions, but also to economic development and fair competition among enterprises. The Government was invited to modernize its inspection procedures and to bring them into line with international standards, in consultation and cooperation with the social partners and the private sector.

The Government representative noted that the criticism which had been voiced by the Ukrainian employers and workers reflected the internal processes under way in the country. He recalled that Parliament was a body that was not subject to the will of the Government, that employers' organizations had lobbyists in Parliament, who could exert influence on its decisions, and on the adoption of legislation, by virtue of which all, including the Government, workers and employers, needed to abide. The Government was keen to establish effective labour inspection services that had adequate powers. He emphasized that full account would be taken of the criticisms expressed by the employers concerning the alleged inadequacy of the current legislation to ensure the effective functioning of labour inspection services and that relevant measures would be taken. Currently, about 3,500 labour inspectors worked at the labour inspectorate as public servants. Before its summer break, Parliament was planning to discuss the legislation on local government, which would also cover public labour services undertaken by the local authorities. The Government entirely agreed with the Worker representatives about the need for more funding and proper training of labour inspectors. He concluded by saying that his Government had welcomed the ILO technical assistance, which had made a significant contribution to the effective functioning of the labour inspectorate. He noted that a number of issues had been discussed in the framework of this assistance, such as the training of labour inspectors, and expressed hope that already next year, his Government would be in a position to report to the Committee of Experts on positive developments in relation to labour inspection.

The Employer members expressed their appreciation concerning the response of the Government on some of the specific issues raised during the discussion. The statements made by the Worker and Employer members from Ukraine had provided further insight into the national situation. It was clear that progress had been made, although the situation was not perfect. They welcomed the Government's willingness to continue to engage with the national workers' and employers' organizations, and to avail itself of ILO support to continue to improve the labour inspection services and the training of labour inspectors. Information was requested from the Government on: (1) the legislation that had entered into force in May 2017, particularly with regard to its impact on labour inspection; (2) confirmation that the moratorium had not in any way been extended; and (3) the circumstances surrounding the moratorium and the relevant vote in Parliament. The positive engagement between the ILO, the Government and the social partners was the first of many steps to ensure a well-functioning and well trained labour inspection service.

The Worker members thanked the Government for its explanations, which showed its willingness to implement the Conventions, and suggested that it continue to avail itself of technical assistance from the Office within the framework of labour inspection reform. The Worker members were waiting for specific action from the Government to ensure that employers and workers were effectively involved in that process. The right of workers to file complaints, including on an anonymous basis, must be ensured, as well as their protection in exercising that right. Furthermore, the Government must firmly commit no longer to resort to measures such as a moratorium on inspections and to provide the Committee of Experts with information in that regard. Equally, in order to enable the labour inspectorate to carry out its advisory and supervisory duties, the Government must allocate more resources to it, including

by increasing the number of inspectors, improving their training and ensuring that they received adequate remuneration. Inspectors must have the necessary leeway to carry out inspections, especially in high-risk industries. Lastly, the Government must make further efforts to implement a national action plan on occupational safety and health.

Conclusions

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

Taking into account the discussion, the Committee called upon the Government of Ukraine to:

- **provide detailed information regarding recent legislation enacted on the regulation of the labour inspection system, including providing a copy of the same for analysis and consideration in relation to the application of Conventions Nos 81 and 129;**
- **promote effective dialogue with employers' and workers' organizations concerning labour inspection matters;**
- **continue to avail itself of ILO technical assistance in order to strengthen the capacity and resources of the labour inspection system, in particular with regards to the training and capacity building of labour inspectors;**
- **ensure that the status and conditions of service of labour inspectors guarantee their independence and impartiality in line with the Conventions;**
- **ensure that other functions entrusted to labour inspectors do not interfere with their primary duties and impact negatively on the quality of labour inspections.**

In view of the information provided by the Government about the expiration of the moratorium placed on labour inspection, the Committee calls upon the Government to refrain from imposing any such restrictions on labour inspection in the future.

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

ALGERIA (ratification: 1962)

A Government representative, while welcoming the work of the Committee of Experts and the Committee on Freedom of Association, expressed great surprise to see Algeria on the list of cases to be examined by the Conference Committee and urged it to re-examine the criteria for the inclusion of countries on the list. The Algerian Constitution guaranteed all the fundamental freedoms, human and citizens' rights, including freedom of association and assembly and the freedom of peaceful demonstration, the right to organize and the right to strike, when exercised in strict compliance with the law. The legislation adopted under the fundamental law of the country was in conformity with the spirit and the letter of the international Conventions and instruments ratified by the country. In this context, the trade union pluralism set out in the Constitution since 1989 had enabled Algeria to see intense trade union activity, both in the private sector and the public service. A total of 102 representative organizations had now been registered, including 66 workers' organizations and 36 employers' organizations. Since 2014, five organizations had been registered. Trade union activities in Algeria were carried out within the framework of the law, without difficulty or hindrance, including the exercise of the right to strike. In 2016, there had been 35 strike movements (23 in the public service and 12 in the private sector) with the participation of over 200,000 workers from the various sectors. With reference to the registration of trade unions, he recalled that the labour administration was responsible for a prior control of the conformity of the basic texts of workers' or employers' organizations with the provisions of the national legislation governing the exercise of the right to organize, in accordance with the provisions of the Convention. The files for three trade unions referred to by the Committee of Experts had been examined by the competent services of the Ministry of Labour, and observations had been sent to them within the time-limits set out in the legislation that was in force, to which replies were expected. The General and Autonomous Confederation of Workers in Algeria (CGATA) had filed an application for registration in June 2013, to which a reply including the observations of the administration on its by-laws had been sent in July 2013 to the address indicated on the application, but the mail had been returned as the wrong address. On 2 December 2014, the organization had requested the labour administration for information on the action taken on its request for registration. Over two years ago, a new communication had been sent to the organization inviting it to bring its fundamental texts into conformity with Algerian law, but it should be noted that up to now no reply had been received by the labour administration. The organization did not therefore have legal personality. With reference to social dialogue, he indicated that the practice of social dialogue at the national level had resulted in the conclusion by the Government and the economic and social partners of a National Economic and Social Pact in 2006, which had been renewed in 2010, as well as a National Economic and Social Growth Pact in February 2014. At the branch and sectoral levels, social dialogue had resulted in the conclusion of 82 collective agreements and 167 branch agreements. Moreover, the Ministry of National Education and eight sectoral trade unions (out of the ten unions in the sector) had concluded in 2015 an ethical charter containing commitments by all parties for the preservation and promotion of a social climate conducive to the resolution of the problems in the sector. The General Union of Algerian Workers (UGTA) had concluded a pact for stability and enterprise development in the private sector with employers' organizations in 2015. Finally, 3,671 collective agreements and 17,242 enterprise agreements had been signed. He added that the experience of Algeria in relation to the practice of social dialogue was currently being shared with African countries within the framework of an agreement signed with the ILO with a view to promoting South–South cooperation through the implementation of a programme financed by Algeria, and that a parallel event on the Algerian experience of social dialogue and social protection had been organized at the 329th Session of the ILO Governing Body. With reference to the observation of the Committee of Experts on the use of police violence against trade unionists during demonstrations, he indicated that the demonstration to which reference was made had been organized in violation of the provisions of Act No. 89-28 on public meetings and demonstrations, its objective had been to disturb and undermine public order and that the demonstrators were accordingly liable to the penalties set out by law. The security services had intervened in accordance with the law and international standards respecting the exercise of the freedom of peaceful demonstration. Finally, with regard to the legislative issues relating to the draft law to issue the Labour Code, he recalled that, in conformity with the conclusions of the 104th Session of the Conference (June 2015), the Government had provided a copy to the Committee of Experts in October 2015. The draft law had taken into account a series of observations contained in the memorandum of technical comments prepared by the ILO services. In relation to the issues concerning sections 3, 4 and 6 of Act No. 90-14 of 2 June 1990 on the exercise of the right to organize, specifications had been included in the draft text in response to the concerns raised. The text was now at the stage of dialogue with all workers' and employers' organizations, and the dialogue had been broadened to include ministerial departments and departmental authorities. A

meeting had been organized in January 2017 with sectoral trade unions and there had been a productive discussion between the labour administration and the unions, in the presence of the ILO Office in Algiers. Although the time elapsed might seem long to certain parties, it was an extremely important legal text and it was important to seek the broadest support in order to propose a coherent text that took into account all of the complex concerns of the world of work. He therefore reassured the Conference Committee of the Government's will to complete the process of dialogue on the draft text.

The Worker members emphasized that, since the previous discussion of the case in 2015, the situation had deteriorated in Algeria. The Labour Code had not been amended, despite the persistent calls for its revision by the ILO supervisory bodies. Algeria had not remedied the problems raised by the ILO and had not engaged in even the most elementary consultations with the social partners. The draft 2015 Labour Code had not been revised, even though certain of its provisions were in explicit breach of the Convention, including sections 510–512, under the terms of which unions could only join federations and confederations in the same branches or sectors. The draft text also imposed a series of prerequisites concerning the required number of unions in the same occupation, sector or branch to establish federations and confederations of their own choosing. Section 514 only authorized persons of Algerian nationality or those who had been naturalized for at least five years to establish and join unions, in violation of the Convention, which recognized the right of all workers to establish and join organizations of their own choosing. Once again, there had been no improvement. Nor had the Government given effect to any of the requests in relation to sections 517 and 525 of the draft text, which set out the requirement for a series of public procedures to be followed for the establishment of a new union or in the case of changes to the by-laws or executive bodies of existing unions. The requested clarifications had never been provided and the process of revision involving the social partners had never taken place. Section 534 of the draft Labour Code also remained unchanged and provided that national unions could only accept gifts or inheritances from foreign organizations with the explicit authorization of the public authorities, which was not in accordance with the Convention. Act No. 90-14 of 2 June 1990 on the exercise of the right to organize, contained a provision on nationality which limited the possibility to establish and join unions. This provision limited the right of foreign workers to establish a union on grounds of discrimination based on nationality, while the Convention required freedom of association to be guaranteed without discrimination of any sort. The State was seeking to discourage and undermine the very heart of the independent trade union movement in Algeria and raised different and persistent obstacles every time that a union filed an application for recognition or registration. Despite the provisions of Act No. 90-14, the authorities arbitrarily refused to issue registration receipts to unions. Moreover, unions were frequently told to amend their by-laws or to provide additional documents which were not required by law. The failure to issue registration receipts restricted the power of unions to operate normally. Without such receipts, unions were not allowed to receive membership dues, which was their fundamental source of income. Nor could they open a bank account, or take legal action. That was the case of the CGATA, which had been awaiting registration for over 20 years. Another union, the National Autonomous Union of Postal Workers (SNAP), had only been recognized after a period of two years, after filing a complaint with the Committee on Freedom of Association. The list of arbitrary and discriminatory dismissals of trade unionists in Algeria was endless. These included Mellal Raouf, President of the Autonomous National Union of Electricity and Gas Workers (SNATEGS), who had been dismissed in March 2015 in reprisal for his trade union activities. In December 2016, he had been convicted in his absence to six months' imprisonment and a fine of 50,000 Algerian dinars for denouncing the illegal practice by Sonelgaz, the national electricity and gas company, of inflating electricity bills. The penal sentence had been confirmed by the court of second instance in May 2017. In April 2013, Rachid Malaoui, President of the National Autonomous Union of Public Administration Personnel (SNAPAP) had been dismissed from his post at the University of Lifelong Training for unjustified absence from work and the payment of his salary had been suspended. He had only been able to obtain a copy of his letter of dismissal in June 2013, and his appeal for his dismissal to be overturned had been set aside by the Council of State in January 2017. There had been several other cases of arbitrary detention and unjustified interference in peaceful demonstrations in Algeria in 2017, including the arrest in a hotel in Tizi Ouzou of the leaders of the SNATEGS of Sonelgaz, including the President, Mellal Raouf, the Secretary-General, Kouafi Abdelkader, the Director of Communications, Chaouki Fortas, and two members of the executive board, Mekki Mohammed and Baali Smail. In March 2017, the police had repressed a peaceful demonstration organized by the same union, with the arrest of 240 workers, including 30 women. It was essential for Algeria to implement in the very near future the various legislative reforms that had been requested for years. The victims of such inaction were the thousands of Algerian workers who were the victims of abuse and the denial of the fundamental right to organize. This was an extremely serious case that the ILO should continue to follow. The Worker members urged the Government to amend the legislation, immediately recognize all legitimate unions, and reinstate all workers who had been unlawfully dismissed for their trade union activities.

The Employer members considered that this was a case of extremely slow progress, rather than that of a deliberate breach, and recalled that it concerned the following three issues. First, since 2011, acts of violence had been alleged on a number of occasions. In this respect, the most recent allegations related to the arrest in February 2016 of trade union members and acts of violence by the police against protest action in the education sector. However, due in part to the fact that in the various interventions made over the years, these allegations had been made by persons from countries other than Algeria, this was not an easy situation for the Committee to supervise. The lack of direct allegations by Algerian nationals, coupled with the Government's indication that no complaints had been made to the competent authorities regarding these matters, made it difficult to do more than simply acknowledge the allegations. Had the Algerian workers lodged the complaints, the Employer members expected that these would have been investigated. Thus, before drawing conclusions, it was necessary to have a balanced set of facts and detailed information on the action taken by the Government, or the lack thereof. Second, regarding the Committee's previous request to undertake consultations with the representative employers' and workers' organizations in order to take their views into account in drafting the Labour Code, a number of consultations had taken place. In 2016, a copy of the draft Code had been submitted to the ILO for comments and, as a consequence, a number of suggestions to improve it had been made. Before and since, numerous tripartite and bipartite meetings had been held to discuss the Code and related issues. In January 2017, copies of the draft, including amendments suggested by the ILO, had been provided to employers' organizations and unions for comments and further suggestions for change. A final draft was in preparation and was expected to be submitted to

Parliament once finalized. Algeria was not reluctant to engage in discussions with the social partners and had an active record of tripartite engagement on a range of issues at the national, industry and enterprise levels. These included the signing of the National Economic and Social Growth Pact and of a number of collective agreements and accords. In so far as the Labour Code was concerned, this was a case of progress, although a slow one, and the Government was encouraged to bring it to a conclusion as soon as possible, taking into account the 2016 direct request in which the Committee of Experts identified a number of restrictive provisions. Third, regarding restrictions on the right to establish trade unions and the right of workers to establish and join organizations of their own choosing, section 6 of Act No. 90-14 of 2 June 1990 restricted the right to establish a trade union organization to persons who were originally of Algerian nationality or who had acquired Algerian nationality at least ten years earlier, and sections 2 and 4 of that Act, read jointly, had the effect of restricting the establishment of federations and confederations in an occupation, branch or sector of activity. The Committee had previously noted the Government's indication that the Act was to be amended to extend the right to establish trade unions to foreign nationals and to include a definition of federations and confederations. Given the Government's stated willingness to make these changes, and in the absence of information on any new developments in this regard, the Employer members called on the Government to amend sections 4 and 6 of the Act as soon as possible. In addition, with respect to the concerns previously expressed over the long delays in the registration of the Higher Education Teachers' Union (SESS), the National Autonomous Union of Postal Workers (SNAP) and the Autonomous General Confederation of Algerian Workers (CGATA), the Employer members noted the Government's indication that SNAP had been registered, that the authorities had informed the SESS of certain requirements that must be resolved for its application to be in conformity with the law, and that the CGATA had been informed in 2015 that it did not meet the legal requirements for the establishment of a confederation. Regarding the latter, it was not clear which requirements were not fulfilled. They thus urged the Government to provide information in this respect and to take all the necessary measures to guarantee the prompt registration of trade unions which had met the requirements set out by the law and, if necessary, to require the competent authorities to ensure that the organizations in question were duly informed of the additional requirements that had to be met.

The Worker member of Algeria considered that deceptive strategies were sometimes used to exert pressure on workers for purposes other than the legitimate defence of their interests. Experience had shown that trade unionism which reflected the will of the workers must not be hindered. Respect for fundamental labour principles in an objective context, free from any negative influence, was an essential prerequisite for social progress. If that were not so, trade unionism would lose all credibility among workers. She emphasized the importance of genuine social dialogue and true representation in accordance with ILO criteria. Her organization, the UGTA, had long-standing experience which it had shared with other trade unions on many occasions.

The Employer member of Algeria emphasized that the ratification of Convention No. 87 and the other fundamental ILO Conventions, as well as the enactment of labour legislation in 1990, had permitted the registration of more than 102 trade unions. Since 1990, a sustained social dialogue had paved the way for the realization of an Economic and Social Pact in 2006, which had been renewed in 2010, and a National Economic and Social Pact for Growth in 2014. An enterprise development agreement between employers' organizations and the UGTA had been sent to the ILO in July 2016. The preliminary draft Labour Code, debated at length by the employers, had been passed to the ACT/EMP for recommendations and proposals. The comments of the employers had recently been communicated to the Government. Regarding social dialogue, the initiatives undertaken by the Algerian authorities represented significant progress which deserved support and encouragement.

The Government member of Mauritania noted that Algeria had made considerable efforts to translate Convention No. 87 into reality, based on the conviction that freedom was a powerful engine, which was not surprising in a country of a million martyrs who paid the highest price for the achievement of this goal. Algeria was a country in which 102 trade union organizations conducted their work in freedom and, side by side with the Government, promote social dialogue at all levels. Trade unions could register safely and there were no conditions for the conduct of trade union activities, other than compliance with the basic legal and regulatory framework. With regard to social dialogue, he referred to the activities organized by Algeria for the benefit of African countries in the framework of the South–South cooperation initiative financed by Algeria. The example set by the country in this regard was highly valued by Mauritania. The dynamics of social dialogue at the national, sectoral and institutional levels had brought positive results.

An observer representing the International Trade Union Confederation (ITUC) said that he wished to summarize the follow-up to the three recommendations made in 2015 by the Conference Committee. The applications for registration submitted by trade unions were still being processed by the authorities, which exercised broad discretionary power, and nothing had really changed. Not only had there been no reinstatements, but dismissals had continued in all sectors. With regard to the SESS, despite filing two applications for registration in 2012, and even a change in the by-laws of the trade union, no reply had been received from the Government. The case of the CGATA, which concerned the right to organize, no progress had been made for ten years, despite the complaints submitted to the Committee on Freedom of Association, the various follow-up reports and the reports of the Committee of Experts. The CGATA needed to report the content of the new draft Labour Code, to draw the attention of the Committee on Freedom of Association and the Committee of Experts to it. Lastly, the case involving SNATEGS had taken on a new dimension as, although SNATEGS had obtained registration in 2013 after several years, and following a complaint submitted to the Committee on Freedom of Association, two successive trade union leaders had been unfairly dismissed by their employer, which had always refused to recognize SNATEGS in writing, despite its official registration and the various appeals made. He indicated that the Minister of Labour had recently decided to withdraw the registration of SNATEGS.

The Government member of Cuba indicated that the stimulation of labour relations governed by labour laws had encouraged the establishment of 102 workers' and employers' organizations. According to the information provided by the Government, social dialogue was developing on three levels – national, industry and enterprise – which had resulted in the participation of the social partners and the negotiation of collective agreements. In addition, the ILO had made observations on the draft bill to issue the Labour Code, which were being considered by the Government. The spirit of cooperation and willingness demonstrated by the Algerian Government should be duly taken into account by the Committee.

The Government member of the Bolivarian Republic of Venezuela emphasized the information provided by the

Government of Algeria in relation to the creation of 102 organizations of workers and employers; the conclusion of a large number of collective agreements at the industry and enterprise levels; and the holding of 20 tripartite meetings between the Government, employers and the UGTA. Between 2006 and 2015, social dialogue had led to the signing of various national agreements in the economic, social and education sectors, as well as to stability and development in the private sector. The draft bill to issue the Labour Code had been discussed with the trade unions in January 2017 and took into account the observations made by the ILO. Once approved by the trade unions, the draft bill would be submitted to Parliament for adoption. He urged the Conference Committee to take into account the Government's efforts and positive attitude, as shown by the explanations and arguments it had provided, and trusted that the Committee's conclusions following the discussion would be objective and balanced. This would help the Government to consider and assess them in the context of its compliance with the Convention.

The Employer member of Mauritania noted that the improvement in the trade union environment, following the enactment of labour laws in 1990, had given rise to trade union pluralism, as shown by the existence of dozens of employers' and workers' organizations. Trade unions merely had to comply with the legislative provisions to obtain registration and become operative immediately. The high number of collective agreements registered at the national level reflected the positive outcome of social dialogue. The draft bill to issue the Labour Code, which had been developed in consultation with the social partners and the ILO, was in the process of being submitted to the Government and adopted by Parliament. Given the remarkable progress made, the request for Algeria to provide information on its failure to give effect to the Convention should be reconsidered.

The Government member of Guinea noted the political will of the Government to respect ILO standards, as demonstrated by the ratification of 60 Conventions, including the eight fundamental Conventions, which were incorporated into national legislation, and the adoption of a legal framework which was in conformity with the international instruments on freedom of association, trade union pluralism and the right to strike. The Algerian Government should therefore be encouraged to continue its contacts with the ILO in order to benefit from its technical assistance.

The Worker member of Spain, speaking on behalf of the Trade Union Confederation of Workers' Commissions (CCOO, Spain), UGT, CIG and ELA (Spain), CGT and CFDT (France), the Italian General Confederation of Labour (CGIL), the Italian Confederation of Workers' Trade Unions (CISL), Italian Union of Labour (UIL, Italy), the Norwegian Confederation of Trade Unions (LO-N, Norway), the Trades Union Congress (TUC, United Kingdom) and the German Confederation of Trade Unions (DGB) and the Swiss Federation of Trade Unions (USS, Switzerland), referred to various cases involving the registration of trade unions in Algeria. For example, the Autonomous Union of Attorneys in Algeria (SAAVA) had filed its application for registration on 8 September 2015, but had still received no reply from the Ministry of Labour, Employment and Social Security, despite a reminder having been sent to the authorities on 24 March 2016. Another example was that of the SESS which, as well as being refused registration, had been the subject of a police investigation against all its founder members, who had been summonsed by telephone or in writing, an illegal procedure intended to put pressure on the founders of the SESS and try to find weak points that the authorities could exploit for the possible cloning of the organization. Report No. 367 of the Committee on Freedom of Association of March 2013, showed that no progress had been made, that there was bad faith and that the Government was refusing to follow the recommendations of the Committee on Freedom of Association. The same could be seen from the observations of the Committee of Experts in 2015 and 2016. As for the CGATA, its by-laws had been drafted by experts from ACTRAV and the ITUC to comply perfectly with the law and with the Conventions that the country had ratified. Nevertheless, the Ministry of Labour had failed to register various trade union organizations, such as the National Autonomous Union of Algerian Workers (SNATA), in September 2000, and the Algerian Confederation of Autonomous Trade Unions (CASA), in April 2001. The examination of complaints by the Committee on Freedom of Association, together with follow-up reports, and examination of the application of Convention No. 87 by the Committee of Experts and the Conference Committee, showed that no progress had been made. Concerning SNAPAP, following its refusal to take a stance on the election of the President of the Republic in 1998, the authorities had decided to punish it. The first means of punishment had been to create another SNAPAP, headed by a Member of Parliament. The authorities had tried all possible strategies to present it as a legitimate trade union, granting it new registration and financial resources and requesting administrations at all levels not to work with any other union. The complaint to the Committee on Freedom of Association contained the evidence for all those points. Finally, the Worker member of Spain recalled that in 2016, the Algerian authorities had refused access to its territory of an ITUC delegation, without giving any reasons to date for such a refusal.

The Government member of Chad observed that the trade union situation in Algeria was highly conducive to the establishment of trade unions as there was only one requirement for their registration, namely conformity with the legislation governing the exercise of the right to organize. Trade union pluralism had progressed as a result of the willingness of the Government to give more space to trade unions and to relax the conditions of legality of their activities. The results of social dialogue which reached all levels were tangible. The Government had turned social dialogue into an instrument for peace and stability, as shown by the conclusion of the agreements necessary for the socio-economic development of the country. The approach adopted by the Government to the working and living conditions of workers and their families was based on seeking consensus with the social partners. The Government had made sufficient efforts to comply with the Convention, and should therefore be encouraged and given time to complete the ongoing projects and reforms.

An observer representing IndustriALL Global Union expressed grave concern at the severe violation of trade union rights experienced by SNATEGS. In December 2016, the SNATEGS President, Raouf Mellal, had been sentenced in absentia to six months in prison after being accused of illegally obtaining documents. These documents, which were freely available on the Internet, exposed the inflation of electricity bills by the state-owned energy company, Sonelgaz, over a ten-year period, affecting 8 million customers. However, instead of being commended for uncovering corruption, he was being persecuted. An appeal against his sentence, examined in May 2017, had been unsuccessful. Since the beginning of 2017, SNATEGS had staged a series of strikes across Algeria to demand higher wages, trade union freedoms and better safety standards after numerous deaths of workers on electricity lines at the company. In retaliation to the successful strikes, 93 union leaders had been fired and a further 663 SNATEGS members were facing legal action. On 16 May 2017, just days before a planned five-day strike, the Minister of Labour had withdrawn SNATEGS' registration and dismissed Mr Mellal, in violation of the national law, Convention No. 87 and the

Right to Organise and Collective Bargaining Convention, 1949 (No. 98), ratified by Algeria in 1962. SNATEGS leaders and members faced ongoing physical harassment and persecution by the security forces for carrying out their legitimate union activities and exercising their right to strike. In March 2017, more than 240 trade union leaders and members had been arrested and 30 women physically assaulted following peaceful demonstrations. The situation was critical. She called on the Government to drop all charges against Mr Mellal and other SNATEGS members, reinstate 93 union members and reverse immediately the decision to withdraw SNATEGS registration.

The Government member of Madagascar said that the application of standards was a fundamental pillar of the Organization. The fact that 102 trade unions had been registered in Algeria showed that the necessary procedures existed. This high figure reflected the freedom accorded to workers. Legislation existed and those organizations were governed by their by-laws and had signed more than 3,000 collective agreements. The question should be posed of how the workers had gone about concluding these agreements and the percentage of employees covered by them. The recent signing of pacts and charters for economic and social development following consultations organized between the relevant entities in Algeria bore witness to the openness of the authorities to dialogue. The draft Labour Code that was being drawn up was the product of a participatory approach and was benefiting from ILO expertise. The result would encourage mutual trust among the parties and improve the social, economic and labour policy environment. He was sure that, with this national legislation, supported by permanent supervision and monitoring procedures, Algeria would be able to comply with the Convention. He encouraged the Government to pursue its efforts to implement the national legislation effectively and to set up a monitoring and evaluation mechanism with appropriate indicators, in addition to providing the Committee of Experts with the necessary information.

The Worker member of Sudan stated that there were over 100 trade unions in Algeria, that national laws and regulations enabled trade unions to play an important role and that the wide external relations of Algerian trade unions enabled them to lead the trade union movement at both the regional and international levels. He pointed out that Algeria had undertaken to implement the provisions of the Convention and expressed the hope that the Government would avail itself of ILO technical assistance in this respect.

The Government member of Turkey appreciated the concrete and positive steps taken by the Government. These included the signing of the National Economic and Social Growth Pact, the Ethics Charter in the Education Sector and the Pact for Stability. The measures taken to enrich social dialogue, which had led to the conclusion of a number of collective accords and agreements, were indicators of the Government's willingness and commitment to further improve the situation of trade union rights in the country. The efforts to enact the Labour Code by taking the views of the stakeholders into consideration should also be commended. He encouraged the Government to increase its efforts to improve working life and protect trade union rights, and to continue working closely with the ILO in this respect.

The Worker member of Mali, Secretary-General of the National Workers' Union of Mali (UNTM), recalling that failure to respect freedoms hindered development, noted that the Government was open to the free expression of ideas, which was essential for the effective recognition of freedom of association. The Government was therefore encouraged to respect the letter of the Convention and ensure the exercise by everyone of the right to organize. The draft bill issuing the Labour Code was an important instrument for good governance and its submission to the social partners and the ILO was an encouraging step towards meeting the expectations of the parties concerned. He indicated that the consultation process must continue and observed that the Government had undertaken, through the National Economic and Social Pact, to promote an institutional framework for strengthening dialogue and consultation in all areas.

The Government member of Libya welcomed the Government's commitment to apply the Convention in practice. Indeed, as indicated by the Government, social dialogue exists at all levels. The draft Labour Code had been discussed with the economic partners, administrative authorities and trade union organizations. The social partners had been included in the dialogue, and this had resulted in the signing of several agreements, as shown by the meeting held in January 2017 between the Minister of Labour and independent trade union organizations. He was thus surprised that Algeria had been placed on the list of cases before this Conference Committee.

An observer representing the International Trade Union Confederation (ITUC) made reference to the use of extrajudicial police violence to undermine the legitimate right to freedom of association of independent trade unions, and the prohibition of peaceful demonstrations. In October 2015, police officers had entered the University of Tiaret to arrest SNAPAP representative Ahmed Mansri, who had been released the following day. In October 2016, a demonstration held in the town of Bouira had been violently suppressed, 75 people had been taken to police stations in the town and detained there for an entire morning. In February 2016, the SNAPAP–CGATA headquarters had been surrounded, and several trade unionists had been detained for several hours. Furthermore, a march by contractual teachers, which had begun in the town of Bejaia in March 2016, had been blocked for 15 days by large numbers of police at the gates of Algiers, before the removal of the participants during the night by law enforcement officers. In May 2017, the SNAPAP–CGATA headquarters in Oran had been surrounded in order to prevent a peaceful assembly organized by CGATA.

The Government member of Egypt indicated that the Government had demonstrated its efforts to ensure trade union pluralism existed and that the numbers of registered trade unions in the country exceeded 100. He welcomed the social dialogue approach adopted by the Government within the framework of the National Economic and Social Growth Pact, which had been adopted by the social partners as an equitable and successful basis for industrial relations. Noting the Government's will to bring the national regulations into conformity with the Convention, he encouraged it to deploy further efforts in this regard, possibly with ILO technical assistance.

The Worker member of the United States, speaking on behalf of the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO) and the Canadian Labour Congress (CLC), highlighted that serious restrictions on unions' right to freedom of assembly were imposed in the country and that, while the state of emergency had been lifted in 2011, the ban on public protest remained in place. In addition to the ban, authorities relied on a number of penal provisions to criminalize peaceful assembly: (i) section 97 of the Penal Code prohibited unarmed gatherings deemed to have the potential to disturb public order – a violation of this provision was punishable by up to three years in prison; (ii) section 98 punished organizing or participating in an unauthorized demonstration by up to one year in prison; (iii) section 100 prohibited "incitement to an unarmed gathering"; and (iv) Act No. 91-19 required Algerians to notify the authorities before holding a public meeting or demonstration, which in practice meant that protestors must obtain prior authorizations, which were

then regularly denied. The authorities were also resorting to the courts to silence dissent, particularly in the case of strikes. In addition to the criminalization of peaceful assembly, section 24 of the Labour Code required unions to fulfil a number of requirements before they could strike, and even when these requirements were met, strikers were often dismissed from their jobs and faced criminal prosecution. Despite the fact that Article 49 of the Constitution guaranteed the right to peaceful assembly, strikes and political demonstrations were still routinely met with police violence and repression. This had been the case with a peaceful demonstration of thousands of SNATEGS members who had marched in March 2017 for decent wages and the right to freedom of assembly, and which had ended with the arrest of 240 participants and the physical assault of 30 women. The AFL–CIO and the CLC shared the deep concern expressed by the UN Special Rapporteur in a 2013 report, as well as by Amnesty International and Human Rights Watch, with respect to the country's continuing and serious violations of the Convention.

The Government member of Ghana noted that the Government of Algeria had put in place structures and committed efforts, guided by the Committee of Experts, to achieve the goal of fully meeting the requirements of the Convention through the interplay of demand and supply of labour and a cordial relationship between employers and employees. This journey could not be achieved without the commitment of time, money and human capital to obtain optimum results. The Government of Algeria was in the process of achieving this feat through the enactment of laws that would guarantee trade union pluralism and the formation of workers' organizations. It had also instituted social dialogue and good governance through consultation for the drafting of the Labour Code, which was currently under consideration. Major issues in the draft bill were the outcome of consultation with the economic partners, various administrative authorities and trade unions, with much ILO involvement. The Government should therefore be encouraged to intensify this engagement with its social partners and the ILO in order to bring this laudable aspiration to fruition.

The Government member of Senegal welcomed the replies provided by the Government to the concerns raised by the Committee of Experts in its latest observation, and the measures taken since the adoption of the labour legislation in 1990. These laws had resulted in: the establishment of 102 employers' and workers' organizations; the maintenance of social dialogue, as shown by the bipartite and tripartite consultations held; the negotiation of collective agreements and branch agreements; the signature of many pacts; and inclusive dialogue which had led to the formulation of the new legislation, and demonstrated the Government's commitment to bringing it into conformity with ILO standards. The social partners should be encouraged to continue their efforts with a view to achieving compliance with ILO standards, while bearing in mind that decent work could only be achieved through social dialogue and respect for freedom of association.

An observer representing Public Services International (PSI) emphasized that the case had been examined by the Committee of Experts almost every year for the past 15 years and by the Conference Committee in 2014 and 2015. On those occasions, the Government had reiterated that labour laws and regulations were based on the principles enshrined in ILO Conventions; that the social partners were represented in all sectors of activity at the regional level; and that trade union registration met legal requirements, based on simple procedures and with no restrictions. However, the examination of the case by the Conference Committee revealed the opposite. The complaints presented to the Committee on Freedom of Association documented anti-union dismissals, acts of harassment by the public authorities, and the arbitrary arrest and detention of trade unionists belonging to independent workers' organizations that did not follow the government line. The Government had vented its ire on various members of SNAPAP, affiliated to PSI, and on members of the CGATA, and to date, had failed to register them as trade unions. Rachid Malaoui, President of the CGATA, had been dismissed in 2013. On 16 January 2017, the ambassador of Algeria in Brussels had written a letter to the ITUC indicating that Mr Malaoui was accused of trying to provoke civil insurrection. While it was flattering to hear that the Government thought a trade unionist could have such influence, it was clear that this was not the case, and that it was merely another excuse to refuse the CGATA registration. Other trade unionists had recently been dismissed for their union activities, including Hasan Fouad, in charge of migration and refugees at CGATA, in December 2016, and Naser Kaca, head of the higher education section of CGATA in the city of Bejaia, on 26 April 2017. Other members had been suspended, demoted or punished with pay deductions. That was the case, for example, of Yahia Habib and Arab Haddak, heads of the higher education sections of CGATA–SNAPAP in the cities of Tiaret and Bejaia. Hassina Bensaid, of the municipal chapter of SNAPAP–CGATA in the city of Bejaia, had been transferred nine times in a single year. Furthermore, her continued trade union activities had led to her being threatened with a firearm by the President of the city council. In addition, Nadia Bedri, of the SNAPAP–CGATA chapter of the National Water Resources Agency, had been obliged to undergo psychiatric assessment after having complained of sexual harassment. The Government had not given heed to all the recommendations of the Committee of Experts and the Committee on Freedom of Association, or the conclusions of the Conference Committee in 2014 and 2015. The Committee should fervently condemn such practices and urge the Government to bring its legislation into line with the Convention and respect its principles.

The Government member of the Islamic Republic of Iran welcomed the measures taken by the Government to reinforce trade union pluralism and, in this respect, took note of the statistics provided on the creation of workers' and employers' organizations in the country. With regard to social dialogue, 20 tripartite meetings and 14 bipartite meetings had been held at the national level, which had yielded a number of pacts between the Government and the social partners. The draft Labour Code had been discussed with trade unions, economic partners and the concerned administrative authorities. These efforts demonstrated the willingness and commitment of the Government to make progress in this case. While supporting those measures, he encouraged the Government to continue making efforts, and called on the Office to provide the necessary technical assistance.

The Government member of Qatar thanked the Government for providing detailed information which highlighted the measures adopted to apply the Convention. He commended Algeria on the efforts deployed to engage in social dialogue, and hold consultations with the social and economic partners, which had resulted in the signing of several national and sectoral agreements.

The Government member of Pakistan welcomed the steps taken by the Government to enforce labour standards in the country through legislative and policy measures, and its constructive engagement with the ILO supervisory bodies. He noted that 102 trade unions had been registered in the country, which pointed to the opportunities afforded for social dialogue and freedom of association. The draft Labour Code was being discussed with the social partners and the Government was awaiting the views of all trade unions for a possible enrichment of the Code. He hoped that trade unions would constructively engage in this process, and that

their genuine concerns would be addressed by the Government.

The Government member of Angola welcomed the fact that, following the promulgation of labour legislation in 1990, Algeria had facilitated the implementation of trade union pluralism. Various workers' and employers' organizations had been created as a result, in accordance with the legislation in force. Moreover, social dialogue in Algeria was being carried in full respect of tripartism, resulting in the signing of an Economic and Social Growth Pact, which set out a number of objectives for the effective management of the economic and social sectors. Algeria was encouraged to pursue its efforts to strengthen trade union pluralism. The Conference Committee and the Office should support the Government in implementing economic and social reforms aimed at development and social peace.

The Government member of Kenya noted that the current national laws of Algeria had enabled the registration of both employers' and workers' organizations, which had as a result grown to over 102 trade unions. This showed that the statutory requirements for trade union registration were aligned with the requirements of the Convention. She also took note of the National Economic and Social Growth Pact signed between the Government and the economic and social partners in order to strengthen dialogue and enhance consultation, and the fact that it was being regularly and periodically renewed. Finally, she noted that there had been an increase in the number of collective bargaining agreements signed over the years. She concluded that the process of changing laws and institutional restructuring did take time and consequently, that the Government should be given more time and ILO technical assistance to enhance compliance with the Convention.

The Government member of Bangladesh welcomed the progress made by the Government in enforcing existing labour laws and regulations and promoting social dialogue at all levels, as well as the ongoing engagement of the Government with the social partners and the ILO in drafting the Labour Code. He encouraged the ILO to continue providing technical assistance to Algeria to complete the ongoing reforms and to improve the institutional capacity of the regulatory mechanisms.

The Government member of Sudan expressed his appreciation at the great efforts made by the Government in social dialogue, as well as in the formulation of national labour regulations. He highlighted that social dialogue gave legitimacy to all measures carried out by the Government, which would grant the social partners the right to freedom of association without any conditions, except those specified by law. He encouraged the Government to continue its efforts on social dialogue, and commended it for requesting ILO technical assistance with respect to the Labour Code.

The Government member of Lebanon welcomed the information supplied by the Government on the application of the Convention in response to the comments of the Committee of Experts, and on the draft Labour Code, the provisions of which were in conformity with international labour standards, and particularly Convention No. 87. She encouraged the social partners to continue the existing social dialogue, seeking ILO technical assistance, where appropriate.

The Government member of Zimbabwe took good note of the comprehensive legislation which existed in Algeria, as well as the Government's commitment to dialogue, which had been echoed by the Employer member of the country. She shared the concerns raised by the Government representative concerning the criteria for the listing of cases to be discussed in the Committee. Both the Government representative and the Employer member of Algeria had confirmed the existence of a mechanism of social dialogue, as shown by numerous meetings convened both at the tripartite and bipartite levels. The outcome of these meetings had been social and economic pacts which had been beneficial to the labour market in Algeria, which was highly commendable. Social dialogue could neither be rushed nor fast tracked if it was to achieve its desired goals. The Committee should give due regard to the willingness of the Government of Algeria to engage in dialogue with the social partners, and the tripartite partners should be encouraged to continue working together to come up with home-grown solutions to the challenges that they faced as a country. This was a case of good progress, and the Office should continue to offer technical support in order to strengthen ongoing initiatives to promote social justice in the Algerian labour market.

The Government representative emphasized that, despite the support of most speakers from all three groups, four or five had levelled accusations at his Government which required a reply. Dialogue and respect needed to be reciprocal, and it was important not to deviate from the major principles advocated by the ILO in this respect. Algeria had re-established and preserved its stability at the cost of enormous sacrifices. Such stability was beneficial and its impact was being felt throughout the African region and the Mediterranean. The Second Session of the Specialized Technical Committee on Social Development, Labour and Employment of the African Union, held in Algiers about two months ago, had offered an opportunity for the tripartite African delegations present to see the reality of social dialogue in Algeria, where there were no restrictions, threats or obstacles. He referred to two examples. In the case of SNAPAP, the communications sent to the ILO in 2014 and 2015 had been clear and precise. At that time, there had been a problem relating to the situation of the union, but the courts had decided that there was only one SNAPAP, not two. SNAPAP was led by Mr Felfour, and the persons mentioned in the interventions were not concerned by this issue. SNAPAP had worked with the administration, obtained official documents and held the statutory general assemblies. With regard to SNATEGS, at the request of PSI, a meeting had been held between the Deputy General Secretary of PSI and the Government two days earlier in the ILO. The discussion had been frank and friendly, but there still appeared to be issues concerning an alleged dissolution. SNATEGS was a registered and active union led by Mr Boukhaly. It had been indicated to the Deputy General Secretary of PSI that the person mentioned in the earlier interventions was not the President. That person had worked as a lawyer since 2016, and could not therefore defend the interests of the workers where he was not working. The person concerned was respected as an Algerian citizen, but was not the Secretary-General of SNATEGS. The Ministry of Labour, Employment and Social Security was aware of the registration and dissolution procedures. If an issue relating to dissolution arose, it would follow the official procedures, but if contradictory information was disseminated, people would be led into error. With reference to the Labour Code, the process might appear slow, but it was important to draft a text that would stand the test of time, and was adapted to the real situation. The Government was currently engaged in dialogue with all the social partners. Algeria had an arsenal of laws and regulations and was adapting and improving the Labour Code and its national legislation to bring it into conformity with certain trends in the economy and enterprises. In conclusion, he said that it was important to avoid false debates and gratuitous accusations which could be prejudicial to the Committee. Algeria was working transparently with all the institutions, as dialogue and consultation between the parties were the basis for the national legislation.

The Employer members thanked the Government and the Committee members for their interventions, which had helped to clarify certain issues and facilitate a greater un-

derstanding of the situation in the country. The Government had provided much information on the law and practice in Algeria, including on the social dialogue processes at several levels and had indicated its readiness to meet the parties concerned in order to address the concerns raised during the discussion. While the Government seemed to be addressing the issues in practice, the vehicle for improved social dialogue was, above all, the draft Labour Code that had been under preparation for a number of years, but had yet not been adopted. Even though it was understandable that such a process might be lengthy, its duration should remain within reasonable limits. Consequently, the Employer members encouraged the Government to complete the work it had started in relation to the Labour Code. Also, recalling that Employer members generally did not condone the use of violence, and that they would have liked to have the benefit of more detailed information on the reasons for the Government's actions, they encouraged the Government to provide such information to the Committee of Experts in order to allow for an appropriate examination of this case.

The Worker members expressed concern at the systematic violations of the right to freedom of association in Algeria, and sincerely hoped that the selection of this case would lead to substantive changes in the lives of trade unionists who were facing unlawful dismissal, arbitrary detention and violent interference by the police in peaceful demonstrations. The Government needed to restore justice for women and men who were engaged in ceaseless combat, often at the peril of their lives and freedom, for the establishment of an independent trade union movement. The question that needed to be answered was how it would be possible to lay the basis for a democratic State without the recognition of such a fundamental principle as the right to organize and to join associations freely. The reply could not be simpler: it would not be possible. The right to freedom of association was the very foundation of any democratic society. By refusing to register and recognize independent trade unions, the Algerian Government was indicating a clear preference for an authoritarian approach. The Committee on Freedom of Association, the Committee of Experts and the Committee on the Application of Standards had on many occasions called on the Government to take all the necessary measures as rapidly as possible to guarantee the registration of trade unions which met the conditions set out by law. Sadly, those calls had been ignored, and for over ten years, the Government had been failing to react to the reiterated calls to make fundamental changes to Act No. 90-14. Algeria was continuing to fly in the face of the workers' rights guaranteed by the Convention, contrary to the international obligations that it had assumed. The members of the Committee had the responsibility to ensure full compliance with the rights guaranteed by the Convention and to adopt a firm position, even with governments which seemed to accord them little importance. The Government needed to take measures without further ado for the implementation of the recommendations of the ILO supervisory machinery concerning freedom of association. Reforms needed to be launched in dialogue with the social partners. In particular, the President of CGATA, Rachid Malaoui, and the President of SNATEGS, Raouf Mellal, who had been sentenced to six months' imprisonment for his trade union militancy, should be reinstated. The Government should immediately register independent trade unions, and particularly CGATA and SAAVA, and reverse the Ministerial Decision of 16 May 2017 to withdraw the registration receipt of SNATEGS. These urgent measures were a first essential step to bring Algeria back onto the right track. The Worker members urged the Government to accept a high-level mission before the next session of the Conference.

Conclusions

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

The Committee expressed serious concern over the persistence of restrictions on the right of workers to join and establish trade union organizations, federations and confederations of their own choosing. The Committee noted with concern that progress towards compliance with Convention No. 87 remained unacceptably slow as this case has been discussed for more than a decade and that the Government had yet to bring the draft Labour Code to Parliament for it to be finally passed. The Committee regretted that the Government did not satisfactorily respond to the Committee's 2015 conclusions.

Taking into account the discussion, the Committee called upon the Government of Algeria, without delay, to:

- **ensure that the registration of trade unions in law and in practice conforms with Convention No. 87;**
- **process pending applications for the registration of trade unions which have met the requirements set out by law and notify the Committee of Experts of the results in this regard;**
- **ensure that the new draft Labour Code is in compliance with Convention No. 87;**
- **amend section 4 of Act. No. 90-14 in order to remove obstacles to the establishment by workers' organizations, federations, and confederations of their own choosing, irrespective of the sector to which they belong;**
- **amend section 6 of Act No. 90-14 in order to recognize the right of all workers, without distinction on the basis of nationality, to establish trade unions;**
- **ensure that freedom of association can be exercised in a climate free of intimidation and without violence against workers, trade unions or employers;**
- **reinstate employees of the Government, terminated based on anti-union discrimination.**

The Government should accept an ILO direct contacts mission before the next International Labour Conference and report progress to the Committee of Experts before its November 2017 session.

The Government representative underlined that the conclusions should reflect the discussions which had taken place within the Committee. Out of 32 interventions by Worker, Employer or Government members, 26 had supported the action taken by Algeria. On this basis, the question of a direct contacts mission should not have been raised. Underlining that these conclusions did not reflect the reactions of Committee members nor the reality of freedom of association in his country, he asked that they be withdrawn. He also indicated that some of the allegations made by the Worker members were false and devoid of any substance. While the SNATEGS had been registered and pursued its activities normally, it had been alleged that it had been dissolved. Concerning the draft Labour Code, contrary to what had been indicated, the legislative procedure followed its course and consultations with the social partners had been initiated. A new draft text had been sent to the ILO. The Government had given sufficient information on the Algerian trade union context. Finally, concerning the personal case of Mr Mellal, the Government representative indicated that he was a lawyer and not a worker at Sonelgaz. Recalling that Algeria was a democratic country, the Government representative reiterated his request that the conclusions which had just been adopted be revised.

BANGLADESH (ratification: 1972)

The Government provided the following written information.

The Bangladesh case on implementation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), has been examined several times by the Committee on the Application of Standards (CAS), including a recent examination in 2013 with follow-up examinations in 2015 and 2016. After the 105th International Labour Conference, there were a series of meetings and consultations with the tripartite constituents to share and discuss the labour rights concerns as specified in the CAS conclusions/special paragraph. A Committee was formed in a meeting of the Tripartite Consultative Council (TCC) to examine the ILO special paragraph and recommend required actions. The committee submitted its report with a specific set of actions to address the labour issues specified in the special paragraph, which was discussed in the TCC meeting held on 14 May 2017.

The actions taken by the Government on this year's main concerns of the Committee of Experts are presented below:

Bangladesh EPZ Labour Act

In order to accommodate the ILO Committee of Experts' expectations related to the law governing the EPZs, in an unprecedented move the draft law that had been vetted by the Cabinet and transferred for adoption to the Parliament (Standing Committee for Law, Justice and Parliamentary Affairs) has been recalled by the Government and will be subject to a thorough review with the objective of ensuring its alignment with ILO core Conventions to which Bangladesh is a party. In light of the recommendations submitted by the ILO, consideration is being given to deleting chapters IX, X and XV by making reference to chapter XIII of the BLA, thus providing rights of freedom of association to all workers. At the time of revising the EPZ Labour Act, issues regarding administration and inspection, all applicable laws will be carefully examined for prevalent concerns to be addressed. A draft of the new EPZ legislation will be shared by November 2017 after consultation with the ILO. The exceptional nature of these decisions reflects the high degree of trust that shapes the overall Bangladesh–ILO relationship. As of May 2017, a total of 232 WWAs (CBAs) have been formed. All registered WWAs (CBAs) in EPZs are performing their activities with full freedom/without any interference. During the last four years, the WWA within the EPZs submitted 351 Charters of Demands and all demands were settled amicably and agreements were signed accordingly, which indicates that EPZ workers are enjoying the right to organize and to collective bargaining. It is pertinent to mention that in EPZs, 60 social counsellors-cum-inspectors, 30 environmental counsellors-cum-inspectors, 45 industrial relations officers and 129 engineers are constantly inspecting compliance issues of EPZ factories. The EPZ inspection module has been developed by the International Finance Corporation in collaboration with the Bangladesh Export Processing Zones Authority. Every EPZ has its own fire station and a strong firefighting team headed by the Director of the Fire Service and the Civil Defence Department of Bangladesh. Besides, three conciliators and three arbitrators are involved in dealing with unfair labour practices. Furthermore, eight Labour Courts and one Labour Appellate Tribunal have been designated to address labour-related disputes in the EPZs. As of May 2017, a total of 161 cases were filed, of which 86 were settled.

Consultation with the social partners to review the BLA, 2006

In the Bangladesh Labour Act 2006, significant amendments were adopted in 2013 after a wide range of consultations with the relevant stakeholders. The ILO Country Office for Bangladesh was also involved in the entire process. In order to get feedback from workers, employers and the ILO, tripartite consultations took place to reach a consensus on the amendment. Through this process 87 sections were amended and some new sections were incorporated in the amended Act. The Government is determined to take necessary steps to review the BLA to accommodate the observations of the ILO Committee of Experts. The recently established Tripartite Technical Committee that includes representatives of the Government, the employers and the workers, has been tasked with contributing to this revision and the matter has already been discussed in the meetings of the Committee held this year. The concerns of the ILO Committee of Experts will be examined and accommodated by the Technical Committee, based on tripartite consensus, taking the level of industrial development, socio-economic conditions and the institutional capacity of the country into account. Since the Bangladesh Labour Law is applicable to a large number of sectors, a wide range of consultations with stakeholders is necessary. However, the steps taken so far reflect the positive intentions of the Government to bring about necessary amendments in close consultation with the ILO and to share a concept draft in advance in December 2017.

Bangladesh Labour Rules (BLR)

Clarification of Rule 167(4): The Rule deals with the right to form trade unions for agricultural farm workers. Previously, agricultural farm workers did not have the right to form trade unions. With the amendment of the BLA 2006 in 2013, agricultural farm workers have been provided this right. Under Rule 167(4), workers engaged in agricultural farms may form groups of establishment. In the Rule, the requirement to form a trade union was set as 400 farm workers. It is to be mentioned that the issue has already been resolved through a gazette notification S.R.O. No. 02-ain/2017 dated 5 January 2017.

Review of other Rules: Further review of the BLA is under process. In line with the further amendment of the Act, the Rules may be updated.

Information on anti-union discrimination or unfair labour practice

The Bangladesh Labour Act, 2006 (BLA 2006) (as amended in 2013) provides specific provisions to protect trade union activities. Anti-union discrimination or unfair labour practices (ULPs) in any form is a violation of law and subject to legal actions. The Department of Labour (DoL) is authorized to receive complaints on unfair labour practices. According to the provisions of the Labour Act, every aggrieved worker has the right to file complaints with the Department of Labour for remedial action against management for anti-union activities or ULPs. Every complaint received by the Department is addressed in due time. For example, from 2013 to 2016, 93 complaints relating to ULPs were lodged in JDL, Dhaka Office. Out of these, 80 complaints were settled: 35 criminal cases were filed, 45 complaints were settled amicably and 13 complaints were under investigation. The disposal rate was relatively high in the year 2016, where all of the 71 cases were settled with a disposal rate of 100 per cent.

Public database on anti-union discrimination or ULP

Recently, detailed outcomes of anti–union discrimination or ULP cases are being uploaded to the DoL's website to make the process more transparent and publicly available. At present, the status of 69 cases of anti-union discrimination or ULPs are available on the website which consists of 46 settled cases and 23 ongoing cases.

Capacity building of labour officers to deal with anti-union discrimination cases

Intensive training programmes are being conducted under the "Social Dialogue and Harmonious Industrial Relations (SDIR)" project being implemented with the assistance of Sweden and Denmark and the ILO. In order to develop a credible, efficient and transparent system of arbitration and conciliation, the project is providing specialized training to labour officials. The project has already conducted 20 capacity-building training courses on handling cases of anti–union discrimination or ULPs where 125 labour officials, 33 judges, 30 lawyers and 166 employers have participated. Under an MOU, the labour officials from Bangladesh are being trained on grievance handling and conciliation at Nunian Training Institute, Singapore. Training courses on grievance handling are also being conducted in four Industrial Relation Institutes (IRIs) of the Government. By this time, 50 officials have completed training on anti-union discrimination or ULPs at IRIs.

Awareness raising and capacity building of workers and employers on social dialogue

Regular training programmes are also being conducted at four Industrial Relations Institutes (IRIs) and 29 Labour Welfare Centres (LWCs) under the Department of Labour. In 2016–17, around 11,000 participants received training in these institutes. The SDIR project is also assisting capacity building of workers and employers on social dialogue in 150 enterprises with newly formed unions to introduce a systematic approach for workplace cooperation in 350 non-unionized medium-sized RMG factories; conducting training on international labour standard (ILS) for mid-level management of 500 participating enterprises. With the support of the SDIR project, establishment of a "Workers' Resource Centre" (WRC) has been initiated which will act as a centre of excellence for workers' training and awareness building.

SOPs to address anti-union discrimination or ULPs

With the support of the SDIR project, Standard Operating Procedures (SOPs) to address anti-union discrimination or ULPs have been drafted which will be adopted after consultation with the relevant stakeholders. It is hoped that the SOPs will facilitate easy handling and investigation of cases of anti-union discrimination or unfair labour practices in a transparent manner following a uniform procedure. The SOPs will be piloted in 500 enterprises with the support of the SDIR project.

Information on helpline for workers

A helpline for workers was established on 15 March 2015 in order to facilitate the lodging of complaints. The helpline has been launched on a pilot basis for RMG workers in a particular RMG intensive area (Ashulia). A total of 226 complaints from the RMG sector workers were received from Ashulia through this helpline. Among them, 142 complaints were settled by the inspectors and the rest – 84 complaints – are under process of settlement. Most of the complaints were on wages, overdue payments and job terminations. Although the helpline targets RMG workers in Ashulia, complaints received from other geographical areas and other industrial sectors are also being addressed by the Department of Inspection (DIFE). After gaining sufficient experience from the pilot operations, the Government will formally replicate/expand the model in other areas and industrial sectors.

Information on union registration

Applications for union registration are considered according to procedures that aim at creating a conducive environment for genuine labour representatives to set up their organizations. In relation to freedom of association the following positive changes took place through the amendment of the BLA 2006 in 2013:

- the obligation for submitting the list of workers to factory management before forming trade unions has been omitted;
- a provision for getting support from external experts for collective bargaining has been included;
- a single trade union in an enterprise is entitled to act as a collective bargaining agent.

With this amendment, trade union registration has increased remarkably. Before the amendment, there were 132 trade unions in the RMG sector. By this time, a total of 439 new trade unions have been registered in the RMG sector and as of 30 April 2017, there are 571 trade unions in this sector. The rate of success in trade union registration in Dhaka Division since the beginning of 2017 is 75 per cent. Before the amendment, there were 6,726 trade unions and 161 trade union federations registered in the country. By this time, 1,000 new trade unions and 14 trade union federations have been registered. As of 30 April 2017, there were a total of 7,726 registered trade unions and 175 trade union federations. In order to further ease the union registration process, an online registration system has been introduced on the website of the Department of Labour. The trade union registration process is clearly spelled out in the Law. There are some conditions to be fulfilled for registration of trade unions set forth in the BLA. If the applicants fail to meet this criterion the applications are lawfully rejected. From 2016, the causes of rejection of any application were communicated in a transparent manner by registered post within 60 days of rejection. No registration applications are kept pending. If the legal requirements are fulfilled, then the registration is given.

Public database on union registration

Recently, detailed outcomes of applications for trade union registration have been uploaded on the website of the DoL to make the process more transparent and publicly available. At present, the status of 171 trade union applications which includes 129 successful cases of application and 42 cases of rejection, is available at www.dol.gov.bd in the database section. It contains relevant information on the submission and resolution of registration requests, including the reasons for rejections of applications. The ILO Country Office, Dhaka is supporting development of the public database under the SDIR project.

Devising SOPs for union registration

To expedite the trade union registration process, Standard Operating Procedures (SOPs) for trade union registration, which were developed with the assistance of the ILO and the Fair Work Commission (FWC), Australia under the SDIR project, were adopted on 17 May this year. Through the introduction of the SOPs, the time requirement for union registration has been reduced by five days from the Government part. During the development process of the SOPs, the SDIR project facilitated consultation with the stakeholders concerned. The Joint Directorate of Labour has already started SOPs on trade union registration, and training of internal staff on SOPs has begun. The adoption of the SOPs is just another clear indication of the Government's willingness to comply with international labour standards. This démarche would be duly acknowledged by the ILO, development partners and stakeholders in Bangladesh. The union registration process broadly comprises

of examination, rectification and decision on application registration. Previously, there was no timeline for each step. In the SOPs, a specific time frame has been set within which each activity must be completed. It is hoped that the SOPs will not only help expedite the trade union registration process but will also ensure greater transparency in the process.

Upgrade of the Department of Labour

Apart from legal instruments, the institution plays an important role in upholding freedom of association. For effective enforcement of the BLA, the Government of Bangladesh has initiated the upgrade of the Department of Labour. Through this initiative, the manpower of the DoL will be increased from 712 to 921. The process is at the final stage as consent from the Ministry of Public Administration (MOPA) and the Ministry of Finance has already been received.

Formation of the Tripartite Consultative Council (TCC) for the country's RMG sector

Bangladesh has ratified ILO Convention No. 144 concerning tripartite consultation, which is at the heart of social dialogue. In line with the Convention, a TCC has been formed to deal with labour issues at all sectoral levels. Moreover, considering the importance of the RMG sector, the Government has formed a 20-member TCC solely for the country's RMG sector on 12 March this year. The TCC (RMG) will examine/review the overall labour situation in the RMG sector and advise the Government on establishing sound employer–worker relationships and enhancing productivity in the RMG sector.

Concluding remarks

Bangladesh is a densely populated (1,015 inhabitants per square kilometre) agro-based country with around half of the working population living in rural areas. Although remarkable progress has been achieved in the country's most labour-intensive RMG industry, the country's overall industrial development still remains in its infancy. Even the most promising RMG sector is still run by the first-generation entrepreneurs. During the last two decades, the country has been experiencing an annual economic growth of around 6 per cent. Despite this notable progress, poverty still remains the single most socio-economic policy challenge for the country. In terms of the labour market, the greatest challenge today is to create jobs for 2–2.2 million who are entering the labour market each year. To ensure full, productive and decent employment for them, 8 per cent annual economic growth is crucial. The employers and workers in Bangladesh are not always aware of their rights and responsibilities. Greater engagement of tripartite constituents and continuous engagement of the ILO and development partners in planning, designing, and implementation of promotional activities is essential in building a culture of harmonious industrial relations in the country.

In addition, before the Committee, **a Government representative** recalled before the Committee, the commitment of the Government to the protection of human and labour rights as enshrined in the Constitution of Bangladesh and reaffirmed that the Government had taken full note of the issues raised in the 2016 special paragraph and had initiated a number of measures to bring Bangladesh in to full compliance.

General efforts undertaken by the Government after the Rana Plaza incident were also recalled, in particular the initiation of rescue and rehabilitation efforts, drastic actions to put in place immediate measures and institutional mechanisms to strengthen safety rules, the revision of labour laws, including the Bangladesh Labour Act, 2006 (BLA), and of the national labour policy in order to address imminent labour concerns and improve labour rights, as well as the strengthening of the monitoring mechanisms. Utmost priority was given to improving labour rights and working conditions in the country, while acknowledging that, as a least developed country, Bangladesh was striving to deal with numerous challenges related to the elimination of poverty, hunger and malnutrition and ensuring decent life, adequate nutrition, basic health care and universal free education up to secondary level. Many of the country's challenges were caused by outdated laws regarding maintenance of law, order and peace, but even under such conditions Bangladesh had been able to balance between development, protection of rights and maintenance of law and order. Per capita income had increased from US$583 in 2006 to US$1,620 in 2017 and take home pay for workers had also increased, contributing to a congenial working environment and income stability of workers. Such development was a reflection of the firm commitment to labour rights, in particular freedom of association and collective bargaining. The Government's commitment had also found expression in its efforts to render trade union registration and the wage payment system transparent, while promoting collective bargaining. While it was recognized that more was to be done in terms of addressing capacity, structural and systematic conditions, as well as civil and political challenges, the Government had been engaging with all the relevant stakeholders to ensure the effective application of labour legislation and to achieve the shared views of the social partners. A number of other developments were mentioned, including access to justice for any aggrieved party through an inbuilt system for addressing grievances, such as the Labour Tribunal, the Labour Appellate Tribunal and the High Court Division of the Constitutional Court; implementation of the ILO's Better Work Programme, as well as a National Plan of Action to promote freedom of association and collective bargaining in the ready-made garment (RMG) sector; establishment of an Occupational Safety and Health Policy; signature of a tripartite Statement of Commitment on fire safety at workplaces; development of an integrated inspection guideline for the RMG sector and organization of fire safety training for factory managers.

Turning to the conclusions of the Committee of Experts, the speaker provided the following information, in addition to that already supplied in Document D.8:

- The proposed Export-Processing Zones (EPZ) Labour Act, 2016, was to be reviewed through a multi-stakeholder approach and an advanced draft should be shared with the Committee of Experts by August 2017, after which formalities would be initiated to place the draft before the Parliament.
- The newly created Tripartite Technical Committee (TTC) for amendment of the BLA had already held its first meeting, demonstrating that work was being done to conform the legislation to ILO standards, and it had been asked to complete work on preparing an initial draft by August 2017. Both the Tripartite Consultative Council (TCC) and the newly created RMG Tripartite Consultative Committee (RMG TCC) would be supported by the ILO, serving as their secretariat.
- The recently adopted and published standard operating procedures (SOPs) for registration had already been implemented, had reduced the time frame for resolving issues concerning registration and should also reduce the registration rejection rate.
- A transparent remediation strategy with a timeline was to be developed and shared with the Committee by the end of August 2017.

– Access to further funding should be facilitated and recruitment of 169 labour inspectors should be finalized by June 2018.

In conclusion, the speaker reaffirmed the Government's commitment to a better and safer workplace for workers to uphold their rights to collective bargaining, freedom of association and their right to strike for realizing their legal demands. Legislative amendments were ongoing and the Government was also engaging with factory owners, businesses and buying houses to ensure that they followed good business practices and recognized that responsible behaviour by all stakeholders was a necessary factor for progress in that area. Moreover, commitment was also expressed to achieving full and productive employment and decent work for all by 2030, in line with the 2030 Agenda for Sustainable Development. The speaker stated that Bangladesh sought continued cooperation, support and understanding from their international friends and partners in order to achieve that goal.

The Worker members recalled that, for the last five years, Bangladesh had appeared before the Committee to explain why it had failed to make any progress in relation to ILO Conventions, in particular Convention No. 87. Each year, the Government had made claims and excuses and concluded with promises to do better the following year. These promises had not only proved to be empty but the situation had worsened each passing year. The Government had still made no progress to implement the repeated observations of the Committee of Experts, the recommendations of the 2016 high-level tripartite mission to Bangladesh and the conclusions of the Conference Committee. The special paragraph that the Committee had applied last year to signal the serious concern with the Government's failures had had no effect whatsoever. Despite all of the technical assistance and the millions of euros in donor resources, garment workers, and workers in other industries, were worse off today than they had been a year ago. The Worker members stressed that, in the final days of 2016, the Government had unleashed a wave of repression against garment workers following a peaceful demonstration for a higher minimum wage that had started on 11 December in Ashulia. Police rounded up union leaders and union organizers, many of whom had not even been in Ashulia at the time of the demonstrations. They were detained for several weeks and some were beaten in custody or forced to pay bribes to avoid physical abuse. Most workers were charged under the provisions of an emergency powers law that had been repealed in the 1990s. Garment manufacturers also suspended or dismissed over 1,600 workers in a massive and coordinated closure of roughly 60 garment factories. Police raided the offices of several unions and worker rights NGOs, disrupting their activities and locking their doors. Police even disrupted a health and safety training event funded by the ILO on 20 January 2017. Following all those events, the Government had refused to act until major international garment brands announced that they would boycott the Dhaka Apparel Summit on 25 February 2017 over their concerns related to the repression in Ashulia. As a result, government and industry representatives reached an agreement with the IndustriALL Bangladesh Council on 23 February 2017. However, the Government had failed to implement that agreement too. Very recently, on 27 May 2017, local thugs had threatened and physically attacked workers and leaders in Chittagong. Union leaders had been warned that if they continued to organize unions they would be killed. The local police watched as union leaders were assaulted. A poster with the union's president in a noose had been circulated in Chittagong.

The Worker members further pointed to the matters raised in the comments of the Committee of Experts. The revised BLA continued to fall short of international standards with regard to freedom of association and collective bargaining despite minor amendments in 2013. In late 2015, the Government had issued the Bangladesh Labour Rules (BLR). Despite the lengthy period taken to draft the Rules, their quality was extremely poor as many provisions violated the Convention. The Government had so far done nothing to amend either the BLA or the BLR to bring them into compliance with Conventions Nos 87 and 98.

With respect to EPZs, trade unions had been banned and only workers' welfare associations (WWAs) could be established. The WWAs did not have the same rights and privileges as trade unions. While the authorities in the EPZs claimed that collective bargaining was permitted, it did not exist in practice. The last draft legislation on EPZs, in 2016, had once again prohibited unions and allowed only for WWAs. There still existed no text, even in draft form, that would allow workers in EPZs to exercise their rights consistent with the Convention. Concerning anti-union discrimination, the leaders of many of the unions that had been registered after 2013 suffered retaliation, sometimes violent, by management or their agents. Some union leaders had been brutally beaten and hospitalized as a result. The Government had done absolutely nothing to address anti-union discrimination.

With regard to the refusal to register unions, since the Rana Plaza incident, and at considerable risk for themselves, young garment workers mostly women had attempted to form and register unions for a collective voice. Their numbers would be much greater were it not for the Government's arbitrary rejection of registration applications. The reasons for rejection were inconsistent from one application to the next, did not comply with the law and the implementing rules, and had no factual basis. During the process, workers and their unions were unable to challenge reasons presented for rejecting a union. The only option available for workers was to file a case in one of the country's few and overburdened labour courts, where cases languished for several years. The arbitrary nature of the process was most apparent in Chittagong, where, in 2016, only around 43 per cent of applications for registration had been approved. Despite some unions submitting applications several times with well over the 30 per cent minimum support of the workforce as required by law, the applications were rejected on multiple occasions. The Joint Director of Labour (JDL) often claimed that many workers' signatures on union forms did not match employer documentation. Yet there was no such provision in the law or rules for rejecting an application for such reason, and the JDL did not ask the worker in question whether he or she had in fact signed the form. Recently, the Government had promised that it would draft SOPs to assist the registration process but such procedures had not yet been completed or adopted and the Worker members had serious doubts as to whether a set of procedures would result in any meaningful change. The Worker members did not doubt that the Government would make more promises to the Committee, but trust had been broken. It was time that this changed for good.

The Employer members thanked the Government for the information it had provided and, in particular, for its reinforced commitment to implement the Convention, its stated intention to pursue social dialogue with workers' and employers' organizations and its reiterated commitment to cooperate with the ILO. The case at hand had been the subject of 22 observations of the Committee of Experts and had been examined by the Conference Committee on seven occasions, most recently in 2013, 2015 and 2016. Given its lengthy and complex nature and the many facets of the Committee of Experts' observations, it was necessary to look closely at the measures adopted by the Government. Although more work had to be done and some concerns still remained, especially in respect of allegations of intimidation and violence, progress had been made. It was also important not to lose sight of the role played by the RMG

sector in the socio-economic development of the country and its contribution to the empowerment of millions of women.

It was recalled that in 2016, the Conference Committee had expressed deep concern at the lack of progress on a number of previously highlighted issues, that the high-level tripartite mission had considered the registration process as highly bureaucratic and had urged the Government to develop SOPs to ensure that the registration process would not become an obstacle to the registration of trade unions. Since then, the Government, in cooperation with the ILO and through consultation with the social partners, had agreed on the adoption of SOPs concerning registration, which was, according to the Employer members, a positive measure. It was stated that while the registration process must be transparent, it did not have to be a simple formality and the Government could determine minimum registration requirements in light of the national context and to ensure a climate of social and industrial peace. Given that the Committee of Experts had raised issues of delays in registration, lack of transparency and lengthy judicial proceedings when challenging registration, the Government was asked to provide further information to the Committee of Experts on the terms of reference of the SOPs, as well as information demonstrating the transparent nature of the registration process.

With regard to the amendment of the BLA, the speaker noted the information provided by the Government, in particular that the revision was an ongoing process, as well as the Government's commitment to work with the social partners and the ILO to address the pending matters. The Employer members noted with interest the recently established TTC and its possible role in contributing to the revision of the BLA. The Government was also encouraged to provide further information to the Committee of Experts in relation to the BLR, so that they could more fully understand how the BLR operated and whether there were any issues to be further discussed.

With regard to the issue of EPZs, the Employer members had previously noted that a situation where a separate legislative framework existed for enterprises located in EPZs was problematic. In Bangladesh, the BLA applied to employers operating outside the EPZs and the EPZ Workers Welfare Association and Industrial Relations Act, 2010 (EWWAIRA), applied to those employers operating inside the EPZs. The EWWAIRA did not allow workers or employers to form organizations of their own choosing and although a draft EPZ Labour Act had been submitted to Parliament, only limited consultations appeared to have been done with national workers' and employers' organizations. Furthermore, the high-level tripartite mission had expressed concerns over the fact that the draft legislation restricted freedom of association of workers' organizations and investor employers in EPZs. Therefore, the Employer members noted positively that the draft EPZ Labour Act had been recalled by the Government and would be subject to a thorough review with the stated intention of ensuring its compliance with Convention No. 87. In particular, the Government was considering deleting Chapters 9, 10 and 15 and replacing them with Chapter 13 of the BLA, thus providing the right to freedom of association to all workers. In such a revision, freedom of association for investor employers should not be overlooked. Overall, the Government's efforts to amend the legislation governing EPZs was welcomed and considered as a significant step towards the implementation of the Government's obligations to ensure that workers and employers could form and join organizations of their own choosing. It was important to encourage the Government to provide the new draft EPZ Labour Act to the Committee of Experts for further examination and to complete the process without delay, as the Committee would note any concerns if no further action was taken in that regard.

The Worker member of Bangladesh was concerned about the lack of protection of freedom of association. He had hoped that after the Rana Plaza incident, the Government and employers would have learned a painful lesson and would finally act responsibly, respecting the rights of workers to form and join trade unions and to bargain collectively. Under the Bangladesh Sustainability Compact, the Government had promised the ILO, the European (EU), the United States and Bangladeshi workers that it would respect freedom of association, further revise the BLA, ensure that workers in EPZs could exercise their fundamental rights and ensure that workers could freely register trade unions and undertake union activities without retaliation. However, the Government had failed to keep those promises and although it was making them again, workers could no longer place their trust only in words.

The RMG industry in Bangladesh exported billions of dollars of goods to global brands in the EU and the United States market each year. At the same time, the wages of garment workers remained very low; they were paid a base wage plus allowances of only $67 dollars a month. The speaker stressed that it was not possible to live on such a low wage. One of the reasons why wages had remained so low was that for many years the Government had maintained a "no-union" policy in the RMG sector.

Regarding union registration, the speaker recalled that it took 60 days to register a union and that the union must have membership of a minimum of 30 per cent of the workers of the factory. This threshold was too high, since factories had between 10,000 and 15,000 workers. With regard to the Ashulia movement, he expressed hope that all dismissed workers would be reinstated. Regarding the EPZs, it was recalled that WWAs were different from trade unions, as they did not have the same rights and privileges. Therefore, the Government should modify its legislation, taking into account workers' views in order to comply with the Convention.

In conclusion, the speaker expressed hope that the industry would prosper and create jobs for the millions of workers in the country. However, the jobs must be good and based on the principles of decent work. It was underlined that workers should not have to produce garments at wages so low that they could not live in dignity. The Government had a clear choice: it could respect its workers and its international obligations and implement the repeated conclusions of the Committee without any further delay, or it could continue with business as usual at the expense of its own citizens. If the latter was chosen, the Government would be the only one to blame if one day global brands, tired of the constant headlines about the abuse of workers in their supply chains, decided to source their garments elsewhere.

The Employer member of Bangladesh recalled the shock and shame of the 2013 Rana Plaza incident and the global attention that it had attracted. Three initiatives – the Accord, the Alliance and the National Initiative – were established in response, to overhaul the industry and establish safe factories and improved working conditions. In 2013, the Government had signed a Sustainability Compact with the EU, the United States and the ILO and some 3,780 garment exporting factories had been inspected through one of the three established initiatives, resulting in the closure of less than 3 per cent of factories that were found to be unsafe. All other factories that were inspected had been required to undertake measures to improve safety conditions. Nonetheless, hundreds of small and medium-sized factories had also closed due to their financial inability to carry out remedial measures, which caused thousands of job

losses. Never had such scale of inspections for fire, building and electrical safety been witnessed in such a brief period of time. Noting the significant investments employers had continued to make to improve factory safety, he urged international buyers to re-evaluate their pricing policies for the survival of struggling factories. With the support of the ILO and development partners, the Government had made efforts to strengthen the capacity of its regulatory institutions and create an optimal culture for adherence to occupational safety and health regulations. Recognizing that close to 1,200 factories had shut down due to compliance costs, and thousands of workers had lost their jobs, some positive developments were noted, including improvements in manufacturing facilities, the issuance of several Leadership in Energy and Environmental Design (LEED) certifications and the growth of green factories. Bangladesh was a global leader in the establishment of green garment factories, with 67 such factories having been certified by the US Green Building Council, and some 220 more prepared for certification.

Multiple weaknesses and challenges in the broader regulatory and institutional framework had emerged in the process of establishing factory safety, such as capacity for inspections, unfair labour practices, respect for trade union rights and rights at work, and weak social dialogue, which had demanded a large number of initiatives to be taken by all stakeholders.

The special paragraph and its reference to four specific issues that the Government needed to address immediately was another major challenge. The comments of the Committee of Experts and the Conference Committee had been taken very seriously by the Government. Commitment to bringing about changes in several areas relating to the regulation of labour standards and their enforcement had been made. Various initiatives had been taken involving employers, including the adoption of SOPs for the registration of trade unions. The Government was committed to working with the ILO to ensure that all stakeholders were aware of the SOPs and that staff implemented them effectively. Additional SOPs for handling cases of anti-union discrimination and unfair labour practices were also being developed in collaboration with the ILO. Noting the challenges of implementing such procedures, he welcomed the Department of Labour's attention to the issue and efforts to strengthen its resources to perform tasks agreed upon by the tripartite partners. He recalled the illegal work stoppages and vandalism in Ashulia in December 2016, and the 11 cases filed by factory management and law enforcement authorities. Five of those cases had been disposed of by police following investigation, with no witness to prove the prosecution, and the remaining cases would be disposed of through an expeditious investigation, following due legal processes. The Ashulia Tripartite Agreement was being implemented in compliance with the law.

Full support should be given to social dialogue and tripartism. The speaker noted that employers in the RMG sector had been holding regular monthly meetings with leaders of trade union federations under the IndustriALL Bangladesh Council since March 2017. The TCC for the RMG sector had also been formed in March 2017, comprised by worker, employer and government representatives, and had already met. He expressed confidence in the role of this body in strengthening social dialogue and industrial relations and helping chart the future course of the garment sector.

Amendments to the Labour Act and the EPZ Labour Act were being addressed by the Government and he welcomed the review of the Labour Act by a subcommittee of the TCC, which would propose necessary amendments by the end of August 2017, to bring it in line with the Convention. The draft EPZ Labour Act had also been withdrawn following submission to Parliament and would go through a thorough review to address the concerns and recommendations of the ILO and the Sustainability Compact partners before being shared in November 2017.

The RMG sector had an extraordinary role in the development of Bangladesh, accounting for 80 per cent of export earnings and the majority of jobs in the formal economy. Close to 4 million workers, of which 80 per cent were women, depended on the sector for their livelihoods and all partners had a moral obligation to ensure its growth and consolidation. The country was undergoing gigantic reforms on multiple fronts, each involving a major and elaborate process that had great potential. The comprehensive reforms would provide an exemplary model for job creation, workplace safety, protection of labour rights, social dialogue and international cooperation, and required a positive approach from the Government, with support from tripartite constituents and other stakeholders, national and international. The speaker urged the Government to remain continuously engaged with the social partners and to facilitate their capacity building. The speaker reiterated the importance of the rights and safety of all workers in Bangladesh. It was essential to consider the livelihoods of the millions of workers in the industry and the need for care, sensitivity and compassion in the consideration of this case.

The Government member of Malta, speaking on behalf of the EU and its Member States, Bosnia and Herzegovina, Montenegro, Norway, the former Yugoslav Republic of Macedonia, and Serbia, indicated that they attached great importance to the respect of human rights, including freedom of association and protection of the right to organize, and recognized the important role of the ILO in developing, promoting and supervising international labour standards.

The EU, together with the ILO, the United States and Canada, had established intensive cooperation with Bangladesh in the framework of the Bangladesh Sustainability Compact and Bangladesh benefited from preferential access to the EU market through the "Everything but Arms" arrangement, which largely depended on respect for human and labour rights. Additionally, the 2001 cooperation agreement between Bangladesh and the EU specifically mentioned the need to respect ILO principles, including freedom of association and the right to organize and bargain collectively.

While recognizing progress achieved on a number of labour issues, notably on factory safety, setting up new labour-related structures – such as the new RMG TCC – and SOPs, as well as the recall of the draft EPZ Labour Act for review, the speaker expressed serious concerns regarding respect for labour rights, particularly freedom of association and the right to collectively bargain. Despite the 2016 conclusions of the Committee and the seriousness of the case, deep regret was expressed that the steps taken by the Government had not responded adequately to the concerns raised. The Government was strongly encouraged to come forward with more substantial and time-bound steps.

Concerning the specific incidents of violence and use of force against trade unionists contained in the report of the Committee of Experts, the Government was called upon to ensure that all workers could freely exercise their fundamental labour rights, and ensure effective, expedient, and transparent investigations, as well as prosecution of violence and harassment against trade unions and workers' representatives. The Government was further encouraged to extend the existing helpline to other regions, to develop and implement SOPs to address anti-union discrimination and to provide further information on follow-up regarding the cases reported.

Bangladeshi labour laws and procedures continued to pose significant barriers to founding and operating a union. For instance, registration of trade unions continued to be hindered by various obstacles. Given the concerns expressed in this regard by the Committee of Experts, the

Government was called upon to ensure that trade union registration was carried out in a transparent and expeditious manner through the effective implementation of SOPs and to ensure full and transparent reporting on registration procedures. Other provisions of the BLA restricted the right to form a trade union, including the 30 per cent minimum membership requirement, and the Government was, therefore, urged to amend, as a matter of urgency, the BLA and the BLR so as to bring their provisions fully in line with the Convention. It was also asked to provide clarification regarding the alleged new membership requirement of 400 workers to form a union in the agricultural sector. The speaker welcomed the Government's commitment to do so, as well as the recent formation of the TTC.

Finally, the legislation regulating the right to organize in EPZs or other specific export-oriented zones remained a significant issue of concern. The Government was urged to adopt the new law governing the EPZs allowing for full freedom of association in consultation with the social partners.

In conclusion, while welcoming the Government's willingness to address the concerns raised, such commitment needed to translate into firm, concrete and time-bound actions, both in law and practice. Furthermore, progress on the matter was urgently expected and would be closely monitored by the EU, which remained committed to cooperation with Bangladesh.

The Government member of Algeria said that the Government of Bangladesh had made great efforts to improve the situation concerning social dialogue and the free exercise of the right to organize. He noted with interest: the amendments made in 2013 to the BLA, following extensive consultations, the diligence demonstrated in the handling of complaints concerning practices that might undermine trade union activities; the efforts made to publish information on issues relating to freedom of association on the Internet; the capacity building of staff to address cases of infringement of freedom of association; the capacity building of workers and employers on social dialogue; the provision of online information and assistance to workers to facilitate the filing of complaints; and the easing of trade union registration procedures. He welcomed the progress made by the Government and encouraged it to continue its efforts, in consultation with its economic and social partners, to ensure the effective application of the relevant ILO standards.

An observer representing IndustriALL Global Union regretted the lack of progress made in compliance with the Convention given the continued acts of trade union repression. In December 2016, over 1,600 garment workers had been dismissed following worker demonstrations over low wages in Ashulia. At least 34 workers and trade unionists had been arrested and detained, trade union offices had been ransacked and vandalized, and union organizers had gone into hiding, fearing retribution. The creation of a tripartite forum for sectoral dialogue in the RMG industry was one positive outcome, which the Government should build on by providing a clear legal basis for bargaining at the sectoral level.

Applications for trade union registration were rejected on unjustified grounds, and there were strong indications of political interference in the registration process. Denial of union registration at two factories in Chittagong was cited as an example of continued violations since February 2016 and IndustriALL's shipbreaking affiliates faced similar problems in Chittagong. Union registration decisions should be based on objective criteria and politicization of the process was a violation of the right to freedom of association. The Conference Committee had previously recognized the failure of the Government to address incidents of violence against trade unionists and this climate of impunity continued. Workers in Chittagong had been threatened, beaten and warned that, if they continued to organize unions, they would be killed. This general hostility towards trade unions persisted in Bangladesh despite international pressure which had led to the release of the workers and trade unionists detained following the labour unrest in Ashulia in 2016. Noting that none of the charges against the workers had been dropped, she stressed that the pending charges contributed to a lack of confidence in organizing and to the suppression of trade unions activities. The Prime Minister's recent public comments increased hostility towards trade unionists and raised further doubts concerning the Government's commitment to the Convention. The speaker called for the inclusion of this case in a special paragraph.

The Government member of Canada commended the Government's actions and commitment towards improving workers' rights and safety, specifically in the RMG sector. In the follow-up to the Bangladesh Sustainability Compact, the Government had reported on progress in establishing SOPs for trade union registration as well as an online system to improve transparency in the handling of anti-union discrimination cases and the rejection of trade union applications. Continued efforts to enforce and sustain the use of that system were encouraged. Recalling issues of harassment and violence against trade unions, and interference with union activities, she urged that all acts, such as those during the recent Ashulia crisis, be investigated. A report on lessons learned from Ashulia and on measures taken to avoid repetition of these incidents was requested.

With the removal of the draft EPZ Labour Act from Parliament, prompt action was necessary to ensure that a revised draft law that reflected international standards was submitted to the Committee of Experts by autumn 2017. A revised draft of the BLA, addressing freedom of association and collective bargaining issues, should also be submitted to the Committee of Experts for review. The newly formed TCC and its role in providing recommendations on changes to the BLA was noted in this regard, and she called for the development of terms of reference and a comprehensive workplan for the Council, and regular updates to stakeholders. The Government had taken the issues seriously and continued to make good progress in the RMG sector, with positive impacts on other industries; however, there was still work to be done. The development of a strategy with concrete and time-bound actions to address the full range of concerns raised by the Committee of Experts and the Conference Committee was recommended.

The Worker member of Germany, speaking also on behalf of the Worker members of France, Italy, Netherlands, Spain and Sweden, referred to violations of human rights, including freedom of association, in Bangladesh. A variety of instruments and initiatives had been adopted to support the Government's efforts to build a society in which human rights and trade union rights were fully respected. For example, the Alliance for Sustainable Textiles in Germany was a unique national initiative, in which all stakeholders were committed to improving social conditions along the entire supply chain in the textile sector. The alliance was launched by the Government of Germany and was supported by employers' and workers' organizations, the federal Government and NGOs. Reference was also made to the EU's "Everything but Arms" arrangement, which granted Bangladesh duty-free and quota-free access to sell its goods in EU markets. Bangladesh was taking full advantage of this special treatment under the Generalized Scheme of Preferences (GSP). Compliance with fundamental rights and other labour rights was a prerequisite for continuing to participate in the GSP. Bangladesh benefited from this special treatment, but did nothing to maintain it or to approach the next stage, namely the GSP+ arrange-

ment. The speaker referred to the comments of the Committee of Experts that had not been implemented by the Government, and indicated that it was necessary for the EU to initiate an investigation on the basis of the GSP requirements and to consider the timely removal of existing benefits if the situation in Bangladesh did not improve. That demand had been addressed by the international trade union federations in a joint letter of May 2017. It must be made clear to the Government of Bangladesh that fundamental human rights and trade union rights were of the utmost importance to the EU.

The Employer member of India appreciated the progress made by the Government of Bangladesh. The threshold limit to form a union in the agriculture sector had been framed by the Government according to the realities of the sector. The situation of violence that had taken place in Ashulia was subject to investigation and five out of 11 cases had been disposed of. Labour laws for the EPZs were being reviewed. The legislation recognized the right to register unions, as demonstrated by the fact that 960 unions had been registered in less than a year. The rejection of union registrations based on technical or administrative grounds did not mean that union registration was not allowed. Cohesive and strong unions were recommended in order to provide for successful collective bargaining, since a multiplicity of unions frustrated the cause of collective bargaining. Therefore, fixing the threshold for registration of trade unions at 30 per cent was reasonable. In conclusion, the speaker called on the Committee of Experts to consider those facts and to allow the Government additional time to report on progress.

The Government member of China took note of the information provided by the Government of Bangladesh and noted the progress made in respect of protecting labour rights, including the revision of the labour law, drafting of the EPZ Labour Act, the increased rate of trade union registrations, social dialogue and the establishment of the TTC. Compliance with ratified ILO Conventions was an obligation of every member State and development cooperation could assist with the implementation of the Convention. Efforts made by the Government should be recognized. The speaker hoped that the ILO would continue to provide technical assistance to support the Government in complying with its obligations.

The Employer member of New Zealand noted that the case illustrated the growing concern over the years regarding the discussion of issues that should not come before the Committee. He questioned whether the Rana Plaza incident should be raised in discussions relating to the application of principles of freedom of association. Interventions should be focused on issues pertaining to the Convention. Bangladesh had demonstrated that it could move forward. The collapse of Rana Plaza had rocked the world, and what had been achieved since then was a massive review of the country's system, its companies, and the emergence of green factories. While recognizing that challenges associated with the registration of trade unions and discrimination against unions persisted, it was incorrect to claim nothing had been done. The gap between the provisions of the new acts and the practices and situation in the country needed to be addressed and the Government had demonstrated a willingness to pursue social dialogue through its withdrawal of the draft bill on EPZs and its subsequent actions. The situation was certainly not perfect, but it never was. This should be recognized in consideration of the issues expressed by workers and others.

The Worker member of Argentina expressed concern at the situation of workers and trade union leaders in the textile industry in Bangladesh. There were constant violations of fundamental labour standards, and wages remained the lowest in the world. The minimum wage for a worker in the textile industry amounted to around 5,300 takas, or just under US$67 a month. This figure was far below both the poverty line established by the World Bank and minimum wages in neighbouring countries that produced textiles, such as Cambodia. At the end of 2016, prompted by a peaceful protest in the city of Ashulia in support of better wages, a wave of repression had been unleashed against workers and trade union leaders in the textile industry. The police had arrested around 34 people, many of them trade union leaders, who had not even taken part in the protest. Some union leaders had been accused of offences under legal provisions that were no longer in force, while others had been sued by textile producers for alleged damage to property that had yet to be proven. Moreover, some 1,500 workers had been dismissed or forced to give up their jobs. Raids had also been carried out on the offices of trade unions and NGOs that protected workers' rights. It was surprising that such a situation had arisen while the country's trade preferences with the European Union continued to be based on compliance with the Sustainability Compact, an agreement negotiated between the European Union and Bangladesh on 8 July 2013 with ILO support. The agreement had been motivated by the Rana Plaza disaster, which had cost the lives of 1,200 workers in the textile industry. In the year following the collapse of Rana Plaza, while the international community's attention was on this event, the Government had allowed workers to join trade unions, but the commotion in the international community had barely died down before measures were again being taken against workers. Laws and regulations were therefore needed that created enterprise responsibility for violations of labour standards and human rights.

The Government member of the United States noted that the Committee was discussing the application by Bangladesh of the Convention for the fourth time in five years and that the issues remained largely unchanged: the Government must investigate violence against trade unionists in a transparent and credible manner. It had yet to establish a transparent trade union registration process as indicated by high rates of trade union registration rejections. While a tripartite review of the BLA was promised in the near future, no steps had been taken to amend the Act or its implementing rules in line with ILO supervisory recommendations; and workers in EPZs still did not enjoy the right to freedom of association – an issue that the Committee of Experts had been highlighting over the past 25 years.

The May 2017 review of the Bangladesh Sustainability Compact had yielded no demonstrable achievements on the part of the Government over the past year with regard to freedom of association and there was little evidence that efforts were being made to address the observations of the Committee of Experts, the conclusions of the Conference Committee, or the recommendations of the high-level tripartite mission that had visited Bangladesh in 2016. The Government's response to the December 2016 labour protests in Ashulia also indicated that freedom of association was not protected in Bangladesh.

The speaker fully endorsed the conclusions of the Conference Committee, which had been made repeatedly over the past few years and urged the Government to act, without further delay, to ensure that the trade union registration process was transparent and based on clear and objective criteria, that actions of anti-union discrimination were fully investigated and prosecuted, that the law governing EPZs allowed for full freedom of association and that the BLA and its implementing rules were revised in line with the observations of the Committee of Experts. He recommended bringing the conclusions of the discussion before the plenary of the Conference.

The Worker member of the United States, speaking also on behalf of the Worker members of Canada, described the day-to-day harassment and abuse that workers, their organizations and their allies faced when they organized to raise

the wages of the poorest, form unions and plan collective action. This difficult work took place in the months before and after the dramatic events such as the recent strikes. At every turn, the employers and the Government acted to block workers. These tactics had been widespread since the strikes in late 2016, but they had long been used and continued unabated as the Committee met. Workers had described blacklisting: those who took action in Ashulia and Chittagong could no longer get work. Surveillance of all workers had increased. Police also "visited" workers at home and harassed the entire family. Moreover, many labour organizers had been charged with crimes that had taken place when the person charged was out of the region or the country. The charges against strikers in Ashulia and Chittagong, and countless others, continued, as part of the permanent pressure on workers. Independent unions and their allies were repeatedly harassed while training workers on safe workplaces. On 20 January 2017, the industrial police forced workers at a safety training to disperse after photographing them, recording the names of participants and of their entire family, warning workers to avoid the Bangladesh Independent Garment Workers Union Federation (BIGUF), and threatening to drown one of the leaders of the BIGUF. The speaker pointed out that, on that occasion, workers were participating in an ILO-funded safety training. He also referred to an incident that had occurred only ten days ago, where an employer in Chittagong had filed charges against a BIGUF leader, Mr Chandon, and factory-level leaders for alleged unlawful assembly. Mr Chandon had not even been in the country on the date of the alleged offense. The employer in question had a long history of harassing workers who organized. The speaker called on the Committee to send the strongest message possible – a special paragraph – to demand that Bangladesh finally stop attacking and act to defend its workers.

The Government member of the Islamic Republic of Iran welcomed the measures taken by the Government to improve labour rights in Bangladesh. A tripartite technical committee had been established by the TCC to review the BLA. Moreover, trade union registration had increased to 63 per cent in 2016, compared to 32 per cent in 2015. SOPs had been developed with the assistance of the ILO so as to expedite trade union registration. With respect to anti-union discrimination or unfair labour practices, intensive training programmes for labour officials were being conducted. The Government was encouraged to continue to take measures to comply with the Convention. The speaker called on the Office to provide technical assistance to support the Government in this regard.

The Government member of Sri Lanka was of the view that the Government of Bangladesh was committed to giving full effect to the provisions of the Convention. The BLA was being reviewed and legislation in relation to EPZs was being drafted. Moreover, SOPs had been developed to expedite trade union registration. The TCC had been established to deal with labour issues at the national level and to promote social dialogue. The speaker expressed the hope that the Government would effectively address all issues that had been raised.

The Worker member of Japan, speaking on behalf of the Japanese Trade Union Confederation (JTUC–RENGO), stated that the case of Bangladesh had been examined on numerous occasions in the last few years, which demonstrated the seriousness of the issue. In Bangladesh, it was difficult to organize due to lack of freedom of association and social dialogue, legal restrictions and strong resistance from employers against the establishment of unions. In 2016, only around 60 per cent of trade union applications submitted for registration were approved. In addition, workers encountered many issues when attempting to form a union, including dismissal, threats and violence, as was the case in a large factory in May 2017 and in the biggest oil company. While taking note of some improvements made to the BLA in 2013, the speaker expressed concern about the large number of difficulties linked to forming a union and requested the Government to further amend the legislation, including the 30 per cent minimum membership requirement, and to fully implement it. In April 2017, the Government had declared services by its national flag carrier to be essential, thereby restricting the aviation unions' ability to take collective action. The Government should address this issue as a matter of urgency. In light of the seriousness of the situation, the speaker considered that the matter should be addressed in a special paragraph.

The Government member of Switzerland indicated that her Government supported the statement by the European Union. She regretted that there had been no response to the requests made by the Committee the previous year. The objectives established by the Committee remained valid, namely: to bring law and practice into conformity with the Convention, and to ensure the respect for the social partners and freedom of association, and for civil liberties in general. The Government of Bangladesh should put an end to all acts of violence and harassment, including those carried out against trade unionists. In support of the ILO Better Work Programme, the Government of Switzerland insisted on the full respect of workers' rights. The procedures to register trade unions must be made more efficient and faster, so that delays could be resolved and organizations recognized. Moreover, the legislation applicable to EPZs must respect freedom of association. Progress must be made in this regard. Lastly, she emphasized that the Committee's previous and future conclusions must be respected and applied by the Government.

The Worker member of Italy highlighted the climate of anti-union violence, intimidation and impunity which was pervasive throughout Bangladesh. She recalled that workers and approximately 70 trade union leaders in a factory in Chittagong had recently been attacked in front of the factory gate within sight of factory management and the police. Workers and trade union leaders had also been blackmailed: if they had continued to organize unions, they would have been killed. The factory had filed false charges against trade union leaders, most of whom were in jail.

The attackers, at the request of management, continued to intimidate trade union leaders and their families by visiting their homes, making phone calls and threatening to kill them. These recent attacks followed the workers' fourth attempt to apply for union registration. Since 2016, the Government had rejected the workers' application on arbitrary and baseless grounds. While the recent escalation of attacks against those workers had been among the most severe, it was not the first. Since 2014, various episodes of violence against trade union leaders had taken place and trade unions of the factory group had been forcefully removed one after the other. The assaults had been carried out at the behest of the company.

Earlier instances of labour rights violations had only been stopped through the far-reaching and coordinated intervention of global brands, who had threatened to sever ties with that group of factories. The impunity in Bangladesh showed how both the Government and the Bangladesh Garment Manufacturers and Exporters Association (BGMEA) were condoning these clear violations of national labour legislation and core international labour standards. The EU had acknowledged the Government's failure to protect freedom of association many times and had urged it to take concrete steps to ensure that national legislation and practice were in line with international labour standards. There was well-documented and abundant evidence demonstrating the systematic violation of core human and labour rights. The speaker requested for this case to be treated as particularly serious by the Committee and included in a special paragraph.

The Worker member of the United Kingdom indicated that consumers, many of them workers and union members, bought garments from Bangladesh but were deeply troubled by the terrible conditions faced by workers in the textile industry. Consumers wanted to continue to buy those garments, but they also expected the Government of Bangladesh to meet its international obligations, especially the right to freedom of association. British workers were deeply alarmed when, after ten days of strikes beginning on 12 December 2016, thousands of workers were dismissed in Ashulia. Union leaders had been imprisoned under entirely inappropriate wartime legislation and many more had been forced into hiding. Union offices had been forcibly shut down and vandalized by the authorities. In February 2017, more trade unionists had been arrested in Chittagong after police interrupted a training session in union offices. The speaker then referred to the Ethical Trading Initiative (ETI), a multi-stakeholder body involving unions, corporations and NGOs. Corporate members of the ETI, including many of the UK global brands, had joined unions in calling for the union leaders in Ashulia to be released. Moreover, in protest at the arrests, the ETI and its global corporate members withdrew from the Dhaka Apparel Summit organized by the BGMEA. The speaker called on the Government to take urgent action to bring its law and practice in line with the Convention and to ensure non-discrimination of trade unionists.

The Government member of Kenya welcomed the information provided by the Government of Bangladesh and the steps the country had taken to fulfil its obligations. She welcomed the review of the rules regulating the EPZs, the use of SOPs, which enabled an increase in trade union registration, and the constitution of a TCC for the RMG sector, which promoted harmonious industrial relations. She was convinced that the challenges that persisted would be addressed by the Government and called for continued technical assistance by the ILO to support the necessary changes.

The Employer member of Cambodia commended the Government of Bangladesh for the various initiatives taken to improve working conditions in the RMG sector and supported the view of the Employers of Bangladesh that the livelihood of millions of workers in the industry needed to be taken into account while considering this case. The RMG industry generated more than four fifths of Bangladesh's export revenue and employed millions of workers, the majority of whom were women. The speaker was confident that Bangladeshi employers would respect the rights of all workers in the country. Good industrial relations between employers and workers were essential. Over the last four years, Bangladesh had made considerable progress to improve workplace safety in the garment sector and it was hoped that the ILO would continue to support the country in the development of this sector.

The Government member of Uruguay thanked the Government for the explanations provided. However, he expressed concern at the case as there were workers whose criminal proceedings were still pending. He emphasized that this situation had its origins in legitimate, not criminal trade union activities, and regretted that there had been a high number of dismissals, acts of anti-union discrimination and attacks on freedom of association. Uruguay was a strong advocate of ILO standards, particularly of the Conventions guaranteeing freedom of association. The acts which had given rise to the workers' complaint appeared to be in violation of the Convention. He therefore kindly requested the Government to redouble its efforts to ensure the correct and strict application of the Convention and of all provisions that ensured full freedom of association and collective bargaining.

An observer representing the International Organisation of Employers (IOE) acknowledged that the Honourable Minister of Law, Justice and Parliamentary Affairs was leading the Government delegation of Bangladesh, which showed strong commitment by the Government in responding to the issues raised under the special paragraph. The Government's response should be appreciated as it demonstrated that concrete, specific and time-bound action was being taken. Although Bangladesh was a least developed country, it was trying to emerge out of poverty by 2021 under a strategic economic policy by a Government committed to observing the core ILO Conventions. Bangladesh was a world leader in the RMG sector by virtue of the great skills of its workers and was moving towards a lower middle income status, with close to 4 million people engaged in the RMG sector, of which 80 per cent were women, although other sectors were also important. Bangladesh had been successful in eliminating child labour, including the worst forms of child labour, and had given emphasis to the protection of the rights of workers and to creating a healthy and safe working environment through social dialogue. The speaker expressed gratitude to the ILO and other development partners for their continuous support, which had allowed the Government to implement remediation works at the factory level. The speaker made a strong appeal for Bangladesh to be removed from the special paragraph.

The Government member of India thanked the Government for the information provided and recalled that the matter had been discussed in successive sessions of the Conference. The speaker welcomed the significant legislative amendments that the Government was working on with respect to EPZs and its close cooperation with the ILO. The establishment of a TCC to examine issues raised by the Committee and strengthen tripartite consultation and the realization of a harmonious industrial relations culture were appreciated. Improvements in the labour statistics system demonstrated progress and steps taken to address issues of anti-union discrimination were welcomed, including through capacity building of labour officials, awareness raising and capacity building of workers, development of SOPs, a helpline for workers, and the strengthening of databases despite the significant socio-economic challenges faced by the country. He noted the information provided by the Government on trade union registration and urged the Committee to favourably consider the positive steps taken by the Government.

The Employer member of Turkey recognized the transition of Bangladesh, which had enabled a rapid change in its economic and social structures. These circumstances raised questions regarding the functioning of its industrial relations system, which the country and its social partners had had to address in addition to serious occupational health and safety, trade union representation and labour dispute challenges. International focus on the situation had also led to a wider debate that contributed to the reshaping of its legal and administrative structures. New legal instruments and administrative measures had been adopted for the improvement of working conditions. The draft regulation on EPZs was noted and the legislative process was expected to be completed following a revision process that would increase compliance with international labour standards. The new law should respond to all expectations of tripartite constituents and pave the way for a new era in Bangladeshi industrial relations. The long and demanding transformation of the country, while it faced serious and extensive problems in the implementation of its international obligations, should be positively recognized by the ILO supervisory bodies.

The Government member of Egypt noted the measures adopted by the Government to ensure compliance with the provisions of the Convention, including the development

of new policies, the amendment of laws, awareness campaigns and social dialogue. Efforts to fight anti-union discrimination both in law and practice were welcomed. The speaker encouraged continued collaboration between the Government and the ILO.

The Government member of Cuba thanked the Government for the information provided, in particular regarding the revision of the BLA, the activation of the TCC, the updating of labour standards, and the strengthening of the Department of Labour. She noted with appreciation the Government's willingness to continue strengthening the labour legislation.

The Government representative noted that it was unfortunate that some of the information presented was outdated and distorted and for that reason considered that it was necessary to respond and clarify matters that had been raised. In addition to the written statement reproduced in Document D.8, he provided the following information:

- out of the 11 Ashulia cases, three had been withdrawn and two resolved, a final report having been produced in all five cases; and six other cases were being investigated in accordance with due process and would be resolved without delay, as the Government, while respecting the independence of the judiciary, had requested the investigating authority to expedite the matter;
- SOPs for registration had been published on 22 May 2017 and had been given effect from that date;
- as for the tripartite agreement reached with IndustriALL after the Ashulia incident, a meeting had been held on 23 February 2017, as a result of which all persons imprisoned and under police custody had been released on bail, the salary of workers who had left jobs had been paid as per the labour legislation and all offices for the zones covered by the registered federations at Ashulia had been reopened;
- utmost priority was given to the smooth functioning of the telecommunications sector and this was the reason why it had been identified as an essential service under the Essential Services Act of 1958;
- in addition to the amendment of Chapters 9, 10 and 15 of the draft EPZ Labour Act, mentioned previously, which would be brought in line with the BLA, administration and inspection of factories in EPZs would also fall under the BLA; and
- the Chittagong incident was a dispute between two labour groups and had nothing to do with the Government or the employers.

The speaker expressed firm commitment to the implementation of the measures mentioned within the indicated time frame and requested the withdrawal of the special paragraph from the conclusions of the Committee. He thanked all who had taken part in the discussion, in particular the speakers who understood the challenges, appreciated the steps taken and encouraged the Government to move forward.

The Employer members recognized the importance of the RMG sector in the development of the country and the empowerment of women, and took note of the information provided by the Government. The Employers recalled their disagreement with the Committee of Experts' views concerning Convention No. 87 and the right to strike. They recalled the Government group's statement of March 2015 according to which "the scope and conditions of this right are regulated at the national level". It is in this light that the Employers have addressed the case of Bangladesh. In light of the observations of the Committee of Experts, governance of industrial relations took place at the national level and there should be freedom to balance interests. In consideration of the commitments made by the Government and the measures adopted, the Employer members urged the Government to ensure that the law on EPZs ensured the right to freedom of association for workers and employers, particularly the right to form organizations of their own choosing, and to ensure that applications for union registration were expeditious and transparent. Measures to provide for online registration, which would encourage transparency were welcomed in this regard. Noting the development of SOPs for the registration of trade unions as a positive measure and requesting a copy of these, it was emphasized that continued investigation of acts of anti-union discrimination and the development of procedures for handling such cases were necessary. Information on the operation of the labour rules was requested so that the Committee of Experts could have a fuller understanding of the status of the rules and their impact on the implementation of the BLA. The establishment of the TCC and continued social dialogue was encouraged and further progress was expected without delay. In that regard, the Employer members urged the international community and development partners to continue to support the positive progress noted. On that basis, it was not appropriate to include a special paragraph on Bangladesh in the Conference Report. More needed to be done to encourage progress, and a full report on measures taken should be provided to the Committee of Experts.

The Worker members responded to some of the statements made during the discussion, including on the steps that had been taken by the Government on issues that fell outside the scope of the Convention. Although those steps were welcomed, they could not compensate for the complete lack of progress in relation to the application of the Convention in Bangladesh. The garment industry did in fact employ more than 4 million workers, but that did not exonerate factory owners from their obligations. Decent work and sustainable jobs could only be created where fundamental rights were respected. The Worker members were in agreement with the Employer members concerning the need for objective and transparent requirements for the registration of trade unions. A minimum membership requirement was clearly not in itself incompatible with the Convention. However, the minimum membership requirement must be fixed in a reasonable manner so that it did not hinder the establishment of trade unions. In the case of Bangladesh, the Committee of Experts had repeatedly highlighted that the minimum membership requirements were excessive. It was beyond doubt that the Government had firmly returned to its long-standing, anti-union ways, apparently hoping that the limited progress it made on fire and building safety would obscure its efforts to deny freedom of association to Bangladeshi workers. At every turn, the Government was making it nearly impossible for workers to exercise their fundamental rights. There appeared to be no labour justice for workers. The Government had employed every tactic to delay or deny trade union registration. Some organizations, which had been the most successful in registering new unions following the Rana Plaza incident, currently found their applications routinely denied. If anyone had any doubts, the crackdown in Ashulia made it clear that it was the policy of the Government to repress workers' rights in order to attract and maintain investment. The arrests and absurd charges under long-ago repealed laws showed just how little commitment the Government had for the rule of law. The fact that police shut down an ILO-funded health and safety programme should be seen as an insult to every Committee member. The Government had failed to comply with nearly all of its international commitments. It had ignored the observations of the Committee of Experts, the conclusions of the Conference Committee, as well as the Bangladesh Sustainability Compact. Even the achievements on fire and building safety had been largely the result of private initiatives, not the Government's own efforts, therefore calling into question the sustainability of the progress. Every year, the Government informed the Conference Committee that it understood and

would do better. The Worker members concluded that the Government would not follow through with its commitments unless significant additional measures were taken. Even the joint conclusions of the Sustainability Compact reflected that no progress had been made, as the parties had urged the Government to undertake once again the promises it had made in 2013 related to freedom of association. The speaker reiterated the conclusions of the Conference Committee of the previous two years, adding a new point in relation to the Ashulia crackdown. In that regard, the Government was urged to fully implement the tripartite agreement of February 2017, including to drop all charges against trade unionists, to end the surveillance of unions and interference in their activities, and to reinstate those workers who had been dismissed in Ashulia following the December 2016 demonstrations. The Worker members also called for the conclusions of the Committee to be placed in a special paragraph. The tripartite constituents were also urged to take all possible measures to persuade the Government of Bangladesh to comply with its legal obligations.

Conclusions

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

The Committee noted the long-standing nature and the prior discussion of this case in the Committee, most recently in 2015 and 2016. The Committee took note of the drafting of Standard Operating Procedures (SOPs) regarding union registration in collaboration with the ILO, the establishment of the Tripartite Consultative Council for the ready-made garment (RMG) sector, and the recall from Parliament of, and the preparation of, the draft EPZ Labour Act. At the same time, the Committee noted the insufficient progress in relation to previous discussions of the Committee, and emphasized that more needed to be done to achieve compliance with Convention No. 87 and that this must take place without further delay.

Taking into account the discussion, the Committee called upon the Government of Bangladesh to:

- **ensure that the Bangladesh Labour Act and the Bangladesh Labour Rules are brought into conformity with the provisions of the Convention regarding freedom of association, paying particular attention to the priorities identified by the social partners;**
- **ensure that the draft EPZ Labour Act allows for freedom of association for workers' and employers' organizations and is brought into conformity with the provisions of the Convention regarding freedom of association, with consultation of the social partners;**
- **continue to investigate, without delay, all alleged acts of anti-union discrimination, including in the Ashulia area, ensure the reinstatement of those illegally dismissed, and impose fines or criminal sanctions (particularly in cases of violence against trade unionists) according to the law;**
- **ensure that applications for union registration are acted upon expeditiously and are not denied unless they fail to meet clear and objective criteria set forth in the law.**

The Committee urges the Government to continue to effectively engage in ILO technical assistance to address the Committee's recommendations and to report in detail on the measures taken to implement these recommendations to the next meeting of the Committee of Experts in November 2017.

BOTSWANA (ratification:1997)

A Government representative stated that significant efforts had been made, in collaboration with the social partners, towards the enactment of labour laws that protected and promoted workers' rights. The Trade Disputes Act had been amended in August 2016 in order to address delays in the resolution of trade disputes. Legislative amendments had also been introduced pursuant to the Court of Appeal ruling on the invalidity of statutory provisions which gave the Minister the power to amend the list of essential services. That judgment clarified that it was the role of Parliament to determine the list of essential services. In response to the judgment, the Government had presented amendments to the Trade Disputes Act which included the issue of essential services. The Government's position on essential services was premised on the socio-economic circumstances of the country. Inclusion on the list of essential services did not deny those categories of employees the right to organize or to associate, but only the right to withdraw their labour. Section 13 of the Constitution guaranteed freedom of association, and allowed the reasonable limitation of that right in the interest of defence, public safety, public order, public morality or public health. The Trade Disputes Act had been carefully crafted to ensure its conformity with the Constitution and had been promulgated after extensive consultations. Considerable consultation had also been undertaken with public service unions on the Public Service Bill, and care had been taken to ensure that the Bill was constitutional. The Bill was at the stage of publication in the Official Gazette prior to being tabled before Parliament. The publication would allow for further consultation and input, and could result in further amendments prior to its consideration in Parliament.

The Committee of Experts considered that essential services were those whose interruption would endanger the life, personal safety or health of all or part of the population. However, the Committee of Experts also considered that account must be taken of the special circumstances that existed in various member States. While the interruption of certain services in some countries might cause only economic hardships, it could prove disastrous in others and rapidly lead to conditions that might endanger the life, personal safety or health of the population and the stability of the country. That flexibility allowed the circumstances to be taken into account when incorporating the spirit and intent of a Convention into domestic legislation. A more rigid approach would unduly restrict member States. The original list of essential services in the Trade Disputes Act had been adopted approximately 25 years ago, and was amended in 2016 in response to new developments and the specific circumstances in the country.

The exclusion of prison officers from coverage under the Trade Disputes Act and the Trade Unions and Employers' Organizations Act had also been cited as a contravention of the Convention. Prison officers in Botswana were classified as members of the disciplined forces and were the custodians of public safety and security. The constitutionality of that exclusion had been reaffirmed by the Court of Appeal. However, support staff or administrative staff were covered by the Trade Disputes Act and the Trade Unions and Employers' Organizations Act.

In the spirit of discussion and consultation, the Employment Act and Trade Unions and Employers' Organizations Act were being reviewed, which would address a number of the issues raised by the Committee of Experts. A request had been made to the ILO Decent Work Team for Eastern and Southern Africa in January 2017 for technical assistance in a number of areas, including labour law reform, with a focus on the Employment Act and the Trade Unions and Employers' Organizations Act. The objectives of that review were: addressing the gaps in those Acts; making the legislation conducive to the undertaking of business; incorporating the various decisions of the Courts; and aligning the Acts with the international labour standards ratified. Several ILO missions had been undertaken in April 2017. There had been general consensus that some of the labour legislation was outdated and needed revision in order to align it with ILO Conventions, and to comply with the decisions of courts. It had therefore been agreed that the main focus of the reform would be the Employment Act and the

Trade Unions and Employers' Organizations Act, but the reform could be extended to include other Acts, to ensure consistency. Social dialogue and stakeholder engagement during the labour law reform process were considered central to its success. The Government was committed to aligning its labour laws with ILO Conventions. There had not yet been the opportunity for open discussion with the social partners on the labour laws, and the law reform and other consultation processes should be allowed to take their course. It was therefore necessary to wait for the outcome of these discussions.

The Employer members commended the Government for its ratification of all eight fundamental Conventions. Pursuant to certain provisions of the Trade Unions and Employers' Organizations Act, the Trade Disputes Act and the Prison Act, members of the prison service were part of the disciplined forces, and were therefore prohibited from becoming members of a trade union. According to Article 9(1) of the Convention, only armed forces and the police could be exempted from the application of the Convention. The national courts believed that the prison service was functionally akin to the police or armed forces. In its observation, the Committee of Experts had initially appeared to agree with that assessment. However, it then concluded that the prison service was not akin to the police or the armed forces, and requested the Government to amend the law to grant the rights under the Convention to workers in the prison service. In that respect, the Committee of Experts' recommendations appeared to be contradictory, and its conclusion, without an explanation of its reasoning, was confusing. Clarity in that respect was required in order to enable the Conference Committee to properly supervise the case. In addition, the right to associate did not automatically mean that the trade unions of prison staff would have a right to bargain collectively. It also did not mean that those workers would have the right to take industrial action, as the Committee of Experts had recognized that prison services were essential services where strikes could be prohibited. However, the difference between the right of association and representational rights was sometimes not well understood.

Section 46 of the Trade Disputes Act, as amended, defined essential services to include the Bank of Botswana, diamond sorting, cutting and selling services, operational and maintenance services of the railways, veterinary services in the public service, teaching services, government broadcasting services, immigration and customs services, and services necessary to the operation of any of these services. Pursuant to section 46(2) of the Trade Disputes Act, as amended, the Minister could declare any other service as essential if its interruption for at least seven days endangered the life, safety or health of all or part of the population or harmed the economy. In this respect, the Employer members disagreed with the conclusion of the Committee of Experts. With reference to the Joint Statement of the Workers' and Employers' groups at the 2015 Tripartite Meeting on the Convention in relation to the right to strike and the modalities and practices of strike action at national level, they considered that there was no basis for a discussion in the Committee on that point. Regulation at the national level was appropriate for those issues and the national regulation was deemed in conformity in a decision of the courts.

Section 48B(1) of the Trade Unions and Employers' Organizations Act granted certain facilities only to unions representing at least one third of the employees in the enterprise. While the Committee of Experts had requested that this be amended, the difficulty with this provision was not clear. It would have therefore been more appropriate for the Committee of Experts to request information on the motivation underlying that section. Section 43 of the Trade Unions and Employers' Organizations Act provided for inspection of accounts, books and documents of a trade union by the registrar at "any reasonable time". The Employer members agreed with the Committee of Experts' conclusion that "any reasonable time" was not appropriate and that inspection should be limited to an obligation to provide periodic reports.

The Committee of Experts' direct request referred to the reform of employment legislation. The ILO was providing technical assistance in this respect. The Government had met with the social partners and there was general agreement on the need for a holistic review of the legislation, rather than of certain provisions of the Trade Unions and Employers' Organizations Act, the Trade Disputes Act and the Prison Act. In this respect, the Government and the social partners should be given the time necessary to finish this holistic review and to amend the legislation in accordance with the Committee's latest conclusions, and then to report back.

The Worker members emphasized that freedom of association, as enshrined in the Convention, was a fundamental right that was essential for the realization of all other rights. This right included, on the one hand, the right to associate with other workers to establish trade unions and, on the other hand, the right to take collective action. The Committee of Experts had reported violations of the Convention by the Government of Botswana on several occasions, for which reason it had been included in the list of individual cases and needed to provide detailed responses to the allegations. Acts of favouritism towards trade unions was one of the most insidious and dangerous violations of the Convention, as it led to division and contention within workers' organizations. Moreover, the favouring of one organization to the detriment of others was an indirect violation of the right of workers to join organizations of their own choosing.

Regarding the need to amend the legislation to allow workers in the prison service to join a trade union, the Government considered that the prison services formed part of the disciplined forces and that they could therefore be excluded from the protection afforded by the Convention in the same way as the police and the armed forces. In this respect, the Worker members emphasized that the exception set out in Article 9 of the Convention for the armed forces and the police had to be interpreted restrictively, as indicated by the Committee of Experts in the 2012 General Survey on the fundamental Conventions. It was the nature of their work that meant that public servants in the prison administration were covered by the exception, not the fact that they were subject to special disciplinary regulations. Furthermore, the police, the armed forces and the prison service were governed by separate legislation.

Concerning the long list of essential services contained in the Trade Disputes Bill, to which the Committee of Experts had referred, the Workers emphasized that several services on the list could not be considered essential services, that is, those services whose interruption would endanger the life, personal safety or health of all or part of the population. Furthermore, the provision enabling the Minister to declare any other service essential if its interruption harmed the economy was arbitrary in nature and contrary to the Convention. This provision rendered the right to engage in collective action completely meaningless, as any action of a certain scope would inevitably have an impact on the national economy. The legislation must therefore be amended in order to limit the list of essential services.

Regarding the thresholds of representativity required for the granting of certain facilities to trade unions, the establishment of such thresholds was not in itself contrary to the Convention. However, this possibility was subject to conditions (the specific and objective nature of the criteria, or the distinction being limited to certain privileges). In this

case, the legislation did not establish a minimum number of members as a requirement for the establishment of a trade union, but as a requirement for the granting of certain privileges, such as access to the premises of an enterprise to recruit members or the representation of members in the event of a complaint, disciplinary measures or dismissal. These two elements were fundamental aspects of trade union activity. Without them, it would be almost impossible for a trade union to recruit members and to establish itself within an enterprise. Workers would therefore no longer be able to choose their trade union freely.

The Worker members referred to another legislative provision that was in violation of the Convention and would need to be amended, namely the provision authorizing the trade union registrar to inspect the books and documents of a trade union "at any reasonable time". This measure constituted interference in the activities of organizations that was contrary to the Convention, as controls by the authorities should only be carried out in exceptional cases and according to strictly defined criteria. Organizations needed to benefit from the necessary autonomy and independence.

In 2005, the Committee of Experts had welcomed the efforts made by Botswana to ensure a more effective application of the Convention. It was to be hoped that there would be further progress in relation to the various points outlined above so as to ensure full respect for freedom of association.

The Worker member of Botswana expressed support for the Committee of Experts' conclusion that prison staff were not members of the disciplined forces and were therefore being unjustly denied the right to organize and bargain collectively. No court ruling had held that prison staff belonged to the disciplined forces. The recent amendments to the Trade Disputes Act had significantly enlarged the definition of essential services. In April 2011, the public service unions had gone on strike and demanded a salary increase when no agreement had been reached through negotiation. In response, the Government had quickly introduced legislation seeking to categorize a number of services as essential, including the teaching services and the diamond cutting and polishing services. That legislation had subsequently been ruled unlawful by the judiciary. In 2016, despite the strong opposition of trade unions, amendments to the Trade Disputes Act had been adopted extending the list of essential services from 10 to 16 services, some of which did not fall under the definition of essential services in the strict sense of the term. Those amendments had opened the door for the classification of the whole economy as essential, in providing that all other services that were necessary for the operation of the services listed were also considered essential. Both workers directly involved in the services listed as essential and those working in supporting services were affected, including workers in the public, parastatal and private sectors. Moreover, the amended Act prohibited all workers in essential services from participating in a strike, which aimed to prevent the use of strikes as a bargaining tool. Those provisions had not been enacted pursuant to court rulings. Section 46(2) of the Trade Disputes Act as amended also authorized the Minister to declare more services essential after consulting the Labour Advisory Board if a strike lasted more than seven days. That was unacceptable, as consultation of the Labour Advisory Board had often been a formality. The industrial relations situation in the country was deteriorating, as evidenced by the newly proposed amendments to the Public Service Act, which would be presented before Parliament in July 2017. The proposed amendments sought to deprive public employees of the right to bargain. Section 72 of the proposed amendments provided that the Department of Public Service Management would be the secretariat of the Public Service Bargaining Council (PSBC), and that would enable the Government to take control of the Council. In addition, section 74(4) of the proposed amendments authorized the Minister to appoint the Chairperson and Vice-Chairperson of the Council without any consultations with, or agreement of, the trade unions. The proposed amendments would also allow salary increments to be granted without the Council's approval. Those changes, if adopted, would render collective bargaining in the public service useless. He urged the Committee to call upon the Government to comply with its international obligations.

The Government member of Swaziland, speaking on behalf of the member States of the Southern African Development Community (SADC) acknowledged the efforts of the Government. ILO technical assistance had commenced with a view to achieving compliance with the Convention, and this assistance should continue. Meaningful and constructive social dialogue was encouraged among all the partners involved in ensuring full compliance with the Convention, taking into account the socio-economic situation of the country. The Government should be given the opportunity to continue the internal review process of the relevant national legislation in an effort to ensure full conformity with the Convention, and the necessary technical assistance should continue.

The Worker member of Zimbabwe stated that the Trade Unions and Employers' Organizations Act violated labour rights. Sections 11 and 15 of the Act prohibited unregistered trade unions from conducting any operations. However, the Committee of Experts had previously recommended that the activities of unregistered unions should not be totally banned and that an opportunity should be provided to rectify the absence of formal registration, by virtue of Article 2 of the Convention. Moreover, section 27 of the Act required that trade unions and employers' organizations conduct "a general meeting" by convening all members of the concerned organization, which was difficult to achieve in practice. Trade unions must have the right to regulate their own operations through their constitutions. Stipulating such conditions was inconsistent with the requirement of Article 3(1) and (2) of the Convention and amounted to interference. The Trade Unions and Employers' Organizations Act also granted excessive authority to the registrar. Pursuant to section 43 of the Act, the registrar could interfere in the operations of a trade union by inspecting its books without cause. The Government had a duty to ensure transparency, but there were no guarantees of an impartial procedure by the competent judicial authorities. It was regrettable that those provisions, which interfered with the autonomy and financial independence of trade unions, had not been amended despite the repeated recommendations of the Committee of Experts. Consequently, the Government must be called upon to adhere to its international obligations.

The Government member of Malawi took note of the Government's statement regarding the challenges surrounding the practical application of the Convention. She commended the Government's efforts, particularly its request for ILO technical assistance with the labour law review, to address certain gaps with a view to guaranteeing the constitutional right to freedom of association. The ILO should provide the support necessary to fulfil the country's obligations. She encouraged the Government to engage in meaningful consultation with the social partners and stakeholders to align the labour laws with ILO Conventions.

The Worker member of Norway, speaking on behalf of the trade unions of the Nordic countries, expressed disappointment that the new Trade Disputes Act limited the fundamental rights of many workers. Prison workers were prohibited from joining trade unions. Section 46 of the Trade Disputes Act as amended enumerated a broad list of essential services, and other services could be added at the Minister's discretion. This affected approximately

20,000 workers and appeared to stifle trade union activities. Botswana's tripartite Labour Advisory Board currently only advised the Minister. Instead of imposing restrictions, the Government should enhance dialogue with the social partners on the basis of trust and respect, and agree on a roadmap for cooperation. The right to organize for all workers was not antithetical to an agreement as to what constituted essential services. In conclusion, the Government should promote the development and use of collective bargaining mechanisms and laws in both the private and public sectors, and widen the scope of workers covered by effective collective bargaining agreements.

The Government member of France referred to the problems identified by the Committee of Experts regarding, on the one hand, obstacles to the free exercise of trade union activities, particularly the prohibition on prison staff joining trade unions and, on the other hand, the very broad definition of essential services, which excluded many workers from the exercise of the right to strike. Freedom of association and specific provisions permitting the full exercise of this right, through effective and balanced social dialogue or through protections and facilities granted to worker representatives, were essential. Moreover, the right to strike was an essential element of freedom of association and it was important to recall the importance of respect for that right in the context of the application of the Convention. He invited the Government to take into account the requests made by the Committee of Experts with respect to amending the legislation on labour disputes and the public service in order to enable workers whose duties could not reasonably be classed as essential services to freely exercise trade union activities.

An observer representing Education International (EI) noted with concern the inclusion not only of teachers but of support staff on the list of essential services in section 46 of the Trade Disputes Act, as amended. As outlined in the 2012 General Survey of the Committee of Experts, the restriction of the right to strike should only be limited to those services whose interruption would endanger life, personal safety or health, and teachers did not fall within that definition. During a lengthy strike, the possibility of establishing minimum services in consultation with the social partners made the inclusion of education on the list even less necessary. The core value of respect for teachers must be reflected in appropriate working conditions as well as in freely negotiated collective agreements, for which the ability to strike was fundamental. Unions had been given only three days to make written submissions on the draft amendments to the Public Service Act, without any face-to-face consultations. Nonetheless, the amendments had been gazetted and would be submitted to Parliament in July 2017.

An observer representing the International Transport Workers' Federation (ITF) recalled that, as clearly enunciated by the Committee of Experts, the essential services enumerated in section 46 of the amended Trade Disputes Act did not constitute essential services in the strict sense of the term. Transport generally did not constitute an essential service. Other than air traffic control, the transport occupations listed in the Act, namely the operational and maintenance services of the railways and the transportation and distribution of petroleum products, did not constitute essential services. Furthermore, the broad classification of the services necessary to operate essential services as also being essential services would invariably capture the majority of transport operations in the economy. Harm to the economy caused by the interruption of a service was insufficient to consider it as an essential service and this would limit collective bargaining. For example, the majority of members of the ITF-affiliated rail union workers in the state railways operations, engineering, finance and IT departments, were all covered by the essential services provision. Moreover, the Government had failed to give compensatory guarantees for workers deprived of the right to strike. The Government had not even considered the introduction of a negotiated minimum service as a possible alternative to a total prohibition on strikes. The new essential service provisions made it more difficult for transport workers to take action in defence of their jobs, livelihoods and working conditions. Echoing the comments by the Government member of France, he recalled that the right to strike was a human right protected in international law, not only covered by the Convention, but also recognized now as customary international law. The Government was therefore urged to comply with the observations of the Committee of Experts in order to bring the amended Trade Disputes Act into conformity with the Convention.

The Worker member of South Africa, speaking on behalf of the Southern Africa Trade Union Co-ordination Council (SATUCC) and its affiliates in the SADC, recalled that the Trade Disputes Act and related legislation, such as the Public Service Bill and the Prison Act, subjected workers to a labour market system in which organizing and bargaining were viewed as contradictory to progress. Botswana illustrated a tendency to restrict workers' rights in the race to diminish labour standards. Botswana had for some time been ambivalent regarding labour rights and the freedom to express contending views. There was a regional trend to erode gains made by workers and seemingly to test problematic legislation which restricted workers' rights. When the Trade Disputes Act had been adopted, it essentially eliminated the right to strike and the means to bargain. The Committee should call on the Government to respect the unequivocal and unambiguous provisions of the Convention regarding the rights of workers to organize. Ratifying a Convention without adapting national law was in violation of international law.

An observer representing Public Services International (PSI) noted that the Government had started a wide-ranging process of revising the labour legislation in the country. Certain provisions of the new Public Service Bill were not fully in line with ILO principles on freedom of association and collective bargaining. Section 3(2)(c) of the Bill excluded some categories of workers from unionization. This included "members of staff" of the Directorate of Intelligence and Security. The term "members of staff" had a broad meaning, which would exclude support staff such as labourers and cleaners. Section 19(2) excluded, among others, persons who had been convicted of a criminal offence from joining the public service. The term "criminal offence" was also broad and it might prevent, for example, a person convicted of a speeding offence from joining the public service. Section 50 banned political expressions in the public service but was silent as to what constituted a political matter. According to ILO principles, workers should enjoy civil liberties and freedom of political expression. Section 61 removed the power of the PSBC to settle disputes or grievances of whatever form. Sections 72 and 74(4) of the Bill gave power to the Directorate of Public Service Management and the Minister to appoint the secretariat, Chairperson and Deputy Chairperson of the PSBC, respectively. The Constitution of the PSBC currently conferred that power to the Council itself. Section 74(3) provided that representatives of both the worker and employer shall be public officers. That restriction limited the ability of both parties to be represented by experienced negotiators of their choice and was contrary to Article 3 of the Convention. Section 75 gave the employer the power to unilaterally change terms and conditions of service without input from the PSBC, or even from workers. Finally, section 76(2) gave the employer the possibility of conferring benefits during ongoing negotiations, which short-circuited the bargaining process and might be contrary to the duty to bargain in good faith. The revision of the labour

legislation in Botswana was a great opportunity for the Government and the social partners to adopt legislation in line with ILO Conventions. In that process, consultations with representative trade unions were of the utmost importance for constructive labour relations and to maintain the social peace. He requested that the Government keep working with the ILO and that there be a formal process of consultation with trade unions representing public sector workers.

The Government member of Zimbabwe expressed support for the statement delivered by the Government member. Consultations were ongoing with a view to aligning legislation with the ILO Conventions. The Committee should afford the tripartite partners an opportunity to undertake these consultations in earnest. The issues raised by the Committee of Experts provided a good platform through which the tripartite constituents in the country could continue to engage. Issues around labour law reform and social dialogue required the collaboration of the tripartite partners. The speaker encouraged the ILO to provide the necessary support in order to achieve the desired objectives.

The Government representative acknowledged the contributions to the discussion as helpful and indicated that some issues raised by members of the Committee had not been factual. For instance, all registered trade unions had the right to organize and no trade unions were favoured by the Government. All trade unions were subject to the labour laws and could have recourse to established trade dispute resolution mechanisms and the courts of law. He did not agree with the statement by the Worker member of Botswana that consultations in the Labour Advisory Board were superficial. Botswana had ratified 15 ILO Conventions as a result of the advice of the Board. He fully agreed with the position of the Employer members regarding the need for a holistic review of the labour laws. The Government also undertook to further engage with the social partners to clarify certain issues during the labour law reform process. The necessary time must be given for consultations to take place.

The Worker members reaffirmed that the inclusion of the case in the list of 24 individual cases, which was agreed by consensus, was fully justified. Violations had been clearly identified by the Committee of Experts since 2001, and it was to be hoped that the Government would make every effort to meet its international obligations. To that end, it must, inter alia: (i) refrain from any action that had the consequence of favouring one organization to the detriment of others; and (ii) amend its legislation to enable all workers in the prison administration to join a trade union and to limit the list of essential services. In that regard, it should be recalled that, in their Joint Statement of 2015, the Employer and Worker members had recognized the right to take collective action. The fact that the concept of essential services was being discussed meant that limits could be placed on that right, on the basis of the Joint Statement. Furthermore, the consequences of allowing a State to consider a service as essential if its interruption harmed the economy were twofold: it called into question the right of workers to take collective action and it contradicted the main objective of the Organization by subordinating the achievement of social justice to an economic imperative. In that regard, the statement by the Government member of France, to the effect that the right to strike constituted an essential element of freedom of association, was to be welcomed.

With regard to the privileges granted only to trade unions representing one third of employees in an enterprise, the Government should either review this limit or review the privileges granted to such unions. Those privileges prevented the development of trade union pluralism. Lastly, the Government should repeal the provision allowing the trade union registrar to inspect a union's books and documents at "any reasonable time". To give effect to these reforms, the Worker members called on the Government to avail itself of ILO technical assistance and to establish a workplan in collaboration with the social partners.

The Employer members stated that they were in agreement that the determination of the list was a consensual process. They reiterated that the Committee of Experts had been correct to indicate that the legislative provision providing for the inspection of accounts, books and documents of a trade union by the registrar at "any reasonable time" should require no more than periodic reporting. Disagreement existed on the issue of essential services and on the right of those services to take industrial action. Disagreement existed with respect to the existence of the right to strike under the Convention. In that respect, the Government group statement of the 2015 Tripartite Meeting on the Convention in relation to the right to strike and the modalities and practices of strike action at national level had stated that the scope and conditions of the right to strike were regulated at the national level. That also applied to essential services. Noting the reference to the 2012 General Survey of the Committee of Experts, the Employer members stated that the contents of the General Survey had led to difficulties in the Committee's functioning for several years.

The Employer members indicated that the provision of technical assistance should continue. The holistic review of the legislation should also continue, particularly in light of the numerous pieces of legislation mentioned by various members of the Committee. The Government should then report back as to the outcome of the holistic review and the changes made.

Conclusions

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

Taking into account the discussion, the Committee called upon the Government of Botswana to:

- **take appropriate measures that ensure that the labour and employment legislation grants members of the prison service the rights guaranteed by the Convention;**
- **ensure that the Trade Disputes Act is in full conformity with Convention No. 87, and engage in social dialogue, with the further technical assistance of the ILO;**
- **amend the Trade Unions and Employers Organisations Act, in consultation with employers' and workers' organizations, to bring these laws into conformity with the Convention.**

The Committee called upon the Government of Botswana to develop a time-bound action plan together with the social partners in order to implement these conclusions. The Committee urged the Government to continue availing itself of ILO technical assistance in this regard and to report progress to the Committee of Experts before its next meeting in November 2017.

CAMBODIA (ratification: 1999)

A Government representative 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, the 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 inter-

national non-governmental organizations. The Government had reviewed and taken due note of the DCM conclusions and recommendations.

In connection with the murders of trade unionists, the Government deeply regretted and shared its profound sorrow for the loss of lives with the victims' families. It was committed to taking all necessary measures in line with 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 a 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 better access for 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 to expedite and conclude the investigation concerning the murder of trade union leaders, namely Chea Vichea, Hy Vuthy and Ros Sovanareth, pending before the Committee on Freedom of Association. 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 regretted the January 2014 events which were instigated by certain politicians by using the minimum wage as propaganda. As had been reported to the DCM, this incident was a riot, did not fall under the strike definition provided by international labour standards and was accompanied by violent actions and destruction of public and private property. When facing such incidents or threats to harm the 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 the relevant court decisions.

Regarding legislative issues, the newly adopted Law on Trade Unions (LTU) aimed to: protect lawful rights and interests of all persons covered by the Labour Law; as well as air and maritime transportation personnel; ensure collective bargaining rights; promote harmonious industrial relations; contribute to the development of decent work; and enhance 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 already been discussed. To make it easier for a newly established trade union to register, the MLVT had simplified and reformed the registration procedures. In particular, the LTU shortened the registration period of 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 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 set out the relevant 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 process. 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 the 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 requirements for forming a union under the LTU, they could still join an association whose mission was to safeguard their rights and interests. Similarly, civil servants enjoyed and exercised their freedom of association under the Law on Associations and Non-Governmental Organizations (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 Statutes 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 consultation. 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 to address all the 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 had been 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 ILO support and technical assistance. Recognizing the effectiveness of the Arbitration Council, the Government was willing to promote its role by empowering this institution to hear individual disputes. The draft law would 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 members 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 a 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 register as NGOs, this did not ensure the extension of trade union rights to them. The highly burdensome union registration process set out in the LTU and its accompanying regulations was of concern. The regulations required applicants to fill out numerous forms and provide excessive information, much of which was irrelevant, concerning not only workers, but also their extended family. In many cases, neither the Government nor the employer had provided workers with the information necessary to complete the application. Applications had been denied due to 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 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 its registration. This was an extraordinary interference in trade union activities and was a violation of the Convention.

The provisions of the LTU on the most representative status (MRS) was also of serious concern. Only an MRS union, possibly representing as little as 30 per cent of its 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 this 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. This had 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 had 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 the Arbitration Council under newly created labour courts, which were likely to be influenced by the executive branch. Moreover, the draft provided for excessive fines, which disproportionately targeted workers 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) and the prohibition on conducting 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, kept those charges pending 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 no one had been held responsible for the violence against those who took part in the 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 murders 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 Council, which had interpreted the law to prohibit fixed-term contracts beyond a total of two years, and had attempted to extend their use for an even longer period. In conclusion, the Worker members strongly urged the Government to respect the Convention in law and in practice.

The Employer members 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 of the case and all issues had already been discussed previously. They noted that a DCM had visited the country and wished that its report had been circulated. They also 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 inadequate recognition of the right to organize of teachers, civil servants and 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 that expeditious and independent investigations be carried out 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 trials, the Government had provided information on the work of the following three bodies, indicating that: (i) the Damages Evaluation Commission had 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 an 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. They considered that the murders would be linked to freedom of association only if it could be shown that these were committed in order to frustrate freedom of association; otherwise they should be dealt with as criminal matters. 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's 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 such details it could only be recommended that all facts be made available to the competent authorities so that they could be examined.

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 to 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. They noted the Government's indication that section 36 of the Law on 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. Nevertheless, the Employer members considered that some of the LANGO provisions contravened freedom of association rights of civil servants by subjecting the registration of their associations 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.

Lastly, 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 ILO technical assistance, the law on labour procedure of the Labour Court was in the drafting process and 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.

In conclusion, 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 stated that since the entry into force of the LTU in May 2016, freedom of association had been further reduced. A whole new set of requirements had been established, such as the type of information to be supplied, which included the employment book, social security number, the names of the leaders and their phone numbers, and particulars of the spouse, parents and children. He stated that these requirements were excessive, unjustified and fear-inducing. Trade union registration could now be blocked simply because the required information had not been supplied. 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 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 maintained their registration status, or because they no longer were the most representative union. Employers had taken advantage of this situation to reject negotiation of collective bargaining agreements or dispute resolution. He indicated that the problem before the Committee concerned the implementation of this new piece of legislation, rather than a lack of ministerial regulation. 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 economy. Workers in the informal economy could not produce their employment information and were in effect excluded. Additionally, no steps had been taken towards reforming the Law on Common Statutes for Civil Servants nor the Law on Education, in order to ensure equal rights for public servants and teachers. Employers had continued to use short-term employment contracts and to terminate workers for joining trade unions. Judicial harassment was ongoing and violence had remained unpunished. Little action had been taken by the Government to implement the legal protection of trade unions, to clear or reduce the arbitration backlog, including in relation to 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 undermined further. 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 them 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 recalled that since Cambodia had been discussed by the Committee in 2010, the Government had shown strong commitment. A DCM had visited Cambodia in March 2017 and formulated recommendations in May 2017 to improve the situation. This did not give the Government sufficient time to implement the recommendations in time for the Conference. In respect of 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 frame within which this process should be implemented, given the short period that had elapsed since the recommendations had been 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 ILO technical assistance required one or two years. The recommendation to amend the LTU also required time, as did 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 speaking on behalf of the European Union (EU) (as well as the Candidate Country Montenegro, the former Yugoslav Republic of Macedonia, Serbia, Albania, Bosnia and Herzegovina, and Norway), 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 Interministerial 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 adopt it shortly, so as to ensure the 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 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 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 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 concerning arbitral awards which continued to hinder the reinstatement of independent unionists and which 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 La-

bour 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 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 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 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 kept pending 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.

The Government member of Switzerland said that Switzerland recognized the transparent and inclusive process carried out by the Government to adopt the Law on Trade Unions, particularly consultations with the opposition party and the organization of a public forum in March 2016. However, some provisions of the Law still gave cause for concern, and it was regrettable that no response had been received to previous requests – enabling the freedom of association to be exercised without violence and intimidation, ensuring compliance with the Convention in law and in practice, and ending impunity by prosecuting those responsible for the murders of and violence against trade unionists – as they remained valid. It was to be hoped that the Law on Labour Disputes Adjudication and the Law on Trade Unions would be brought into conformity with the Convention.

The Worker member of Australia stated that the Government had either directly participated in, or tacitly condoned, widespread 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 the Arbitration Council 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 official had resigned following threats to her parents by company representatives. Three local BWTUC leaders 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, jointly with the Canadian Labour 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 had 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 economy 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 was extremely difficult for informal economy 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 US$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 economy workers labouring in precarious industries the right to freedom of association is particularly concerning. The Committee had repeatedly commented that the LANGO did not provide equal trade union rights to public servants and informal workers. The LANGO was not an alternative to amending the applicable laws to provide 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 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 3,400 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 reopened.

The Worker member of France, speaking also on behalf of the International Transport Workers' Federation, said that freedom of association posed several problems in Cambodia and had a significant impact on the capacity of workers to engage in collective bargaining, and therefore on their working conditions and wages. While the Government was responsible for ensuring the application of international labour standards, enterprises were not necessarily exempt from responsibility: they had a duty of care throughout the whole supply chain. Unfortunately, a major construction enterprise was willingly contributing to the violation of workers' fundamental rights within the common enterprise through which it operated in the country's three airports and which, in 2012, had unilaterally made substantial amendments to the existing collective agreement, at the expense of the three trade unions represented in those establishments. On the grounds of creating a versatile workforce, the enterprise had started to harass workers in order to make them individually sign a so-called "voluntary" letter which rescinded all of the guarantees obtained for the period of the agreement covering 2011–13. Threats, intimidation, warning letters and discrimination then began to occur on a daily basis for those workers who refused to see their rights denied. The enterprise subsequently hired new, multi-skilled employees, who were prohibited from sharing the terms and conditions of their employment contracts with the three trade unions that were party to the agreement on wage scales and work task descriptions for 2004–13 and to the 2011–13 agreement. Employees had seen an increase in the volume and intensity of their work, a drastic reduction in overtime pay, the disappearance of promotion prospects and bonuses, and a two-thirds decrease in wages. At Siem Reap airport, the enterprise had prohibited strikes and regularly resorted to hiring workers on fixed-term contracts in order to break strikes. Voluntary corporate social responsibility, and in this case in a French multinational enterprise, was largely insufficient to guarantee fundamental rights within global supply chains. It was time to call for respect for fundamental rights in the supply chains of multinationals, respect for international labour standards and respect for the United Nations Guiding Principles on Business and Human Rights, and to support an ILO standard on decent work in supply chains. She expressed support for the initiative proposed by the Government of Ecuador for a binding United Nations treaty on business and human rights.

The Worker member of the Republic of Korea 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 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. 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 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 members stated that the Committee had received a great amount of information, some of which was new and much 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 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. In this regard, the Employers recalled their disagreement with the Committee of Experts' views concerning Convention No. 87 and the right to strike. They recalled the Government group's statement of March 2015 according to which "the scope and conditions of this right are regulated at the national level". Overall, social dialogue was the preferable course of action. The Government should be given time to address these issues internally.

The Worker members 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 this had been arbitrarily denied. Fixed-term contracts were commonly used to frustrate trade unions. These 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 previously. However, they noted that the Government had no intention of taking any measures to resolve the issues that the Workers group, the ILO and other UN bodies had raised. The report had been handed to the tripartite constituents in Cambodia and it was surprising to hear someone mention that the report had not been distributed. They hoped that it would also be sent to the Committee of Experts for its examination at its next session in November 2017. The Worker members urged the Government to formulate a roadmap together with all social partners in order to define time-bound actions to implement the recommendations of the Committee of Experts and the DCM.

Conclusions

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

The Committee expressed deep concern at the acts of violence which resulted in the death, injury and arrest of workers.

Taking into account the discussion, the Committee called upon the Government of Cambodia to:

- **ensure that freedom of association can be exercised in a climate free of intimidation and violence against workers, employers and their respective organizations;**
- **provide the reports of the three committees charged with investigations into the murders of, and violence perpetrated against, trade union leaders to the Committee of Experts, and ensure that the perpetrators and instigators of the crimes are brought to justice;**
- **ensure that acts of anti-union discrimination are swiftly investigated and that, if verified, adequate remedies and dissuasive sanctions are applied;**
- **keep under review the Trade Union Law, closely consulting employers' and workers' organizations, with a view to finding solutions that are compatible with Convention No. 87;**
- **ensure that workers are able to register trade unions through a simple, objective and transparent process;**
- **ensure that teachers, civil servants, domestic workers and workers in the informal economy are protected in law and practice consistent with Convention No. 87;**
- **ensure that all trade unions have the right to represent their members before the Arbitration Council;**
- **complete, in consultation with workers' and employers' organizations, the proposed legislation and regulations on labour disputes, in conformity with Convention No. 87, so as to ensure that the labour dispute settlement system has a solid legal basis that allows it to fairly reconcile the interests and needs of workers and employers involved in the disputes;**
- **develop a roadmap to define time-bound actions in order to implement the conclusions of this Committee.**

The Committee recommended the Government to avail itself of ILO technical assistance and to report progress to the Committee of Experts before its November 2017 meeting.

ECUADOR (ratification: 1967)

A Government representative referred to the earthquake of 16 April 2016 and its serious consequences just before the new President of Ecuador took office on 24 May 2017. He stressed the importance that the Government attached to the ILO and its supervisory bodies as well as to the compliance of ILO international Conventions. He said that it was the intention of the new administration to promote dialogue with the social partners and to seek joint solutions to labour issues through a tripartite approach. In the first place, he considered that serious and urgent cases should focus on situations that were of such a nature, and (serious violations of the human rights of trade unionists or their families), not merely administrative matters, such as those which had led to the discussion of the present case. He reiterated the call made by the group of Latin American and Caribbean countries (GRULAC) for cases to be selected on the basis of objective criteria and transparent procedures. The situation required systematic analysis of the whole applicable legal and institutional structure in a manner which addressed the observations and the recommendations of the Committee of Experts, which had not been seen in its treatment. Turning to the issues raised by the Committee of Experts, first in relation to collective bargaining in the public

sector, he said that the Government was in compliance with the indications of the Committee of Experts as it guaranteed the right to organize of public sector workers, which could establish trade unions. As proof that collective bargaining had not been eliminated in the public sector, he noted that the national competent labour authority had concluded 35 collective labour contracts since the publication of the constitutional amendments. Second, with regard to the comments of the Committee of Experts that penalties should not be imposed for participation in strikes, he indicated that the crime of the paralysis of a public service set out in section 346 of the Basic Comprehensive Penal Code did not in any event affect the right of association or of social protest, but was confined to punishing the illegal and illegitimate paralysis of a public service, which was in conformity with paragraph 158 of the 2012 General Survey of the Committee of Experts. There were no penalties in the case of strikes, which was a right of workers, although a sanction did exist in the case of the paralysis of public services, which related to a right of society, in accordance with Article 326.15 of the Constitution. Strikes and peaceful demonstrations, within the context of respect for the rights of citizens, were a worker's right set out in law, without any infringement of international labour Conventions. Third, with regard to the determination of the minimum services that were acceptable to call a strike, he indicated that the institutions responsible for determining minimum services in the event of disagreement between the parties were in compliance with the indications of the Committee of Experts. The labour inspectorate was an institution which exercised a first level of control over the lawful nature of disputes and immediately took on the role of facilitating the various processes, in agreement between workers and employers. In the case that no agreement was reached, a conciliation and arbitration board would be set up with representatives of workers and employers, to ensure total impartiality and the participation of the parties to the dispute. He added that the determination of an acceptable level of minimum services before a strike was called was necessary to guarantee the normal operation of basic services. The Government would, in any case, examine the possibility of adopting the recommendations of the Committee. Fourth, with regard to compulsory arbitration contained in Article 326.12 of the Constitution and Article 565 of the Labour Code which specified the procedure to follow for the resolution of collective labour conflicts, he considered that recourse to arbitration in collective disputes removed the possibility that matters covered by arbitration would be submitted to the courts, allowed the participation of the parties in the conciliation body and reduced the level of labour conflict. There was no evidence that the removal of arbitration reduced the level of labour conflict or affected further bargaining. Finally, he noted that the procedure of the compulsory purchase of redundancy was regulated, and its application was based on constitutional and legal provisions, and as such did not have the effect of anti-union discrimination.

The Worker members recalled that in 2016 the Committee had discussed the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), by Ecuador. With respect to the right to freedom of association, they referred to Case No. 2970 of the Committee on Freedom of Association, in which it was noted that the Government had gradually started dismantling the collective rights of public sector workers. An ILO technical mission had visited Ecuador in January 2015 and issued a number of recommendations, including on the right of public sector workers to establish trade unions of their own choosing. However, since then the situation had become worse. The Committee of Experts had repeatedly expressed concern over the limitations on the right of workers to establish organizations of their own choosing without previous authorization by state bodies. Regrettably, the Government had failed to amend Article 326(9) of the Constitution, which provided that for all purposes relating to industrial relations in state institutions, workers shall be represented by a single organization. Moreover, despite numerous requests by the ILO supervisory bodies and the 2015 ILO technical mission, the Government had continued to refuse the registration of the National Federation of Education Workers (UNE). The UNE had applied for registration in January and July 2016. However, both applications had been refused. On 18 August 2016, the Government had ordered the dissolution of the union and the confiscation of its assets. This decision had drawn heavy criticism from the special procedures of the United Nations Human Rights Council. Referring to the comments of the Committee of Experts, the Worker members called on the Government to take measures to immediately register the UNE and review its legislation in order to prevent the administrative dissolution of trade unions for expressing views on economic and social policy. The anti-union climate in the public sector was further aggravated by prison sentences imposed on workers in the public sector who engaged in peaceful strike action under section 346 of the Basic Comprehensive Penal Code. The restrictions on the right to freedom of association were sadly not limited to the public sector. The national legislation imposed excessive requirements with respect to the minimum number of workers required for the establishment of workers' organizations in the private sector. A legal provision introduced in 1985 had increased the minimum number of workers required to establish a union from 15 to 30. Most enterprises in Ecuador had fewer than 30 workers. The Government justified this provision by arguing that the minimum number of workers required to establish unions was kept high intentionally in order to ensure the representative nature of enterprise committees. While this might be a legitimate consideration when it came to the recognition of trade unions for collective bargaining, it was not an acceptable argument in relation to the establishment of trade unions. Furthermore, strict compulsory time limits on the convening of trade union elections infringed the right of workers to determine the rules governing the administration and elections of their unions. Trade union elections were an internal matter and needed to be regulated through union statutes. Thus, the compulsory time limits set by law constituted a violation of the Convention. In addition, workers who were not union members continued to be granted the right to stand for election as officers of enterprise committees under section 459(3) of the Labour Code. The Worker members stressed that the rules governing the election of Worker representatives should be set by the committees themselves and should not be imposed by law. This issue had still not been addressed by the Government despite repeated calls by the ILO supervisory bodies. The Worker members were deeply troubled by the lack of compliance with the Convention and the specific recommendations of the Committee of Experts. The Government was therefore urged to give serious consideration to the issues that had been raised on numerous occasions and to engage in tripartite dialogue at the national level.

The Employer members recalled, first, that they disagreed with the position of the Committee of Experts on Convention No. 87 and the right to strike. They added that the statement made by the Government group in March 2015 indicated that: "The scope and conditions of this right are regulated at the national level." They also expressed concern at the present case, in view of the number of times that it had been considered and that it involved a fundamental Convention. With regard to the application of the Convention in the public sector, they considered it dangerous for the Government to claim that the purpose of Article 326(9)

of the Constitution was to avoid the disorderly proliferation of workers' organizations since, according to the Committee of Experts, this position ran counter to Article 2 of the Convention. Trade union unity imposed by law, whether directly or indirectly, was in violation of the principles of freedom of association. Although such unity was desirable, it was a matter to be decided by the trade unions themselves using the methods they considered most fitting. However, it should also be borne in mind that Article 326(7) of the Constitution guaranteed the right and freedom of workers to establish trade unions, federations, associations and other forms of organization. More information was needed from the Government to understand exactly whether public sector workers in Ecuador enjoyed that constitutional guarantee in practice and established trade unions without any restriction. With regard to Executive Decree No. 16 of 20 June 2013, as amended by Decree No. 739 of 12 August 2015, which introduced the option of administrative dissolution for certain professional associations of public servants, they shared the view of the Committee of Experts. They agreed that the professional nature of such associations gave them the character of trade unions that was needed to enjoy protection under Convention No. 87, and that the above provision was in violation of Article 4 of the Convention. With regard to the observations of the Committee of Experts concerning the Basic Comprehensive Penal Code, the Employer members had decided not to comment on the issue in view of the reservation expressed at the beginning of their statement. With regard to the application of the Convention in the private sector, they recalled that the Committee of Experts took as its starting point the principle that workers should be free to establish the organizations of their own choosing and that the requirement for a reasonable level of representativity to sign collective agreements was not in contradiction with the ILO Conventions on freedom of association. With regard to the recommendation of the Committee of Experts to review the legal provisions concerning one of the institutions of collective labour law, they considered that the Government and the social partners should be called on to engage in social dialogue with a view to undertaking a comprehensive revision of all the elements of collective labour law. Bearing in mind that amending one provision in isolation always had repercussions on the others, the reform should be comprehensive so as to avoid creating a dysfunctional system. With regard to the deadlines for calling trade union elections, they shared the concern expressed by the Committee of Experts that elections were an internal matter for the organizations concerned and should be governed by their by-laws, and the Government should provide more information on the application of this provision in practice. They also shared the concern of the Committee of Expert at the violation of the principle of the independence of workers, as contained in Article 459(3) of the Labour Code, as only workers affiliated to a workers' organization were entitled to decide on its governance structure. Finally, they emphasized that the Government and the social partners should undertake a comprehensive revision to ensure that the legal system was internally consistent, and should avoid isolated reforms that could result in contradictions with or violations of other international treaties.

The Worker member of Ecuador emphasized that the Government had maintained a firm and radical position on the right to freedom of association of workers, allowing them to establish associations, trade unions and federations. However, he recalled that those rights carried with them obligations and that in order to defend labour rights it was necessary to follow legal procedures. With regard to the UNE, he said that its members were public servants protected by the Basic Act on the Public Service and the Basic Act on Education and Intercultural Issues, but that they were not protected by the Labour Code. He recalled that the UNE had been founded in 1950 by agreement with the Ministry of Education and that, as such, if its members considered that their rights had been violated, they should take the appropriate legal action. He added that UNE members enjoyed the right to freedom of organization, in accordance with Article 326(7) of the Constitution of Ecuador. Lastly, he recalled that Ecuador had ratified 61 ILO Conventions, and invited the UNE to initiate dialogue with the new Government to resolve the current situation.

The Employer member of Ecuador recalled that freedom of association for workers, whether in the public or private sector, included the right to establish organizations of any kind, and that workers' organizations could only be dissolved by the will of their members. The Act governing the establishment of workers' organizations distinguished between the various types of organization and the minimum requirements for their establishment, with the aim of meeting the representativity requirement. In his opinion, freedom of association was not restricted by the fact of a country's internal legislation imposing requirements to guarantee a minimum level of representativity. He considered that the Committee of Experts was using a mistaken premise when it said that "the requirement of a minimum number of 30 members to establish enterprise unions in countries in which the economy is characterized by the prevalence of small enterprises hinders the freedom to establish trade unions." In Ecuador there were 5,860 workers' organizations, 72 per cent of which were in the private sector. Over the past decade, 83 organizations had been established every year, while in the preceding 68 years, the figure had barely reached 31. He emphasized that the root cause of the problem of unionization lay outside the formal economy. Any observation relating to freedom of association should be discussed with interest groups and in the general report of the collective bargaining institution, with a view to identifying its effects objectively and rationally, as recommending a change without consultation would seriously affect job creation and threaten the sustainability of the formal sector.

The Government member of Malta, speaking on behalf of the European Union (EU) and its Member States, as well as Albania, Bosnia and Herzegovina, Montenegro and Norway, said that the EU attached great importance to human rights, including freedom of association and trade union rights, and recognized the important role played by the ILO in developing, promoting and supervising international labour standards. The EU was actively engaged in promoting the universal ratification and implementation of the core labour standards, as part of its Action Plan on Human Rights, adopted in July 2015. The recent accession of Ecuador to the EU trade agreement with Colombia and Peru was welcomed. It was recalled that this agreement included commitments to effectively implement the fundamental ILO Conventions. He expressed concern at the allegations made by the trade unions reporting police violence in the context of a peaceful demonstration following the adoption on 3 December 2015 of amendments to the national Constitution, and the arbitrary detention of several persons, including the President of the Confederation of Workers of Ecuador, Mr Edgar Sarango. Referring to the comments of the Committee of Experts, three points should be highlighted: (i) the impossibility of establishing more than one trade union in state bodies; (ii) the fact that associations of public servants were subject to administrative dissolution or suspension; and (iii) the imposition of penal sanctions on workers participating in a peaceful strike. With respect to the first point, the Government was urged to ensure that the new provisions of the Bill to amend the legislation governing the public sector would fully respect the right of public servants to establish organizations of their own choosing for the collective defence of their interests. Second, the Government was urged to amend the legislation

and to take the necessary measures to ensure that occupational associations of public servants were not subject to dissolution, which prevented them from fully exercising their mandate of defending their members' interests. The EU also called on the Government to revoke its decision to dissolve the UNE in order to allow it to immediately exercise its activities. Third, as to the imposition of penal sanctions on workers participating in a peaceful strike, the Government was urged to amend the provisions of the Basic Comprehensive Penal Code commented on by the Committee of Experts so as to bring it into conformity with the Convention. In relation to freedom of association in the private sector, the EU called on the Government to take the following measures, as requested by the Committee of Experts: (i) amend the Labour Code to reduce the minimum number of members required to establish workers' associations and enterprise committees; (ii) amend Ministerial Decision No. 0130 of 2013 to ensure that the consequences of any delay in convening trade union elections were set out in the by-laws of the organizations themselves; and (iii) with regard to the election of workers as officers of the enterprise committee who were not trade union members, amend the Labour Code in order to bring it into compliance with the principle of trade union autonomy. It was also suggested that the Government facilitate the organization of trade unions at the sectoral level. In conclusion, the EU called on the Government to avail itself of the ILO's expertise and to comply with its standards-related obligations.

The Government member of Panama, speaking on behalf of the group of Latin American and Caribbean countries (GRULAC), thanked the Government for the information it had provided on the application of the Convention and highlighted the commitment to the ILO's supervisory system expressed by the current Government, which had taken office on 24 May 2017, as well as its call to the social partners to engage in dialogue. The Government's replies had clarified issues on which the Committee of Experts had requested further details. In that regard, the Government had indicated that, by virtue of the amendment to Article 229 of the Constitution and the reform of Article 247 of the Labour Code, the right to freedom of association for workers in the public sector was guaranteed. Similarly, Ecuador had shown that collective bargaining had not been eliminated in the public sector, as demonstrated by the 35 collective agreements signed between public sector employers and workers since the Constitutional amendment had been published in December 2015. With regard to the comments of the Committee of Experts that penalties should not be imposed on those who participated in peaceful strikes, the Government had clarified that such a situation would only occur if there was an illegal and illegitimate interruption of a public service that fell outside the relevant procedures for the exercise of the right to strike. Among the progress that Ecuador had made in labour matters, emphasis should be placed on the Labour Justice Act, which had entered into force on 20 April 2015, and included concepts such as unjust dismissal to protect trade union leaders carrying out their activities as representatives of workers' organizations. He reiterated GRULAC's call to the Committee of Experts to select cases for discussion by the Conference Committee using objective and transparent mechanisms that took into account the severity of the facts and to ensure that their recommendations were clear, concise and, above all, achievable.

An observer representing Education International (EI) expressed regret at having to appear before the Committee once again to describe the systematic violation of the trade union rights of UNE and the process of its destruction by the Government. She claimed that the Government had: (i) revoked UNE's right to check off union dues in 2009, and had still not restored that right despite calls from the ILO; (ii) denied registration of the new UNE board, despite it having met all the necessary requirements; (iii) proceeded, on the basis of Executive Decree No. 739 of 12 August 2015, to the administrative dissolution of UNE, in violation of Article 4 of Convention No. 87; (iv) closed offices and requisitioned two of UNE's main buildings in Quito and Guayaquil, with the intervention of the national police; and (v) liquidated assets that had belonged to UNE for 73 years, initiating the sale of various buildings. She added that the Government had created, financed and promoted a different organization, known as the Teachers' Network, which was the only organization of primary school teachers in the country recognized by the Government as being representative, despite the fact that it was presented abroad as merely an educational organization. In recent years, the Government had dismissed more than 20 union officials because of their union activities, the most recent cases being those of Juan Cervantes, national Vice-President (August 2016) and Glenda Soriano, President of UNE in Guayas (March 2017). She requested the Committee to appoint a high-level tripartite mission to verify the information provided and to urge the Government to restore the long list of UNE rights that had been violated, including its right to administer the pension fund. She emphasized that dialogue was the best way of resolving disputes and finding lasting solutions, and she hoped that the route of dialogue would avoid another appearance before the Committee the following year.

The Government member of Cuba agreed with the statement by GRULAC. She recalled the social progress made in Ecuador, as reflected in the reduction of poverty, the inclusion of vulnerable groups in national life and support for girls, adolescents and women. She indicated that labour issues in Ecuador focused on the eradication of the worst forms of child labour and the establishment of social security for women performing unpaid work in the home and those in domestic work. She emphasized that the Government had repeated its call to the social partners to initiate a social dialogue, and that it was necessary to grant the new Government time to resolve the issues raised.

An observer representing Public Services International (PSI) said that he was also speaking on behalf of 11 trade union federations and two trade union confederations in the public sector, which were affiliated with PSI in Ecuador, and on behalf of the United Workers' Front (FUT) and eight allied organizations from the public sector, which represented workers in universities, the legislative body, the electricity sector and firefighters. He regretted that all of these organizations had been adversely affected by the labour counter-reform in the public sector, which had been carried out by the Government over the preceding ten years. He emphasized that violations of Articles 2, 3 and 4 of the Convention were systematic in Ecuador, and had become the policy of the previous Government. The Government had interfered in trade union organizations through threats, dissolution and the imposition of conditions on their action plans, as noted by the Committee of Experts on various occasions. Furthermore, in October 2008, an administrative and unilateral review of all public sector collective agreements had been initiated, on the pretext of removing clauses that were considered privileges, with no possibility of recourse, and no referral to the courts. Nevertheless, he expressed his willingness to pursue a process of dialogue with the Government of Ecuador, which would include workers from all sectors in Ecuador, with emphasis on public employment, and with ILO assistance, which would be binding in nature. He urged the Government to accept an ILO tripartite mission as the beginning of a new stage of dialogue.

The Worker member of Colombia expressed concern at the complaint submitted to the Credentials Committee of the International Labour Conference by six national trade

union confederations because they had not been taken into account with a view to participation in the Conference. He emphasized that Governments needed to comply with ILO Conventions, irrespective of their political views. He considered that Article 326(9) of the Constitution of Ecuador was contrary to trade union pluralism and recalled that the Committee of Experts had urged the Government to take the necessary measures immediately to ensure that, in accordance with Article 2 of the Convention, the legislation fully respected the right of public servants to freely establish organizations of their own choosing. He added that the legislative reform of 1985, which had increased the minimum number of workers required to establish a trade union from 15 to 30, had resulted in a decrease in the number of trade unions. Lastly, he considered it necessary to request the ILO to carry out a tripartite mission.

The Government member of Switzerland indicated that her country supported the statement made by the European Union. She emphasized that the independence and freedom of the social partners were essential to achieve effective social dialogue and to contribute to economic and social development, in both the public and private sectors. Expressing concern about the restrictive rules governing social dialogue and the interference of the State in the affairs of the social partners, she encouraged the Government to follow the recommendations of the Committee with a view to guaranteeing freedom of association, in both law and in practice.

The Government member of Nicaragua endorsed the GRULAC statement and thanked the Government for the information provided, which had clarified some matters on which the Committee of Experts had requested further details. In that regard, he recalled that the Government had replied to the comments and observations of the Committee of Experts on various occasions but that, even so, its replies had not been taken duly into account. For example, questions were being asked about the fact that, under Ecuadorian legislation, a minimum of 30 people was required to establish a trade union, when in other countries, the minimum required was higher. At the same time, the fact that the current Government had taken office only recently meant that it should be given time to assess the labour situation in the country. In that regard, he welcomed and reiterated the Government's call to the social partners to engage in tripartite dialogue.

An observer representing the Confederation of Workers of Universities of the Americas (CONTUA), also speaking on behalf of PSI, while highlighting the awkwardness of raising difficult political issues against a Government with which it shared many objectives, said that nothing could justify failure to comply with international labour standards, which were the basis of labour rights. There were serious problems in Ecuador regarding collective labour relations, including explicit interference, specifically coordinated by the Government, with trade unions through laws, intimidation and anti-union discrimination which aimed primarily at undermining independent trade unionism. These policies had resulted in the imposition of penalties and dismissals, particularly on public sector trade union leaders, the almost complete eradication of public sector collective bargaining, and the extremely serious situation of UNE. Despite that critical situation, the arrival of a new Government in Ecuador could be a positive sign. The Government was therefore called on to be open to dialogue and a tripartite mission. He noted the forthcoming visit to Ecuador of the PSI General-Secretary, Rosa Pavanelli, from 16 to 22 June, to meet the Ecuadorian authorities at the highest level and support affiliated trade unions and professional organizations, with a view to restoring rights.

The Government member of the Plurinational State of Bolivia endorsed the GRULAC statement. He emphasized that both the Constitution and the national legislation fully guaranteed the right to freedom of association and suggested that the Committee of Experts should be more meticulous and exhaustive in its methods of work, especially when it questioned the content of constitutional provisions. With regard to Article 346 of the Basic Comprehensive Penal Code, he considered that this provision did not imply the criminalization of strikes, but of violent acts that interrupted public services. The provision should be interpreted in the light of the principle of last resort, and in accordance with human rights instruments, as required by sections 3 and 13.1 of the Penal Code. With regard to the dissolution of trade union organizations, he said that, by law, dissolution could only be requested by the members of trade union organizations, and not by the State or employers. He considered that an erroneous interpretation of the Convention that did not allow for any margin of discretion or regulation by the legislative bodies with respect to the exercise of freedom of association, did not contribute to social dialogue, and could damage trade unions themselves. He highlighted the Government's efforts to safeguard the right of citizens to have access to public services without any hindrance, and considered that an appropriate balance had been struck in Ecuador's current legislation. Lastly, he said that the increase in the number of registered trade union organizations demonstrated the Government's commitment to freedom of association.

The Worker member of Italy, also speaking on behalf of the Worker members of Austria, Belgium, Honduras and the United States, drew the Committee's attention to specific violations of the application of the Convention regarding banana workers in Ecuador. The banana sector was central to Ecuador's economy. However, the banana plantation structure was characterized by a large number of small (0–30 hectares) and medium-sized (30–100 hectares) producers, as approximately 79 per cent of all producers nationwide had farms that did not exceed 30 hectares and in many of them, the number of workers was under 30. Even in larger farms with more than 30 workers, many workers were often not employed directly by the farm, but had been subcontracted to undertake specific tasks such as packaging or fumigation. It was clear that this practice of subcontracting or limiting the number of employees to fewer than 30 was an elusive measure to prevent workers from attaining the legal number for the creation of a union. Despite the comments of the Committee of Experts, gross violations of freedom of association continued and the national legislation remained unchanged. Given the very specific structure of the Ecuadorian economy, the prerequisite of 30 workers to create a union was far too high and consistently denied freedom of association to hundreds of thousands of workers. The Government was therefore urged, in consultation with the social partners, to take the necessary measures to amend the Labour Code, and particularly sections 443, 452 and 459, to reduce the minimum number of members required to establish workers' associations and enterprise committees. The Government was also requested to set up an independent inquiry regarding the high number of anti-union actions relating to the establishment of trade unions at the company level and to undertake remedial action without delay, including in relation to the application to register trade unions. Without any further delay, the Government needed to apply the ILO Conventions it had ratified and the international rules to which it had subscribed.

The Government member of the Bolivarian Republic of Venezuela expressed agreement with the GRULAC statement and took note of the updated information provided by the Government, which demonstrated its commitment to the ILO supervisory system. He welcomed the Government's willingness to engage in dialogue with the social partners and recalled that, under Article 8 of the Conven-

tion, in exercising the rights provided for in the Convention, workers and employers and their respective organizations, like other persons or organized collectivities, should respect the law of the land. He welcomed the Government's invitation to engage in dialogue and expressed his conviction that, by that means, solutions would be reached on the basis of tripartite agreement. Lastly, he expressed the hope that the Committee's conclusions resulting from the debate would be objective and balanced, which would enable the Government to consider and assess them within the framework of the Convention.

The Government member of Canada indicated that her Government placed great importance on Convention No. 87 and strongly encouraged all member States to respect its provisions. In its comments, the Committee of Experts had noted a number of issues in Ecuador in relation to the application of the Convention. Moreover, in 2015 the ILO had made several recommendations following an expert mission to the country. Among these recommendations, the mission had urged the Government to register a new executive board for the UNE. The UNE had repeatedly tried to register its new board on several occasions without success. She was also concerned at the use of Executive Decree No. 16 of 20 June 2013, as amended by Decree No. 739 of 12 August 2015, to dissolve the UNE in August 2016, and that in March 2017, these Decrees were presented in draft legislation to the National Assembly to allow for greater state powers to dissolve non-governmental organizations. The Government was encouraged to ensure that any new legislation operated in conformity with the Convention to guarantee freedom of association and the right to organize.

The Government representative thanked all those who had participated in the discussion. Firstly, with regard to trade union organizations of public sector workers, he referred to the Basic Act to reform the legislation governing the public sector, published on 19 May 2017. The Act guaranteed the right to equality, freedom of association and to strike, and consequently addressed one of the concerns raised by the Workers. Second, with regard to unions in the private sector, he indicated that the issue of the minimum number and the extension of the time limits for the process of changing trade union executive bodies would be analysed taking into account the concepts of full employment, inadequate employment and the social capital of undertakings, in addition to the numerical and time requirements in each case. Third, with reference to the issue of the UNE, he said that the necessary administrative measures would be assessed so that the dispute with the Ministry of Education was addressed appropriately, although noting that the Ministry of Labour did not have a register, and had not initiated regularization or re-establishment procedures. Fourth, he called on all workers and employers to engage in a constant process for the reinforcement of tripartite dialogue. For that purpose, a national meeting would be convened with a view to designing, formulating, agreeing upon and implementing a minimum agenda of social dialogue, together with its tools, time limits and content. He hoped that, in exchange, the workers and employers would issue a formal statement on this subject. The Government would request the ILO to participate in the launching of technical labour round tables, and in the design of tripartite training programmes for the application of Conventions. Finally, he indicated that, from the moment that Ecuador became aware of its inclusion in the list of countries with double footnoted cases, at least five consultation meetings had been held at various levels with ILO officials, including meetings with Employer and Worker representatives at the Conference, with whom initial constructive contacts had been established.

The Employer members thanked the Government for the information provided. They recognized the efforts that the new Government was making, having taken up the reins of public administration only recently, but recalled that this circumstance was not an excuse for failing to comply with the country's commitments to the ILO. They considered that there were areas in which the Government could still provide further information on the application of the Convention in practice: specifically, the possibility for public sector workers to establish one or more workers' organizations in each administrative department at their own free will, as provided for in Article 326(7) of the Constitution and as developed in recent legislation adopted in May 2017. They urged the Government to provide a detailed report on that subject by 1 September 2017. They agreed that some labour standards should be reviewed, but on the basis of a comprehensive approach, without affecting the collective institutions established in labour law. This should be undertaken within the framework of social dialogue, through due consultation with the National Wage and Labour Council, on the basis of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). They concluded by recalling that the conclusions in the case should only cover those subjects on which there was agreement.

The Worker members sincerely hoped that the recent election in Ecuador would mark a turning point and the start of a full and frank dialogue with the country's social partners in order to achieve progress towards a number of serious and long-standing issues. The commitment expressed by the Government to start a process of consultation with the trade unions concerned in order to address the issues raised by the Committee was welcomed. Workers should not be obliged to join an organization established by law. Workers, both in the public and private sector, must have the right to freely pursue their collective interests. Moreover, the dissolution of the UNE was deeply troubling. The Worker members urged the Government to register the UNE without further delay, and to take the necessary measures to prevent the dissolution of workers' organizations for expressing their views on broader social and economic policies. Furthermore, section 346 of the Basic Comprehensive Penal Code should be amended and the Government was urged to refrain from criminally prosecuting peaceful participation in strikes. No worker should have to face criminal charges and penalties unless he or she committed violence or engaged in other serious violations of penal law. In addition, a number of laws in the country created enormous obstacles to the free functioning of trade unions in the private sector. In this regard, the Government should review and amend sections 443, 452 and 459 of the Labour Code and lower the minimum requirement to a reasonable number in consultation with the social partners. Questions relating to the internal rules and administration of trade unions should be left to workers and should not be set by law. The compulsory time limits for the election of trade union officials under section 10(c) of Ministerial Decision No. 0130 of 2013 and the election of non-union members as workers' representatives in enterprise committees under section 459(3) of the Labour Code required the close attention of the Government. Those provisions must be amended to be brought into line with the Convention. The Worker members expressed their disappointment at the lack of progress on those issues. Constructive social dialogue required the recognition of independent trade unions in all sectors of the economy. The Government was therefore urged to bring its law and practice into line with the Convention without any further delay.

Conclusions

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

Taking into account the expressed views, the Committee called upon the Government of Ecuador to:

- **ensure full respect for the right of public servants to establish organizations of their own choosing for the collective defence of their interests, including the protection regarding administrative dissolution or suspension;**
- **revoke the decision to dissolve the UNE and to allow the free functioning of the trade union;**
- **amend legislation to ensure that the consequences of any delay in convening trade union elections are set out in the by-laws of the organizations themselves;**
- **initiate a process of consultation with the most representative employers' and workers' organizations to identify how the current legislative framework needs to be amended in order to bring all the relevant legislation into compliance with the text of Convention No. 87.**

The Committee invited the Government to consider availing itself of ILO technical assistance in relation to the legal reform process. The Committee invited the Government to report progress in relation to the abovementioned recommendations to the Committee of Experts in 2017.

EGYPT (ratification: 1957)

A Government representative assured the Committee that his Government fully respected its obligations under all the Conventions it had ratified, including the Convention under examination, ratified in 1957. Based on its belief in the importance of trade union freedom for the realization of social peace and stability, as well as balanced labour relations, the Ministry of Manpower had issued a statement on the establishment of trade union freedoms, according legal personality to trade unions and providing for the receipt and deposition of their founding documents. Thus, 1,800 trade unions had been established at the enterprise level, in addition to 63 general trade unions and 24 trade union federations, which did not belong to the Egyptian Trade Union Federation (ETUF). These trade union organizations played their role in defending the rights and interests of their members, engaging in collective bargaining and concluding collective agreements, which had been registered and deposited at the Ministry. However, judicial decisions issued by administrative judges and the ordinary judiciary, as well as decisions by the Council of State, had not recognized the statement of the Minister of Manpower, as a ministerial decision could not override the Trade Unions Act No. 35 of 1976, which only recognized trade union organizations established in accordance with its provisions. Furthermore, the Civil Code, which provided the general legal framework for all labour legislation, did not recognize legal personality other than that established by law, and not by ministerial decision. Therefore, and in spite of the upheavals since 2011, the Government, since June 2013, had been fully determined to improve and correct the state of affairs, including with regard to trade union organizations, and it had thus taken measures to issue a law in this regard. The President himself had urged the House of Representatives to expedite the issuance of labour legislation, including the draft Labour Code and the draft law on trade union organizations, which would abrogate the current Trade Unions Act No. 35 of 1976, and thus also annul the judicial decisions referred to above. Although the protection of trade union freedoms was already enshrined in the Constitution of 2014, the new law had been drafted in an explicit manner, using the terms of "trade unions and federations" and not "the federation" as in the current law. The new law was to be considered complementary to the Constitution, as it undoubtedly granted additional protections and guarantees, while the Constitution itself was inspired by the international human rights treaties and Conventions which Egypt had ratified, including Convention No. 87. Article 76 of the Constitution thus provided that the establishment of trade unions and federations on the basis of democratic principles was a right guaranteed by law, and that they would possess legal personality, freely conduct their activities, contribute to enhancing the skills of their members, defend their rights and protect their interests. It further provided that the State guaranteed the independence of trade unions and federations, whose governing bodies could not be dissolved other than by a court judgment. Based on these constitutional provisions and the international Conventions ratified by Egypt, the Government had prepared a draft law, with due consideration to all the comments of the Committee of Experts and the ILO on the current Trade Unions Act. The Ministry had finalized the draft law on 24 April 2016, submitting it to the Council of Ministers which had in turn, approved it and passed it to the Council of State for its review. A copy of the draft law had been sent to the Director-General of the ILO to obtain the ILO's views on its sections. Comments received from the ILO had partly been integrated in the text of the law during its discussion by the Council of State, while responses had been provided on other comments. In April 2017, while the draft law was pending before the House of Representatives, the ILO had transmitted a second set of comments after having received the final version of the draft law. The Government had then invited a delegation of experts from the ILO International Labour Standards Department, which had visited Cairo in May 2017. An open discussion had thus been held on the technical comments, and agreement had been reached on the amendment of some sections of the law, which demonstrated Egypt's seriousness and its eagerness to move forward.

Still, in May 2017, the President of Egypt had urged the House of Representatives to pass the pending labour legislation. Subsequently, the Labour Committee of the House of Representatives had finalized the draft Labour Code on 28 May 2017, while it had commenced its discussion of the draft law on trade union organizations on 23 May 2017, in preparation for its submission to the plenary session of Parliament for adoption. The draft law on trade union organizations enshrined the principle of freedom of association for trade unions and federations, while guaranteeing their democratic nature and independence. In particular, it enshrined the freedom of workers to establish trade union organizations, and to join such organizations or to withdraw from them. The bill renounced the notion of the existence of a single trade union federation. It also provided explicitly that public authorities were to refrain from any interference that would restrict or impair the legitimate exercise of these rights. Furthermore, the draft law prohibited the dissolution of trade unions or their governing bodies, or the halting of their activities, by the administrative authorities or the competent Ministry. It also provided that trade unions, regardless of their level, should acquire legal personality, and abolished the unified hierarchical structure. With regard to some specific sections of the draft law on trade union organizations, he explained that sections 1, 4 and 13 provided for the possibility to establish more than one federation, ensuring trade union plurality, and the freedom to join any trade union or federation. Sections 14, 16 and 17 provided for the annulment of the provisions on a unified structure. Moreover, the draft law would make it possible for a trade union organization to formulate its own by-laws which regulates its relationship with a higher organization if it wished to join it. Sections 59, 60, 61 and 65 allowed trade union federations to draw up their own financial regulations. After submission of the draft law on trade union organizations to the House of Representatives, and following discussion with the ILO concerning the Committee of Experts comments on the Trade Unions Act, and the two sets of comments transmitted by the ILO on the bill, agreement had been reached. Already before the Conference, and during the meeting with ILO representatives in Cairo, the tendency had been to involve the representatives of independent trade unions in social dialogue on the draft law

in the Ministry of Manpower or the Labour Committee of the House of Representatives. Moreover, the presidents of the Egyptian trade union federations (the ETUF, the Egyptian Federation of Independent Trade Unions and the Democratic Union of Egyptian Workers) had signed a joint document with the heads of the employers' organizations in Egypt, in which they identified the provisions agreed upon in the draft law and affirmed their full faith in the principle of freedom of association as the basic element for the stability of labour relations in Egypt. In conclusion, he emphasized that: (i) the draft law on trade union organizations had passed through several stages, all with the consensus of the social partners and in full and continuous coordination with the ILO, in all transparency and clarity to ensure its compatibility with international labour standards; (ii) the most important reason behind the delay in its adoption was the absence of an Egyptian Parliament until the beginning of 2016, and the fact that the bill, being complementary to the Constitution, could not be issued by decree; and (iii) the Ministry had not frozen the activities or bank accounts of independent trade unions, since it considered it important to give them an opportunity to adjust their conditions and enter the umbrella of the new law. The new trade unions continued to freely conduct their activities, defend the rights of workers, engage in collective bargaining and conclude collective agreements. Finally, he questioned the basis and criteria applied for the inclusion of Egypt in the list of individual cases, while reconfirming the Government's seriousness and eagerness to realize social justice for workers, which was not possible without freedom of association, to which the Government was committed through its Constitution and the international Conventions it had ratified. Thus, he reaffirmed that the ongoing cooperation with the ILO had contributed to achieving the progress made in a very short time frame, and that the Government would continue on this path, in accordance with the Egyptian Constitution and ratified international Conventions.

The Employer members welcomed the information provided and appreciated the recent engagement of the Government with the social partners and the ILO as well as its stated intention to respect the commitment to ensure compliance with the Convention. The Committee of Experts had repeatedly commented on the Labour Code No. 12 of 2003 and had noted the formulation of a new draft Labour Code and the social dialogue taking place in this regard with employers' and workers' organizations. The Employer members recalled their disagreement with the comments of the Committee of Experts on Convention No. 87 and the right to strike. They also recalled the Government group's statement of March 2015 according to which "the scope and conditions of this right are regulated at the national level". The Employer members, highlighting their views on the subject matter, emphasized that industrial action could be regulated at the national level by the Government taking into account national circumstances. Furthermore, the Employer members made reference to the observation of the Committee of Experts that the final draft law on trade union organizations was expected to be finalized soon to replace the Trade Unions Act. Emphasizing that the discussions on the bill had been ongoing since 2011, the Committee of Experts had reiterated its comments on the Trade Unions Act, in particular concerning the single trade union system, the control exercised by the ETUF over other trade unions and the prohibition to join more than one trade union. The Employer members noted with interest the steps taken to date by the Government, in particular the completion of the draft law on trade union organizations in April 2016 in a process of social dialogue with the involvement of workers' and employers' organizations. In August 2016, the Government had received technical comments on the bill from the ILO, which had been discussed by the Council of State and had entailed certain amendments. In April 2017, a second version of the bill had been submitted to the ILO and a mission had been accepted in May 2017 to discuss the ILO's additional technical comments. In July 2017, the bill would be presented to the stakeholders in a process of social dialogue and would be submitted to Parliament in October 2017. The Employer members felt encouraged by the concrete steps taken by the Government, which illustrated its commitment to compliance with the Convention. They urged the Government to continue bringing the discussion forward so as to demonstrate the tangible results of its efforts, and invited it to continue working with the ILO in cooperation with the social partners so as to ensure that the draft legislation was in line with the express requirements of the Convention. The Government should provide updated information on all the measures taken in time for its examination by the Committee of Experts.

The Worker members emphasized that the commitments made by the Government to the Committee in 2013 concerning respect for freedom of association had not been given effect. It was true that the country had undergone a change of regime since then, but that could not justify the inertia for the past four years, with trade unionists having to wait so long for their country to be in conformity with its international commitments to guarantee freedom of association. This was aggravated by an unfavourable general situation, as the country had once again been in a state of emergency since 9 April, with important consequences for civil liberties. In addition, a new Act had been adopted on non-governmental organizations (NGOs), which contained provisions drastically tightening up the procedures for their establishment and imposed very serious penalties for violations of the law. Certain statements by the Government gave grounds for fearing that the principles of that Act would also be applied to trade unions. Several circulars intended to limit the freedom of action of independent trade unions had also been issued. Moreover, the Committee of Experts indicated in its report that it had received several allegations concerning the arrest and harassment of trade unionists. As it recalled in paragraph 59 of its 2012 General Survey on the fundamental Conventions, which also referred to the 1970 Resolution concerning trade union rights and their relation to civil liberties, in the absence of a democratic system in which fundamental rights and civil liberties were respected, freedom of association could not be fully developed. For the existence of genuine freedom of association, it was essential for the following rights to be established: (i) the right to freedom and security of person and freedom from arbitrary arrest and detention; (ii) freedom of opinion and expression, and in particular freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers; (iii) freedom of assembly; (iv) the right to a fair trial by an independent and impartial tribunal; and (v) the right to protection of the property of trade union organizations. The ILO supervisory bodies unceasingly recalled the interdependence between public liberties and trade union rights, emphasizing that the concept of a truly free and independent trade union movement could only develop in a climate free from violence, pressure and threats of any kind against the leaders and members of such organizations. The Worker members called on the Government to take all the necessary measures to guarantee all the aspects of freedom of association outlined above.

With regard to the legislative issues, the draft law on trade unions was being drawn up and would soon be adopted. An ILO mission had recently visited the country to provide technical views on the draft law and to discuss freedom of association in more general terms. It was necessary to be particularly vigilant concerning the following points: (i) the draft law contained, in section 2, a provision

placing the ETUF, the only trade union that was currently really recognized, in a more favourable position than other trade unions. The ETUF would maintain its legal personality under the new law and would only have to comply with certain additional measures, while independent trade unions would have to follow new procedures to obtain legal personality. To prevent this difference of treatment between trade unions, the only solution was for independent trade unions to be recognized as of now; (ii) apart from the exceptions set out in Article 9 of the Convention, the new law must not contain provisions which constituted in practice a prohibition for certain workers to join unions, for example on the grounds of their nationality or political views. The same applied to the right to join several unions; (iii) it should also be ensured that the new law did not contain any section that might impair the organization of the administration and activities of trade unions, contrary to the current provisions of the draft law, which set out measures for the control of their financial management by the trade union confederation. The introduction of the systematic financial control of their accounts by the public authorities, even through such a body as "a confederation of trade unions" or the Court of Accounts, was a violation of the Convention; (iv) finally, the new law would need to guarantee trade unions the right to draw up their by-laws and administrative rules, without any interference from the public authorities. This right was set out in Article 3 of the Convention and prevented the authorities from imposing requirements that went beyond generally admitted formal conditions, such as the need to comply with democratic principles and the establishment of a right of appeal for members. These various elements were covered by the observations in the report of the Committee of Experts. In any case, it would be useful for the comments made by the Office in the context of its technical assistance to be attached to the draft law when it was examined by Parliament, so that they could be taken into account. The ministerial circulars referred to above limited the freedom of action of independent trade unions. They prohibited dealings with these unions and also denied them the possibility of receiving dues from their members. This was a clear illustration of the ambiguity that reigned in the Egyptian Government. On the one hand, it stated that it wished to be in compliance with the Convention, and on the other hand, it was taking measures that were in breach of the instrument. Until the new law entered into force, independent trade unions would continue to be afflicted by these measures. The Government needed to bring an end to this situation without further ado, as the new law would only be implemented in several months' time. It was urgent to allow independent trade unions to be able to exercise their rights in full freedom. History taught that institutions could only achieve stability when they were founded on justice and respect for human dignity.

The Employer member of Egypt indicated that he did not share the view expressed by the Worker members. Egypt enjoyed social stability and peace, and there was good cooperation between the Government and the social partners. An agreement had been signed with the social partners and had been submitted to the ILO for comments. Freedom of association should not necessarily mean a proliferation of trade unions, which would inevitably lead to conflicts. There were 1000 trade unions and 26 federations with 5 million members in the country. Freedom of association should be guaranteed, but on a clear and well-regulated basis, in order to ensure that trade unions were representative. The draft law on trade union organizations guaranteed freedom of association for workers as well as for employers. The country was adopting new legislation after a period when Parliament did not exist. Parliament had started to function again in 2016, and this legislation could not be adopted by presidential decree. Egypt had ratified the ILO's core Conventions and the Government ensured their compliance. The Constitution of Egypt guaranteed the right to freedom of association and tripartism, and the Government did not interfere with independent unions. The Constitution also protected the right to strike. Steps had to be taken before strike action, but if they were followed, they were the only conditions to be met prior to a strike. While expressing his respect for the work of the Committee of Experts, he considered that it sometimes exceeded its mandate when addressing the right to strike and other issues under the Convention. The Committee of Experts needed to focus on the application of the Convention. More information and facts could also be brought to the attention of the Conference Committee. In his view, the Worker members had referred to facts that were inaccurate. Lastly, when a country was selected in the shortlist, it generated reaction in society. The Committee needed to take into consideration the political and economic situation of the countries concerned, and to define clear criteria for the selection of cases. A possibility would be to hear the Employer and Worker members from the country concerned before the adoption of the list.

The Worker member of Egypt denied that the state of emergency impacted on trade unions. It had been adopted to protect citizens, as innocent persons had been murdered. He confirmed the engagement of the social partners in tripartite dialogue, as reported by the Government. The delays in the elaboration of the draft law on trade union organizations and its adoption had been due to political, social and economic difficulties since June 2013. The Committee was asked to show understanding of the circumstances of the country. A new President and a new Parliament had been elected. Numerous draft laws had been submitted to the new Parliament. On 23 May 2017, a dialogue between the ETUF and the independent unions had been initiated and had led to the signature of a joint declaration that approved the draft law on trade union organizations. The Government and the employers had been informed of the joint declaration. The ETUF had taken the initiative to negotiate with all trade unions, since the draft law on trade union organizations constituted a major challenge for workers. The ETUF had submitted to the Government a number of modifications to the draft law that had been accepted. The Government had sent the draft law to Parliament, where it was under discussion and would be on the agenda this year. This draft law was consensual and constituted a new era for industrial relations in the country. It was time to revive the trade unions, in the context of the numerous legislative reforms that required harmonization. Egyptian unions wanted to train leaders to face this challenge and change from an old system to a new and modern one that would take into account the changes in labour relations. The workers of Egypt wanted to launch a new movement, and elections would take place to establish a new trade union. A memorandum of understanding had been signed between the ETUF, the independent unions and the federation of employers. This agreement benefited the country as a whole, the workers and the employers of Egypt. The draft law had been discussed by the three relevant stakeholders, and workers in Egypt were determined to watch over the adoption of a law that would protect freedom of association, in line with the Convention, and the Constitution of Egypt. He called on the Committee to take into account in its conclusions the efforts made by the Government, and in particular the tripartite discussions that had been conducted. The Committee was also called upon to note that the draft Labour Code addressed the question of the right to strike, an issue that should not be regulated by the legislation on trade unions. The country had experienced obstacles, but the situation had improved politically, economically and socially.

The Government member of Switzerland regretted that the Government had not given effect to the repeated requests to bring the Trade Unions Act into conformity with the Convention and emphasized the importance of trade union independence and diversity. Trade union plurality ensured representation of all tendencies. She hoped that the Government would bring an end to discrimination against trade unions and encouraged it to amend the Labour Code, in collaboration with the social partners, to give effect to the comments of the Committee of Experts. She added that it must be possible to engage in collective bargaining at all levels and reiterated her hope that the Government would quickly bring the Trade Unions Act into conformity with the Convention.

An observer representing the International Trade Union Confederation (ITUC) expressed concern at the draft law on trade union organizations proposed by the Government, which repressed freedom of association and violated several provisions of the Convention. Although the information provided by the Government was a step forward, the fundamental problem remained unaddressed. The draft law imposed a model of trade unionism which replicated the current model. Particularly, section 13 provided for three types of trade union organizations: trade union committees, general unions, and national federations. The draft law also imposed conditions with regard to the number of council members, membership requirements, election rules and procedures, as well as the objectives and activities of the unions. Moreover, the draft law differentiated between the ETUF and other unions. While ETUF retained its recognized legal personality, the latter would need to be re-registered, in violation of Articles 2 and 11 of the Convention. The Supreme Constitutional Court of Egypt and an Administrative Court had recognized the right to freedom of association as a constitutional right, which entailed the right for unions to establish their own constitutions and the prohibition of interference by the Government or its administrative bodies. Instead of complying with the rulings of the courts, the Government had relied on the Advisory Opinion of the Council of State of 21 December 2016, which had instructed the Ministry of Manpower and Migration not to register independent trade union organizations and had been widely used to attack independent trade unions. In particular, several unions had been instructed by employers and the authorities to stop their activities and vacate their premises, and could no longer collect the monthly contributions of the workers.

The Government member of Cuba noted the information provided by the Government, according to which: (i) the new draft bill on trade unions took into account the Committee of Experts' comments on the need to ensure that the national legislation was in conformity with the Convention; (ii) the legislative committee established in the Ministry of Manpower and Migration had finalized the preparation of a new draft Labour Code, and dialogue sessions were held with employers' and workers' organizations, and civil society organizations, to discuss the draft text. She encouraged the Government to continue taking measures in line with its commitments.

The Worker member of Germany also speaking on behalf of the Worker members of Finland, France, Italy, Spain and Sweden, stated that security forces in Egypt were operating with the utmost harshness. Despite the reprisals, local strikes had occurred in the recent past. Examples included: in May 2016, a shipyard protest in Alexandria where 20 strikers had been arrested by the military police and brought before a military court; in December 2016, a strike in the chemical industry where 200 strikers had been arrested by the police and released after a few hours; and in February 2017, a partial strike by nursing staff in a hospital where 36 persons had been suspended and subject to an arrest warrant for "work obstruction". Their only offence had been that they had attempted to organize freely outside the state system of control and had demanded higher wages in the face of rising inflation. She added that the state-controlled and supervised ETUF was an extended arm of the Government, supervised by the Minister of Labour in its organizational, financial and personnel matters. The ITUC, the European Trade Union Confederation (ETUC) and the German Confederation of Trade Unions (DGB) did not cooperate with the ETUF, as it was not considered to be a free trade union. While the ETUF enjoyed a State-assured monopoly, the formation of independent and free unions was systematically hampered. The envisaged legislation on the registration and recognition of trade unions would not only perpetuate, but also exacerbate the situation. The already registered ETUF would be recognized, whereas all other unions would, in light of the excessive requirements, be de facto deprived of their right to exist. She called on the Government to bring an end to the constant legal and practical impediments to free trade unions and eventually fulfil its obligations under the Convention.

The Government member of the Bolivarian Republic of Venezuela emphasized the Government's commitment to continue complying with ratified ILO Conventions. In its 2017 report, the Committee of Experts had noted with interest the final draft law on trade union organizations, which had been approved by the Council of Ministers and submitted to Parliament for adoption. He welcomed the indication by the Government representative that this draft took into account the comments made by the Committee of Experts, and trusted that the Government would continue adopting further measures to comply with the Convention, bearing in mind the spirit of pluralism that was reflected in the participation of the accredited tripartite delegation in this session of the International Labour Conference. He also considered that the Committee should bear in mind the Government's goodwill and efforts to comply with the Convention. Lastly, he hoped that the Committee's conclusions would be objective and balanced so that the Government could take them into account and give them weight in the application of the Convention.

An observer representing the International Transport Workers' Federation (ITF) recalled the statement by the Worker members that the draft law on trade union organizations did not come close to ensuring the full right of freedom of association. The lack of consultation with independent unions during the drafting process had rendered any semblance of genuine social dialogue void. The new provisions appeared to ensure that those trade unions that were already recognized would continue in their status, while new independent unions would have to go through a fresh registration process. Real trade union pluralism could not be achieved under those provisions, especially given the onerous membership requirements included in the draft proposals for the establishment of unions. The ITF affiliates in Egypt continued to face difficulties. A recent letter from the Government had confirmed that public sector employees were banned from dealing financially and administratively with trade unions, federations or independent committees not affiliated with the only recognized national union federation. The letter specified that independent unions were illegal for the purposes of the Trade Unions Act. In a subsequent letter, the Minister of Labour and the Public Transit Authority had called on the Minister of Local Development to issue the necessary instructions to all sectors under its purview not to accept the stamp of the independent unions on any official documents or national identification documents. As a result, ITF affiliates had reported consistent state interference in their activities, which had prevented them from collecting membership fees, and thus threatened their very existence. The leader of the Dock Workers' Federation had been deducted five

days' pay because of a social media post calling for the reinstatement of a statutory monetary supplement. Real trade unions representing the real interests of the workers needed to be able to function in full freedom. The Government was urged to comply with the observations of the Committee of Experts and to urgently bring its legislation into conformity with the Convention.

The Government member of Mauritania said that the information provided by the Government proved that progress was under way, despite the political challenges currently faced by the country. Following the parliamentary elections, the new draft law on trade union organizations had been prepared in consultation with the social partners and had been sent to the ILO for comments. In April 2017, the Government had sent the final version of the draft law to the ILO. Moreover, according to the Parliamentary committee, another round of consultations would be held next July 2017, and the draft law would be adopted in October 2017.

Another observer representing the International Trade Union Confederation (ITUC) indicated that the Egyptian Democratic Labour Congress had been established on 28 January 2014 and had submitted its accreditation to the Ministry of Manpower. However, Circular No. 6-4-2014 of the Council of Ministers had been issued calling on all governmental institutions and administrations to stop collaboration with any independent unions, and to recognize only the Confederation of Trade Unions that was supported by the Government. All related information could be found in the complaint that had been submitted to the ILO in 2013. She added that many independent trade unions had been harassed and unionists had been persecuted or threatened, such as the unionists of the Maritime Union who had been convicted by military courts under Case No. 2759/2016. Lastly, she indicated that, in the course of this International Labour Conference, 32 persons had been arrested and had lost their right to be paid because of being accused of calling on workers to strike.

The Government member of Algeria welcomed the information provided by the Government on the measures taken to ensure compliance with the Convention. These measures included the preparation of a draft law on trade union organizations, consultations in this regard with the social partners, as well as the consideration of the relevant technical comments of the ILO. All those steps illustrated the commitment of the Government. With the new draft law, the Government was seeking to address the discrepancies between the Trade Unions Act and the Convention, in particular with regard to the principles of non-interference in the internal affairs of trade unions and trade union pluralism. The Government and the social partners should therefore be encouraged to continue to move forward and avail themselves of the technical assistance of the ILO.

The Government member of Sudan commended the important steps taken by the Government despite the difficult situation in the country, which was experiencing political challenges. Labour legislative reforms had been undertaken by the Government, in particular with regard to the drafting of a labour law on trade union organizations. The draft legislation had been submitted to the ILO for comments. She welcomed the social dialogue initiated by the Government, which was an indication of its respect for freedom of association. The Committee should take into account the positive steps taken by the Government.

The Employer member of Algeria said that the Government, which had cooperated with the Office and made huge progress in its legislative reform, should be encouraged and supported. There should also be support for the steps taken by the Government, in consultation with the social partners, to highlight problems in the draft law on trade unions and introduce legislation that was in conformity with ratified ILO Conventions. All the initiatives taken by the Egyptian authorities were significant steps forward that deserved support and encouragement.

The Government member of Libya said that the Government had proved its commitment to the full application of the Convention by amending the legislation on trade unions. The new draft law on trade union organizations offered an adequate protective framework to workers, particularly as it had been drafted in collaboration with the ILO. He nonetheless expressed surprise at the inclusion of the Government in the list of cases to be discussed by the Committee, in view of the positive steps already taken by the Government. He urged the Committee to take into account the Government's commitment to fully comply with the Convention.

The Government member of the Russian Federation expressed his deep gratitude to the Government representative for the exhaustive information provided on the steps taken to achieve full compliance with the Convention. He expressed satisfaction with regard to tripartite social dialogue in Egypt. The cooperation of the Government with the ILO and the efforts made to take into account the ILO's comments on the draft law on trade union organizations were to be commended. This had led to notable and visible progress, despite the multiple challenges faced by the Government, and this progress would certainly continue. The discussion before the Committee had to be used to express approval and encouragement for the efforts made by the Government to comply with international labour standards, in particular in the area of freedom of association.

The Worker member of Italy also speaking on behalf of the Worker members of Belgium, Spain and the United Kingdom, recalled that the mutilated body of Giulio Regeni had been found near Cairo on 3 February 2016. He had been a 28-year-old student of sociology at the University of Cambridge, whose research had focused on the organization of unions in Egypt. His family still did not know who had ordered his abduction, torture and murder, nor the reason why. Much uncertainty remained due to the absence of cooperation between the Egyptian and Italian authorities. There was evidence that Mr Regeni had been tortured for seven days and that he had had a slow death. The Italian paper *La Repubblica* had reported that officers from the National Security Agency had been directly implicated in the murder. As a result, the Public Prosecutor of Rome had requested the Prosecutor of Cairo to be able to question these agents. This request had remained unanswered. That case was not isolated. For the past three years, non-governmental organizations had reported 1,124 killings, in addition to cases of deaths in detention, individual and collective torture, medical negligence in detention and other forms of state violence. Despite the evidence to the contrary, the Government denied the involvement in these crimes and refused to address them. The murder of Giulio Regeni had pointed at a serious deficit in Egypt, which had also been the engine of Tahrir Square: the fundamental human right of workers to organize in order to change their status, become free and achieve in peace a more just society. The case of Mr Regeni had become a symbol for all Italians and the Government should be aware that justice would be pursued.

The Government member of Ghana recalled that the Government was undertaking a review of new draft legislation. The major stakeholders, including workers, employers, civil society and the ILO had been included in the review, which had taken into consideration the comments made by the Committee of Experts with regard to consolidating the provisions on freedom of association, ensuring trade union pluralism and including within the scope of the new draft Labour Code certain vulnerable categories of workers, such as domestic workers. He hoped that the Government would progress without delay on this review to ensure compliance with the Convention.

The Government member of Zimbabwe stated that the Government's comprehensive presentation had helped to shed light on the case. From the submissions of the Employer and Worker members of Egypt, it was clear that all the tripartite partners were involved in the ongoing reforms. The parties had been consulted and were in agreement with the draft law on trade union organizations. The tripartite partners were therefore encouraged to continue their collaboration on the matter. He agreed with the comments of the Government representative questioning the criteria for listing countries to appear before the Committee. The Government had demonstrated its commitment and willingness to give effect to ratified Conventions, despite the difficult circumstances. The Employer and Worker members of Egypt had acknowledged that social dialogue existed in the country. The Office should continue to provide technical assistance, which would be instrumental in expediting the labour law reform.

The Worker member of the Syrian Arab Republic expressed support for the draft law on trade union organizations, which would soon be brought before the Egyptian Parliament. He commended the comments made by the Office on the draft law and requested the Committee to take into consideration the complex situation in Egypt in recent years. The ILO should continue to provide technical assistance to countries, such as Egypt, which had achieved tangible progress towards compliance with the Convention.

The Government representative wished to clarify, with regard to the doubts expressed by the Worker members in relation to some of the achievements highlighted, that some of the comments appeared to relate to the Trade Unions Act, or an earlier version of the draft law on trade union organizations, which had been revised in the meantime, in light of the ILO's comments. It was important to recall that since 2011 Egypt had undergone major upheavals and it had been able to make progress only after calm had been restored in mid-2013, with achievements such as the holding of presidential elections, the adoption of the Constitution and the resumption of work by the House of Representatives, the body mandated to adopt legislation. Many interventions appeared to be based on hearsay only, and not on a study of the actual situation. Egypt had made progress with the draft law on trade union organizations so as to address the flaws in the current law. The new law was based on freedom of association and had been prepared through tripartite engagement and with the acceptance of many ILO comments. The draft law abolished any distinction between different trade union organizations, and the Government would take all the measures needed to finalize the law so as to provide protection to trade unions. In response to the statement made by the Worker member of Italy, he said that the incident had also shaken the Egyptian people. Although the statement concerned a criminal offence which should not be discussed before the Committee, he stated that procedures were under way between the Public Prosecutor in Egypt and his counterpart in Italy, and that a coordination meeting had been held on 17 May with a judicial investigation team from Rome. He also referred to the case of an Egyptian citizen who had become a victim of crime in Italy, and in relation to which similar investigations and coordination were taking place. Finally, he emphasized that Egypt saw no obstacles to achieving freedom of association and aimed to adopt the draft law on trade union organizations, with the technical support and cooperation from the ILO. The Government had put in place procedures to achieve a system of free and strong trade union organizations by the end of the year. The support of the ILO over the past few years had helped to accelerate the achievements made in a transparent and open manner. The law would be adopted and serve the public interest of Egypt, in full conformity with its Constitution, and the international Conventions ratified by Egypt.

The Worker members, while thanking the Government representative for the explanations and details provided, replied to certain points. They did not consider the dispersion of the trade union movement to be a positive, but the road was long between having a single union (as was the case in Egypt at present) to the dispersed movement described by the Government representative. It was acceptable, in accordance with the Convention, for representativity thresholds to be established, if they were reasonable, but that was not the point at issue. The ministerial circulars referred to above had been issued based on the opinion of the Council of State, which considered that independent trade unions were illegal under the current legislation. Even the Government acknowledged that this legislation was at odds with the Convention. The Government claimed that the legislation in question had been amended and that the Worker members' comments no longer applied. It was however regrettable that the Government had not seen fit to supply the Committee with the latest version of the Bill so that its members would have all the facts.

Full and unconditional respect for freedom of association involved specific steps to ensure that this freedom was respected: (i) in the short term, the Government should withdraw the ministerial circulars which, in practice, prohibited independent trade unions. A State that really wished to guarantee freedom of association had no need for a law to be passed to ensure that it could be exercised. It was enough to refrain from taking measures to restrict it; (ii) in the medium term, the Bill that was being drafted must be in line with all the provisions of the Convention and respond to the criticisms of the current legislation. More particularly, that implied that the new legislation must guarantee the expression of trade union pluralism by ensuring that no trade union could be favoured at the expense of others. In addition, it must guarantee the freedom of workers to join organizations of their own choosing, without the imposition of any other criteria or restrictions not permitted by the Convention. The Government should refrain from adopting measures that undermined the independence and financial autonomy of organizations, such as the introduction of controls over their accounts. The same was true of respect for the right to draw up by-laws and administrative rules without interference from the authorities. To that end, the Government could continue to request ILO technical assistance. Lastly, in view of the information brought to the attention of the Committee of Experts and presented to the Conference Committee, a direct contacts mission was strongly recommended.

The Employer members highlighted their commitment to freedom of association as it related to both employers' and workers' organizations. Freedom of association was the foundation for democracy and crucial for a climate of stable labour relations conducive to investment. Taking into account the importance of the issues raised, the discussion before the Committee had contributed to a better understanding of the case at hand. They appreciated the Government's commitment and believed that the Committee's conclusions should focus on supporting the process of the drafting and adoption of a final law on trade unions. The Employer members encouraged the Government to continue to involve the social partners in social dialogue and to report on its efforts to the Committee of Experts so that it could acknowledge progress. They were supportive of the processes through which the Government engaged with the ILO for the finalization of the draft law on trade union organizations in line with the Convention.

Conclusions

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

The Committee regretted a number of long-standing discrepancies between the national legislation and the provisions of the Convention. The Committee also regretted that despite repeated requests from the Committee of Experts, the Government failed to provide a copy of the draft Labour Code and the draft Law on Trade Union Organisations and Protection of the Right to Organise.

Taking into account the discussion, the Committee called upon the Government of Egypt to:

- **ensure that the draft Law on Trade Union Organisations, presently before the House of Representatives for adoption, is in conformity with the Convention, in particular with respect to the concerns relating to the institutionalization of a single trade union system;**
- **transmit a copy of this draft legislation to the Committee of Experts;**
- **ensure that all trade unions in Egypt are able to exercise their activities and elect their officers in full freedom, in law and in practice, in accordance with the Convention.**

The Committee called on the Government to accept an ILO direct contacts mission to assess the progress in respect of the abovementioned conclusions and requested that this information, as well as a detailed report from the Government, be transmitted to the Committee of Experts for examination before its next session in November 2017.

The Government representative indicated that his Government fully opposed and objected to the totality of the conclusions because they did not reflect the content of the discussion which had taken place before the Committee and did not reflect reality. He asked for the opinion of the Legal Adviser on the way to proceed when a government has objections to the conclusions.

The Worker member of Egypt indicated that an attempt was taking place to politicize the Committee's conclusions to the detriment of Egypt. The conclusions did not reflect the fact that a draft law had been presented to the House of Representatives.

The Legal Adviser indicated that the question raised concerned the procedure to be followed for the adoption of the Committee's conclusions on individual cases when the government concerned wished to express objections to the proposed conclusions. It was essential to recall that in discharging its supervisory function, the Committee on the Application of Standards drew on the Standing Orders of the Conference but had also developed its own working methods and long-standing practices over the years. The conclusions were delivered based on carefully balanced views exchanged in order to encapsulate consensus. It could happen, and had indeed happened in the past, that the government concerned expressed its disagreement with the conclusions. In these cases, the Government's disagreement was always faithfully reflected in the *Record of Proceedings*. This long-standing and constant practice gave satisfaction to governments that their objections had been faithfully reproduced.

The Government representative thanked the Legal Advisor for his reply. He explained that his Government was against the conclusions which were inaccurate and counterfactual. They contained no reference to the new draft legislation, although the draft law had been presented on two occasions before it was submitted to Parliament and the ILO had expressed its views as recently as last May. He repeated that the conclusions were inconsistent with reality: not a single point was accurate. He would have accepted them, had they reflected events that had occurred, but as they were factually inaccurate, he felt he must object.

Another Government representative indicated that the question he wished to raise with the Legal Advisor was not related to the Committee's practice but to the fact that the Chairperson had asked the room whether there was any objection prior to the adoption of the conclusions. He asked whether, in the event of an objection as in this case, the Chairperson could still go ahead and declare that the conclusions had been adopted by consensus.

The Legal Adviser answered that the Chairperson could proceed on the basis of a very large majority in circumstances where objections were expressed. The main duty of the Chairing Officer was to conduct the debate according to the Standing Orders of the Conference. He could therefore proceed to adopt conclusions despite legitimately expressing disagreement by the government concerned as long as all statements and facts were faithfully reflected in the *Record of Proceedings*.

The Worker member of Egypt indicated that, according to the conclusions, the ILO had not received a copy of the draft law. He questioned how this could be true, as an ILO official had visited the country, and had obtained and commented on a copy of the law on which the agreement of the social partners had been obtained. In the particular circumstances of his country, it was incomprehensible that the Committee would express disappointment. With the social partners, legislation had been developed that could contribute to peace and open a new era for the people of Egypt, and although the trade unions may have disagreed with certain issues, there was overall agreement. Yet where the Government had hoped that the ILO would extend its support, it had expressed disappointment: the conclusions suggested that nothing had happened, although enormous progress had been made through very hard work. The conclusions disregarded that progress.

The President of the Committee while taking note of the interventions, indicated that they would be entirely reflected in the Conference *Record of Proceedings*. He requested that the Government contact the secretariat to ensure follow up on the case.

GUATEMALA (ratification: 1952)

The Government provided the following written information.

Investigations of murders and convictions handed down to date

The Government of Guatemala reiterates its concern at the actions perpetrated on the victims. It is continuing the relevant investigations with the aim of fully elucidating the facts and circumstances surrounding the murders of the trade union members and leaders, identifying the perpetrators and securing convictions in accordance with the law. In March 2017, at the 329th Session of the Governing Body, the Government of Guatemala reported on 15 court rulings. Since then, the Special Investigation Unit for Crimes against Trade Unionists has reported the following progress: three court convictions; one acquittal; four persons undergoing criminal prosecution proceedings; two arrest warrants put into effect; and one termination of criminal prosecution proceedings. Moreover, the Special Investigation Unit has made investigations to establish and individually identify the suspected perpetrators of the crimes, including the following procedures: statements by indirect and immediate witnesses, statements by victims, collection of evidence, audio visual evidence, property searches, inspections, examination of property records and expert reports. It should be noted that no anti-union motives were established in any of the 18 cases; nevertheless, we are committed to giving the necessary protection to any trade unionists that require it. Note should also be taken of the undertaking given by the Ministry of Labour and Social Welfare, which meets periodically with the authorities of the Public Prosecutor's Office and the International Commission against Impunity in Guatemala (CICIG), to follow up the collaboration between these institutions.

Risk assessments for all trade union leaders and members under threat; assignment of corresponding protection measures

The Ministry of the Interior has reported that between January and May 2017 it received 20 requests for security measures, in relation to which the Risk Assessment Department of the Personal Protection and Safety Division of the National Civil Police undertook the corresponding investigations; as a result, the 20 requested protection measures were granted.

Requests for security measures made by the Public Prosecutor's Office pursuant to the "Protocol for the implementation of immediate and preventive security measures for trade union leaders and members and labour rights activists", issued in January 2017

Since January 2017, the Public Prosecutor's Office, through the Special Investigation Unit for Crimes against Trade Unionists, has requested the Ministry of the Interior to issue 14 preventive security measures for trade union leaders and members, and has asked the National Civil Police to issue eight perimeter security measures.

Report on the free 1543 emergency helpline for receiving complaints of violence or threats against human rights advocates

Since January 2017, the Ministry of the Interior has reported that none of the calls received on the 1543 emergency helpline were connected with trade union leaders or members. Accordingly, with a view to informing the trade union sector of the free helpline and to promote appropriate use thereof, a campaign has been launched to publicize through social media the 1543 emergency helpline for the protection of trade unionists. Moreover, the Ministry of the Interior has established dialogue forums (the "Unit for the analysis of attacks against human rights advocates" and the "Standing trade union round table on comprehensive protection"), which meet periodically and discuss the cases reported by trade unions and ensure the corresponding follow-up by the competent bodies. These dialogue forums seek to address in a timely fashion violations against freedom of association or the physical integrity of trade union leaders and members. In addition, these dialogue forums have been used to raise awareness among the trade unions of the "Protocol for the implementation of immediate and preventive security measures for trade union leaders and members and labour rights activists".

Strengthening of institutions

The Government of Guatemala recognizes the importance of the commitments entered into through the ratification of the Convention. Accordingly, the Chief Public Prosecutor/Head of the Public Prosecutor's Office issued instructions that the corresponding action should be taken to strengthen the Special Investigation Unit for Crimes against Trade Unionists, which currently comprises 19 staff members and operates within the structure of the Human Rights Prosecutor's Office, with the addition of three prosecution offices.

Creation of special tribunals to deal with crimes involving freedom of association

Since the promulgation of Decree No. 21-2009 of the Congress of the Republic (Law on Criminal Jurisdiction in High-Risk Proceedings), the State of Guatemala has had the following judicial structure: four Courts for High-Risk Proceedings, one Court of Appeal for High-Risk Proceedings in the capital, and two Sentencing Tribunals, where proceedings may be heard in cases of offences committed against the lives of trade unionists. In this regard, the Public Prosecutor's Office can submit a request at any time for the Criminal Chamber of the Supreme Court of Justice to consider the circumstances and allocate such proceedings to be heard by the Courts for High-Risk Proceedings. It should be pointed out that the convictions recently obtained by the Public Prosecutor's Office in the cases of Mr William Leonel Retana Carias and Mr Manuel de Jesús Ortiz Jiménez were handed down by the Sentencing Tribunals for High-Risk Proceedings, following the recommendation of the ILO Committee of Experts.

Legislative reforms

On 16 March 2017, at an ordinary plenary sitting of members of the Congress of the Republic, Decree No. 7-2017 (Bill 5198) was passed, reforming Decree No. 1441 (Labour Code); it came into force on 6 June 2017. The fact that the text passed by Congress was the result of an agreement between trade union and employers' organizations in the country is considered a historic event. With the entry into force of this legislation, inspection procedures have been established in law, including the potential for sanctions in the event of failure to apply labour standards, thereby guaranteeing that the State of Guatemala will act to foster a culture of compliance with labour rights and obligations. With respect to Bill No. 5199, the Ministry of Labour appreciates the fact that the ILO Committee of Experts on the Application of Conventions and Recommendations has observed with interest the Bill submitted to the Congress of the Republic on 27 October 2016, as it addresses the majority of the Committee's previous comments. On 9 May 2017, a session of the Labour Committee of the Congress of the Republic was held, in which the employer, worker and government sectors took part, following agreement by the bipartite constituents to submit their agreements and conclusions to the Committee. The government sector endorsed its support for bipartite dialogue and is fully disposed to participate in discussions as and when requested by the constituents, taking into account the fact that the Congress of the Republic, through the chairman of the Labour Committee, has set a specific date for receiving agreements, after eight months have elapsed, during which time Congress has granted various extensions in response to requests from workers and employers for additional time. The Ministry of Labour and Social Welfare is confident that this Bill will be passed in the near future and that it includes all the additional elements referred to by the Committee of Experts in its report to the 105th Session of the International Labour Conference.

Registration of trade unions

The Ministry of Labour and Social Welfare, through the Directorate-General for Labour, receives requests for trade union registration and recognition of legal personality. In this respect, a total of 84 trade union organizations were registered in 2016; in 2017, a total of 26 trade unions have been registered so far. With regard to reforming the procedures for trade union registration, the Ministry of Labour and Social Welfare has created a dialogue forum, within which an agenda has been agreed, including items proposed by trade union organizations.

Handling and settlement of disputes relating to freedom of association and collective bargaining by the Dispute Settlement Committee

At a meeting of the Tripartite Committee on International Labour Affairs held on 18 May 2017, the Ministry of Labour and Social Welfare submitted the terms of reference for consultations on the evolving functions of the Dispute Settlement Committee, which were drafted with sup-

port from the Office of the Representative of the ILO Director-General. In this regard, the sectors agreed to hold the consultations in question and to send in their observations. In addition, the members of the Dispute Settlement Committee are planning to hold a workshop on "self-evaluation by the Committee" in the next few days.

Awareness-raising campaign on freedom of association and collective bargaining

Efforts to raise awareness have been stepped up as part of "Freedom of association and collective bargaining for a better country", especially with media bosses, columnists, commentators, journalists, and public relations managers from the three branches of State. The campaign continues to be promoted through official websites and the social media feeds of the state bodies, as well as through interviews on government media and the distribution of posters and flyers to visitors and trade union leaders at the various institutions. Furthermore, there are plans for training on freedom of association and collective bargaining to be provided with the textile and *maquila* (export-processing) sector, with support from the Office of the Representative of the ILO Director-General.

In addition, before the Committee, **a Government representative** emphasized her country's commitment to compliance with the fundamental labour principles and standards, including through the Memorandum of Understanding and the Roadmap, with a view to resolving the issues relating to the Convention contained in the complaint made under article 26 of the ILO Constitution. The President of the Republic was directly involved in this matter. She added that she was being accompanied by representatives from the three branches of the State, which had reaffirmed their firm commitment to compliance with the Roadmap thereby demonstrating support at the highest levels of the State. She reiterated her concern at the loss of human lives as a result of the violence in the country, including certain trade unionists, and indicated that deep-rooted structural changes were being implemented in the country. In this respect, she indicated that the Ministry of Labour and Social Welfare held regular meetings with the authorities of the Office of the Public Prosecutor and the International Commission against Impunity in Guatemala (CICIG). The Special Investigation Unit for Crimes against Trade Unionists has been strengthened and recently increased to 19 staff members and three prosecution offices. Furthermore, she indicated that, in 2016, the Ministry of Labour and Social Welfare had registered a total of 84 trade union organizations, and that, in 2017, 26 trade unions had been registered so far. With ILO support, it was planned to reinforce the Committee for the Settlement of Disputes before the ILO in the area of Freedom of Association and Collective Bargaining. Efforts to raise awareness had been stepped up as part of the freedom of association and collective bargaining campaign, and there were plans for training to be provided with the textile and *maquila* (export-processing) sector, with support from the Office of the Representative of the ILO Director-General. The recent entry into force of the amendments to the Labour Code had strengthened the general labour inspectorate, granting it powers to impose penalties, and to ensure greater transparency in its action, an Ethics and Transparency Unit had been established, to provide the population with a high quality and efficient service. She reiterated the Government's commitment to making firm progress which, when recognized, would mean that the case of Guatemala could be closed by the Governing Body when it meets in November 2017. In conclusion, she expressed the concern of her Government at the simultaneous use of different supervisory mechanisms to examine the same allegations against a country, concerning which a complaint was before the Governing Body. She considered that this was a duplication of supervisory mechanisms, which weakened the operation and credibility of the ILO's supervisory bodies.

A magistrate of the Constitutional Court noted that the Constitutional Court operated independently and permanently, and that its primary task was the defence of the human rights guaranteed and protected by the Constitution and international treaties, and which consequently formed part of the "Constitutional Block". The Court had observed international standards in the field of labour law when handing down judgments and safeguarding the rights of workers. In 2016, out of 147 decisions issued in *amparo* (legal protection of constitutional rights) proceedings concerning labour rights, 109 decisions had been in favour of the workers. With regard to the right to organize, she emphasized that many decisions had been handed down guaranteeing that during the period of the establishment of a union employers could not, without judicial authorization, dismiss protected workers.

A magistrate of the Supreme Court of Justice referred to the existence of Courts, Sentencing and the Court of Appeal for High-Risk Proceedings where proceedings could be heard in cases of offences committed against the lives of trade unionists, thereby giving effect to the recommendation of the Committee of Experts to create special tribunals. He indicated that those tribunals had handed down three convictions in cases related to trade unionists. Moreover, in the period from March 2017 to date, three convictions, one acquittal, four persons involved in penal proceedings, two executed arrest warrants and one extinction of criminal proceedings had been registered. He expressed the commitment of the Court concerning its responsibilities related to the Roadmap and recalled that the Office of the Public Prosecutor could at any time issue a request for the Criminal Chamber of the Supreme Court of Justice to assess the circumstances and refer prosecutions to higher-risk courts.

The Deputy Minister of the Interior reaffirmed the commitment of his Ministry to continue making progress in giving effect to its obligations under the Roadmap, as demonstrated by the approval, publication and entry into force of the protocol for the implementation of immediate and preventive security measures for the protection of trade union members which was being implemented with the participation of the trade union leaders. Furthermore, a campaign had been launched to publicize the emergency helpline (1543) for the protection of trade unionists, and, with a view to strengthening the protection measures, the budget of the National Civil Police had been increased and more space had been allocated for coordination and communication with the workers, so as to ensure compliance with the requirements of the Roadmap and expedite the elucidation of acts of violence.

The Deputy President of the Labour Commission of the Congress of the Republic reiterated the commitment of legislators to promotion and compliance with labour rights, and emphasized that the commitment of the Labour Commission of the Congress of the Republic, as set out in the Roadmap, had been demonstrated by the adoption of Decree No. 7-2017, which granted the power to impose sanctions to the general labour inspectorate. With respect to Bill No. 5199 concerning freedom of association and the right to strike, a specific date had been set for receiving the agreements of the workers and employers with a view to their submission of a proposal agreed by consensus, after eight months of consultations and three requested extensions. In conclusion, he said that social dialogue would continue to be promoted in the various sectors with a view to developing and reforming new labour legislation to bring it into conformity with international Conventions with a view to the integrated development of the country.

The Worker members considered that the Government had consistently failed to take action in response to the serious observations and recommendations of the ILO supervisory mechanisms. The current situation was not substantially different from that of 2012, which had motivated the complaint submitted under article 26 of the ILO Constitution concerning non-observance of the Convention. Since then, 28 additional trade unionists had been murdered and the environment of almost complete impunity had continued unabated. The question of violence and impunity against trade unionists in Guatemala had been examined many times by the Committee and the inaction by the Government called for continued examination, independent of the process currently taking place in the Governing Body. The Committee of Experts had noted "with deep concern the persistent allegations of acts of anti-union violence" and had expressed "its particular concern at the lack of progress in the investigations of murders in which evidence had already been found of a possible anti-union motive". Of the 70 cases of murder brought before the Committee on Freedom of Association, only 11 had led to convictions to date. Even so, the Office of the Public Prosecutor and the courts had insisted that the motives for the violent murders subject to these eleven convictions had not been based on the victims' trade union activity. Current and past administrations in Guatemala had never seemed to find in any case a relationship between union activities and the motives of the assassinations. The Office of the United Nations High Commissioner for Human Rights and the CICIG had also noted with deep concern the lack of progress in the investigation of such cases. Furthermore, in terms of the investigation of those cases, the Government was still falling short of performing actions as basic as collecting testimony from relatives, witnesses or ballistic analysis. The Government had also failed to protect trade unionists who were being harassed and threatened for undertaking their union activities. The Worker members regretted that the protocol for the implementation of immediate and preventive security measures for trade union members, which had recently been put in place by the Government, would be nothing more than a commitment of good intentions if there was no action on the ground. There was a need to see urgent action to implement the protocol and more funds had to be allocated for this purpose, as had also been stressed by the Committee of Experts. Recent legislation had finally been passed restoring the capacity of the labour inspectorate to impose sanctions in case of the violation of trade union rights. This positive outcome had only been reached due to bipartite agreement between the most representative employers' and workers' organizations, which proved that social dialogue was possible in Guatemala and was the only way forward to address the immense challenges facing the country. Yet, the Government still failed to understand the importance of including social partners in decision making. Recently, a Bill had been introduced in Congress seeking to bring the legislation into conformity with the Convention without proper consultation with the trade unions. The unions could therefore not accept the Bill, especially as it contradicted a number of clear recommendations by the Committee of Experts. In particular, the Bill sought to amend section 390(2) of the Penal Code in a way that would retain the risk of imposing penal sanctions on workers carrying out a peaceful strike. The Government had had an important chance to show its commitment to the Roadmap when the Committee for the Settlement of Disputes before the ILO in the area of Freedom of Association and Collective Bargaining was set up. Unfortunately, that mechanism had become a wasted opportunity due to the lack of political will. Very low resources had been allocated to that initiative. Moreover, the Committee of Experts had noted that there was no complementarity between judicial mechanisms for the protection of freedom of association. The Office of the Public Prosecutor had also admitted that it had received no fewer than 1,950 complaints for failure to comply with court reinstatement orders for workers dismissed as retaliation for forming unions. Impunity was such that employers in the private and public sectors simply ignored court orders. The Government had not provided any details on the penalties imposed on the numerous employers who were infringing the law. The Government had also increased the obstacles for union registration or the renewal of the credentials of existing trade union leaders. The Government had even failed to launch an awareness-raising campaign on freedom of association, as agreed in the Roadmap. A mass media campaign would be particularly useful in the *maquila* sector, where there had been several documented cases of violations of freedom of association and the impossibility to form trade unions. The Government had even used appearances in the media to attack the right to freedom of association and collective agreements in the public sector. The Worker members would continue to monitor closely compliance of the Roadmap. The issues raised had been before the ILO supervisory system for over 20 years. It was their firm hope that the issues related to impunity, legislative changes and union registration would be resolved. Finally, they acknowledged the positive role played by the Special Representative of the ILO Director-General in Guatemala.

The Employer members recalled that this subject had been examined by the Committee on Freedom of Association in Case No. 2609 and by the Governing Body through its follow-up of a complaint made under article 26 of the ILO Constitution. They also recalled that the case related to: (i) trade union rights and civil liberties; (ii) legislative issues; (iii) the registration of trade unions; (iv) conflict resolution on freedom of association; (v) the awareness-raising campaign for freedom of association; and (vi) the *maquila* sector. They emphasized that the written information submitted by the Government contained detailed and updated elements on these subjects. Nearly all of the cases of anti-union violence reported were very old, and that under these conditions it was very difficult to carry out investigations. They emphasized that the institutions of State were nevertheless operational. The State was making its best efforts and results were being achieved. In particular, the fact that representatives of all the branches of the State were present in the Committee was a demonstration of their commitment. It was important to ensure the continued operation of the Tripartite Committee on International Labour Affairs and to continue undertaking awareness campaigns and information dissemination. They expressed interest in being provided with further details on the refusal by the workers of a proposal by the Government to reform the procedure for trade union registration. They also noted with great interest the indication by the Government concerning the requirements for the establishment of branch unions and the changes in relation to foreign nationality to stand for office on the executive bodies of trade unions. With reference to the comments of the Committee of Experts in relation to strikes, they reiterated that they did not consider that the right to strike was regulated by the Convention and that there was therefore no basis for its discussion by the Committee, that the Committee's conclusions on the case should not therefore refer to the right to strike and that the Government was not required to follow the recommendations of the Committee of Experts on that specific subject. They emphasized that there was full freedom at the national level, with regard to strikes, to establish legislation that was adapted to the national circumstances and emphasized in that respect the progress that could be made at the initiative of the Congress, and particularly through the will of the tripartite partners. They referred to the comments of the Committee of Experts on the possible penal sanctions established in section 390(2) of the Penal Code,

and raised the question of whether acts of sabotage, damage or destruction of private property, enterprises or institutions which affected their production and services could be considered peaceful. In view of the high number of complaints to the ILO supervisory bodies relating to freedom of association, they expressed interest in the further use of dispute mediation and resolution machinery, although in each case it was for the State itself to determine the manner in which such machinery should be designed and developed. They emphasized that the *maquila* sector was the principal source of exports and of formal and direct employment in the country, and that compliance in the sector with the legislation and fundamental workers' rights was being promoted by the most representative organization of employers, the Coordinating Committee of Agricultural, Commercial, Industrial and Financial Associations (CACIF). A code of practice based on fundamental labour Conventions, which certified over 300 enterprises and governed over 250,000 workers, and independent audit systems were being implemented, many of which were international. The Employer members added that the fact that textile enterprises were covered by an average of five audits a year for each of their clients, in order to be certified and to continue renewing commercial contracts, should lead the Committee to consider that this aspect of the case had been resolved definitively. In conclusion, they emphasized the commitment of employers to continue the awareness-raising campaign on freedom of association and to continue a strengthening of the various public and private institutions in the country.

The Worker member of Guatemala deplored the constant and serious violations of freedom of association that Guatemala had been witnessing for years, which not only profoundly affected labour relations, but also called into question the situation with regard to democracy and human rights in the country. The figures brooked no discussion: 84 trade unionists had been murdered in recent years, counting only the cases currently being dealt with by the Special Investigation Unit of the Office of the Public Prosecutor, and 251 complaints of serious attacks against trade union leaders and labour rights defenders had been made in 2015 and 2016. At present there were thousands of reinstatement orders in respect of workers who had been dismissed for having tried to organize into unions. According to court records, in the majority of cases such reinstatement orders were not complied with and, in complete violation and disregard of the law, in some cases workers were reinstated only to be dismissed again. There were many ministerial obstacles to registering new trade unions and new executive bodies, to complying with administrative procedures for trade unions and for the approval of the few collective agreements that were actually concluded. The President of the Republic issued an annual circular essentially prohibiting collective bargaining in the public sector by limiting wage adjustments on the pretext of spending restrictions and austerity. Many workers who had applied for the approval of collective agreements more than 15 months previously had still received no answer from the authorities of the Ministry of Labour and Social Welfare. Indeed, there had been many orders to remove clauses from collective agreements from which workers had benefited for many years. A fierce anti-union campaign was under way, driven by employers and the State, with the aim of having collective agreements declared harmful for the country and criminalizing the trade union leadership. In so doing, the campaign aimed to portray trade union organizations as responsible for the disorder, corruption and economic crisis affecting most people in Guatemala. As such, it was not surprising that the annual report of the International Trade Union Confederation (ITUC) named Guatemala as one of the ten worst countries in the world in terms of violations of the right to freedom of association. Workers faced the worst forms of violence, including intimidation, threats, persecution, kidnapping, physical violence and even murder, simply for trying to organize. Worse still, the situation was aggravated by the prevailing impunity of those responsible for such appalling acts, as was clear from the report submitted by the Office of the Public Prosecutor in March 2017 on the state of the investigations into the murders of 84 trade unionists. The document did no more than corroborate the lack of technical capacity and political will to investigate the murders of fellow trade unionists. The vast majority of cases had not seen any progress, and when new ones were reported, they generally resulted in acquittals or investigations being closed and the union link being ignored. It was a matter of deep regret that, four years after the Roadmap had been adopted which had had a one-year time frame for its completion, progress was scarce and insubstantial. There had been no significant change in the situation with respect to freedom of association and collective bargaining. Committees, working groups and similar forums had been formed but, despite the best efforts of trade unionists, they did not lead to substantive changes. The legislative amendments recommended by the Committee of Experts were still pending. The Government's legislative proposal not only failed to follow the recommendations but also, in some respects, involved retrograde steps in relation to freedom of association. A reform of the Labour Code had been adopted with regard to the powers of labour inspectors to impose penalties on those who failed to comply with labour legislation, but at the last moment, members of Parliament had included a provision that prevented inspectors from entering a large proportion of the country's workplaces. Lastly, having reiterated the union movement's commitment to do everything in their power to ensure that the Roadmap was implemented and, in general, that the rights of workers and trade union organizations were upheld, he requested the Committee to urge the Government to take specific action to guarantee the rights enshrined in the Convention and emphasized the need to establish a Commission of Inquiry.

The Employer member of Guatemala welcomed the information supplied by the Government, and the fact that the Government delegation was composed of representatives of all the branches of the State and the highest level civil servants responsible for the subject. That was testimony to the commitment of the Government to the ILO and its supervisory mechanisms to resolve the complaints that had been made for years. That commitment also needed to be made by the social partners. Employers had been doing so for many years, participating in social dialogue forums with the aim of giving effect to the observations of the Committee of Experts. With regard to trade union rights and civil liberties, he noted the information supplied by the Government describing a series of measures to provide trade union leaders with protection and resolve cases of violence against them. The vast majority of those cases dated back many years, which made it much more difficult to obtain final court rulings. Nevertheless, results had been achieved which showed that there was no anti-union persecution in Guatemala. There had been isolated occurrences of that type in the recent past, which were part of the climate of serious violence in the country. He thought that there was a lack of balance in the comments of the Committee of Experts, which had noted "the lack of progress in the investigations of murders in which evidence [had] already been found of possible anti-union motive". Moreover, with regard to the legislative issues, the Committee of Experts had been, for a number of years, asking the Government for decades to engage in tripartite dialogue on various legal provisions with a view to aligning them with the Convention. With the support of the Special Representative of the ILO Director-General in Guatemala, the workers

and employers had discussed this set of reforms, which affected the Labour Code, the Penal Code and the Act governing the rights of state workers. Important agreements had been reached with regard to the Penal Code and it was hoped that more agreements would be concluded in the near future. Decree No. 7-2017, which had also resulted from social dialogue and the support of the Representative of the Director-General, had resolved the long-standing issue of the authority of labour inspectors to impose penalties. Even though the Congress of the Republic had not fully taken into account the content of the agreements reached through social dialogue, a commitment had again been made by employers and workers to insist that Congress adopt the reforms that had been left aside. The country had made unprecedented progress on those issues. With regard to the resolution of disputes relating to freedom of association and collective bargaining, he reiterated the firm commitment of the employers to participate in bipartite or tripartite dispute settlement forums, particularly the Committee for the Settlement of Disputes before the ILO in the area of Freedom of Association and Collective Bargaining. He was aware that the results so far had not been totally satisfactory and perhaps there had not been the greatest willingness on the part of all parties. It was necessary, in a tripartite manner, to evaluate the working methods of that Committee to make its work more efficient, in accordance with the recommendation of the Committee of Experts. With regard to the *maquila* sector, he indicated that since 1997 there had been a code of conduct in the textile industry which was based on the fundamental labour Conventions, under which over 300 companies had received certification for compliance with standards and over 250,000 workers had benefited to date, with compliance being verified by independent auditing companies. Moreover, companies in the sector were constantly monitored and inspected by inspectors from the Ministry of Labour and Social Welfare, and also by labour auditors for the international brands with which they had commercial relations. Companies in the garment and textile industry received an average of five labour audits a year from each of their clients, with a view to obtaining certification and thereby securing contracts. As a result, workers' rights, particularly freedom of association, were fully guaranteed, and workers could choose freely whether or not to establish trade unions. Lastly, he expressed concern that the situation under discussion was being examined by two ILO supervisory mechanisms, which was not conducive to transparency and could undermine the efforts of Guatemala to fulfil its obligations towards the ILO.

The Government member of Panama speaking on behalf of the group of Latin American and Caribbean countries (GRULAC), acknowledged the Government's political will to foster a culture of compliance and respect for labour rights, including freedom of association, to promote the creation of decent work and social dialogue in the country in coordination with the ILO. He encouraged the Government to continue its efforts to accelerate progress in the implementation of the Roadmap and to redouble its efforts to investigate crimes against trade union leaders and thereby provide the necessary guarantees to protect freedom of association. During the March 2017 session of the ILO Governing Body, GRULAC had noted the actions taken by the new Government to move forward in implementing the Roadmap and had supported the decision adopted by the Governing Body. GRULAC urged all of the partners to continue working together in a constructive manner on the implementation of the measures adopted and other future measures to be agreed between the tripartite partners, reinforcing and participating actively in social dialogue with a view to achieving durable solutions and the full application of the Convention in the country. GRULAC reiterated its commitment to fundamental rights at work, especially freedom of association and collective bargaining. Recognizing the technical assistance provided by the Special Representative of the ILO Director-General in Guatemala and its importance for the full implementation of the Roadmap, he requested the Office to continue providing that support. Finally, GRULAC reiterated its concern regarding the simultaneous use of supervisory mechanisms to deal with the same allegations regarding a country that was already being examined by the Governing Body. The unnecessary duplication of mechanisms could weaken the functioning of the ILO supervisory system. Guatemala had demonstrated political will to improve its industrial relations system and create a better future for the exercise of all fundamental labour rights. He considered that strengthening social dialogue and mutual trust between the social partners and the Government, with support from the ILO and international employers' and workers' organizations, was a very important part of continuing to assist a country that was cooperating with the ILO's supervisory mechanisms. He emphasized that the progress achieved by the Government should be assessed objectively, in the hope that the case could be finalized soon.

The Government member of Malta speaking on behalf of the European Union (EU) as well as Albania, Bosnia and Herzegovina and Montenegro, recalled the commitment made by Guatemala under the trade pillar of the EU-Central America Association Agreement to effectively implement the fundamental ILO Conventions. The case referred to very serious allegations on freedom of association that were being closely examined by the Governing Body under the procedure under article 26 of the ILO Constitution. He reiterated the need to avoid in so far as possible the duplication of procedures and efforts. For the sake of consistency, he recalled the views expressed at the Governing Body in March 2017: (1) he acknowledged the commitment of the Government to ensure respect for the rule of law in the country and its increased engagement with the ILO, as well as the advances made regarding social dialogue through the recent adoption of a new law on the labour inspectorate sanction powers; (2) he reiterated the call for a new law on freedom of association and the right to organize to be adopted before the meeting of the Governing Body in November 2017, in full conformity with the Convention and after thorough consultations with the social partners; and (3) he expected rapid, concrete and substantial progress on the Roadmap, including investigations of the murders of union officials, the strengthening of prevention and protection mechanisms, the implementation of reinstatement orders and the development of the awareness campaign.

An observer representing Public Services International (PSI) highlighted that violations of freedom of association in Guatemala were not limited to the activities of union leaders, but also included serious State interference in the autonomy of trade unions, in violation of the Convention. This interference had peaked with challenges in the courts to collective agreements freely signed by trade unions and the State in its capacity as employer. Union leaders had faced criminal charges for participating in these negotiations. The public smear and stigmatization campaign against trade unionism that was being expanded must cease with immediate effect. The State should carry out its role of promoting and developing freedom of association. He considered that the State had, in that respect, put itself at the service of the business sector that were developing the legal strategy for the Office of the Public Prosecutor. The ILO needed to call on the Government of Guatemala to immediately cease its acts of interference and persecution of trade union leaders. The violation of freedom of association had reached such a level that all leaders were being

taken to court, with judicial rulings that protected ministries and institutions so that trade union action could be criminalized and the agreements concluded ignored. Moreover, agreements in the public sector had been subject to delays in their approval by the Ministry of Labour and Social Welfare. He also denounced the dismissal of trade union leaders in the public sector, with the aim of intimidating workers and the dissolution of trade unions. A Commission of Inquiry was urgently needed before all trade union leaders in Guatemala were convicted for exercising their rights, or worse still murdered with total impunity. The problems stemmed from the culture of hate that the anti-union media had spread against social and trade union action. He recalled that dialogue was the means of resolving such matters.

The Government member of Switzerland indicated that her country supported the statement made on behalf of the EU. Strong and lasting labour relations, based on social dialogue and trust, were key for sustainable development. Switzerland supported the recommendations of the Committee of Experts and the conclusions of the Governing Body. She called on the Government and the social partners to implement the whole Roadmap without delay. The persistence of violence and harassment against trade unionists and impunity were a matter of concern. She hoped that the ongoing prosecutions would be brought to a successful conclusion with the imposition of effective sanctions, and that the Government would adopt legislation in accordance with the Convention as soon as possible. Lastly, she encouraged the Government to continue its efforts to promote social dialogue in the necessary atmosphere of trust. In this regard, she welcomed the cooperation of the ILO.

The Worker member of Spain speaking on behalf of the General Union of Workers (UGT), the Trade Union Confederation of Workers' Commissions (CCOO) and the trade unions of Belgium, France, Germany, Italy, Norway and Sweden, expressed solidarity with all trade unionists, and citizens in general, who were risking their physical integrity, and even their lives, to protect human rights and fundamental labour rights, particularly in Guatemala, where at least 84 trade unionists had been victims of union repression and its impunity in the country. He indicated that the Committee of Experts, the Committee on Freedom of Association and the Conference Committee had all examined complaints of serious breaches of the Convention in Guatemala and had urged the Government to adopt the necessary measures in law and practice in order to remedy those violations. Referring to the requests made by the Committee of Experts in its observation, he indicated that the Government's response had been inadequate and that it was far from resolving the situation of serious failure to comply with both Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). In that regard, he regretted that trade unionists in Guatemala continued to suffer from physical attacks, threats and murder, and that there was still no judicial protection for the effective investigation of these crimes. He said that the Government continued to obstruct the registration of trade unions, the enforcement of judicial decisions for anti-trade union dismissal and the exercise of collective bargaining. The Government was also attempting to carry out a reform of the Penal Code reform to criminalize the peaceful exercise of the right to strike. In that context, he called on the Committee to invite the Governing Body to appoint a Commission of Inquiry to examine the non-application of the Convention by the Government of Guatemala.

The Government member of Honduras recognized the continued political will of the Government of Guatemala to promote compliance of and respect for labour rights, including the right to freedom of association. He encouraged the Government to redouble its efforts to shed light on the crimes committed against trade union leaders and to provide the necessary guarantees to protect freedom of association. He recalled the importance of tripartite dialogue and requested all parties to continue working together constructively with a view to finding lasting solutions and achieving the full application of the Convention in the country.

The Worker member of the United States, speaking also on behalf of the Canadian Labour Congress (CLC) and the Central Workers Union Confederation of Brazil (CUT), made reference to the increased citation of ILO standards in trade agreements. Governments often include commitments to honour the ILO Conventions that this Committee supervises. We must point out that the increasing citation of ILO standards in such agreements is accompanied by the complete failure of our Governments to use these standards to protect freedom of association in the context of international trade. Guatemala and the United States are two such Governments, among many. With respect to the Central America and Dominican Republic Free Trade Agreement (CAFTA–DR), which required the parties to protect freedom of association, the Government of Guatemala had persistently failed to comply with the Convention, the country continued to receive trade benefits. The CAFTA–DR arbitration panel had heard arguments touching almost entirely on the application of the Convention by Guatemala. The results of the dispute settlement were not yet public, more than nine years since the submission of the workers' petition. The Conference Committee had also expressed serious concerns in relation to the present case, which was also examined in the Committee on Freedom of Association and under the procedure under article 26 of the ILO Constitution. Since 2007, workers filing complaints had documented violations of Convention No. 87 and updated cases annually showing that the Government had failed to act over the last ten years despite proof that union leaders were offered bribes to quit their jobs and to convince workers not to join unions; and that workers were fired for joining unions or not disbanding unions. The Government did not investigate, prosecute, and punish employers who violated freedom of association. New violations of cases of dismissal of union leaders and members continued to this day. In 2015, an employer with 1,200 workers had refused to bargain with the union chosen freely by over 66 per cent of its workforce and had signed an agreement with another group representing fewer than 3 per cent of workers. One more current example, among many: starting in July 2016 with the formation of a union in the food sector, the employer had fired 150 union leaders and members. There was a judicial order for the employer, Grupo Bimbo, to reinstate the workers but as in over 2,200 such orders, there had been neither compliance nor enforcement.

The Worker member of Colombia said that in Guatemala the murders of trade union leaders and members were not effectively penalized or prevented. Impunity prevailed. In 2016, the Committee had called on the Government to investigate all acts of violence against trade union leaders and members. However, there had been no convictions in the majority of cases, or they had been attributed to causes other than trade unionism. In 2016, the Committee had also asked the Government to draw up draft legislation to bring the law into conformity with the recommendations of the ILO supervisory bodies. However, although the Government had reiterated its commitment to adjusting its legislation, it repeatedly disregarded its responsibilities in that respect, with obstacles to freedom of association and provisions inconsistent with the Convention remaining in the national legislation. After reiterating the solidarity of Colombian workers with those of Guatemala, he suggested that the Committee should call on the Government to provide improved protection for trade union leaders and take the necessary measures to investigate the crimes committed against trade unionists, clarify the true motives and hand

out exemplary punishments to the perpetrators and instigators.

The Government member of the United States congratulated the Government on the enactment of legislation that restored the authority to impose sanctions to the Ministry of Labour and Social Welfare. That was an important step in addressing serious concerns about the effectiveness of labour inspections. The next step would be to ensure the effective implementation of the legislation. He urged the Government to allocate additional resources to the labour inspectorate to ensure sufficient and effective inspections throughout the country. He also urged the Ministry to promptly enact complementary inspection protocols to provide specific guidance to investigators in the investigation of complaints related to freedom of association and collective bargaining and ensure that violations were remedied. He further urged the Government to improve compliance with labour court orders. Several other freedom of association issues of concern had been well-documented in the conclusions of the ILO supervisory bodies. He hoped that a tripartite Bill, developed in consultation with the ILO and that took into account all of the Committee's recommendations, would soon be enacted and effectively implemented. He also hoped that the Government, in consultation with the trade unions and the ILO, would address the issue of the delays in the registration of labour unions. Anti-union discrimination persisted, especially in the *maquila* sector, where no specific measures to address trade union rights existed. He urged the Ministry of Labour and Social Welfare to work closely with the Ministry of Economy, the tax authority and the Social Security Institute to develop and apply strategies to protect freedom of association and collective bargaining rights in that sector, including joint inspections and the implementation of existing laws that required the removal of Government benefits in cases of non-compliance. Finally, he remained concerned at the low rates of convictions in cases of murdered trade unionists. He called for the effective application of existing instruments intended to improve criminal investigations, and increased information sharing between unions and investigative bodies.

An observer representing IndustriALL Global Union noted with concern the incapacity of the Government to give effect to the Convention and to prevent the increase in anti-trade union violence in the country. According to the recent ITUC Global Rights Index, Guatemala was one of the ten worst countries for workers, in which trade union members were harassed, threatened, subjected to physical violence and persecution, and were even murdered, simply because they wished to exercise their right to freedom of association. An affiliated organization, the Trade Union Federation of Food, Agricultural and Allied Workers (FESTRAS), had reported violations committed by enterprises against two trade unions, to which the Government had failed to respond. A trade union from the textile sector, which had been legally established, had met with resistance when it attempted to become fully operational and exercise its right to engage in collective bargaining. Its members and leaders were harassed on a daily basis, with no intervention by the Ministry of Labour and Social Welfare. Another trade union, which had been established for over five years, continued to experience the dismissal of its leaders and incidents of harassment. Despite its legal victories supporting its right to exist, the enterprise continued to refuse to negotiate a collective agreement with the union. He called on the Committee to make a clear and unambiguous recommendation to the Government to take the necessary measures to ensure that enterprises operating in the country fully complied with the Conventions ratified, and respected the rights of all workers.

The Employer member of Chile emphasized that, as in 2016, the Committee had examined the Government's compliance with the Convention, and that the conclusions of the Committee, and the latest comments of the Committee of Experts, showed that this was a case of clear progress. He drew attention to the information provided by the Government on Decree No. 7-2017, which established an inspection procedure aimed at punishing labour violations and promoting a culture of compliance with labour rights and duties. The Committee of Experts had observed with interest the content of Bill No. 5199, submitted by the Government to the Congress of the Republic on 27 October 2016, recognizing that the text incorporated many of that Committee's previous observations. With reference to the Committee of Experts' comments on serious acts of violence against trade union leaders and members, he highlighted that in 2016, in the Committee, the CACIF had stated that, without downplaying the violence reported against trade union leaders, a general climate of violence affected the entire country, and it was therefore necessary to improve without delay the speed and efficiency with which justice was applied. That was particularly relevant because the official information provided by the Office of the Public Prosecutor that the courts in their rulings dismissed trade union activities and the defence of the labour rights of the victims as the motives for their violent deaths. For Guatemalan employers, it was paramount for the Government to guarantee social peace, and protection and respect for the fundamental rights of all citizens, and particularly the right to life. He nonetheless noted with concern that the Committee of Experts was urging the Government to create special courts to deal more rapidly with crimes and offences committed against members of the trade union movement. If that recommendation were adopted, it could result in special and differentiated treatment for a specific group of the population, although the official figures did not show that the crimes and offences committed against trade unionists were due to their activities. The situation was also very delicate as the Committee of Experts was stretching its mandate to the extreme by proposing under the Convention the creation of specialized courts with criminal jurisdiction. In conclusion, he hoped that the Government would pursue its efforts to speed up the application of justice in an appropriate and efficient manner, to protect all citizens, irrespective of their activities, and to ensure due respect for freedom of association and the protection of the right to organize.

A Government member of Panama endorsed the statement made by GRULAC, and welcomed the written information submitted by the Government. He highlighted the action taken by the Government and the authorities of the three branches of the State to achieve the progress required by the social partners in the country. He urged the Government to take further steps to protect freedom of association, which was synonymous with industrial peace.

The Worker member of Burkina Faso underlined that violations of freedom of association in Guatemala had resulted in the deaths of dozens of persons, and emphasized that all human rights violations were to be condemned, regardless of the country in which they occurred. Tribute should be paid to all of those who lost their lives every day in defence of freedom, integrity and human dignity. Such remarkable individuals were found not only in employers' and workers' organizations, but also in governments. While inviting the Government to comply strictly with international labour standards, he called on the Committee members to ensure that the ILO demonstrated credibility in its approach to addressing these issues, and backed up words with action.

The Employer member of Honduras welcomed the information provided by the Government in response to requests which had been made by the ILO over a period of many years. He expressed appreciation for the information regarding the Labour Code reform proposals which would

strengthen freedom of association and would undoubtedly be a tool for social peace. He supported the comments made by the CACIF to the Committee of Experts. He highlighted the work carried out by the Special Representative of the ILO Director-General in Guatemala, in accordance with the Memorandum of Understanding signed in 2013 and the Roadmap. He noted that criminal investigations were now carried out with more speed and determination and observed that the information provided by the CICIG revealed the absence of a climate of anti-trade union violence. He concluded that the ILO should note the significant progress made through the strengthening of institutions and social dialogue.

The Government representative emphasized that, with regard to the strengthening of the protection measures for trade unionists, the budget had been increased by GTQ400 million, mechanisms for coordination and communication with workers had been reinforced and a process had been commenced for the strengthening of the Committee for the Settlement of Disputes before the ILO in the area of Freedom of Association and Collective Bargaining. She indicated that the inclusion of former prosecutors from the Office of the Public Prosecutor into the team of the Ministry of the Interior and the use of new investigation technologies and tools had made it possible to ensure greater flexibility in the investigation of acts of violence. She emphasized that in 2016 and 2017 more trade unions had been registered than in previous years, and that a forum for dialogue had been established, in which it had been agreed to address a series of subjects, including the reform of the procedure for trade union registration, which had been proposed by the trade unions. She also recalled that there were regulations in Guatemala for the registration of trade unions and specific requirements that needed to be fulfilled so that the Ministry of Labour and Social Welfare could grant recognition. She welcomed the fact that the Committee of Experts had noted with interest Bill No. 5199, which had been submitted to the Congress of the Republic on 27 October 2016, as it took on board most of that Committee's earlier observations. She expressed support for social dialogue and expressed her full willingness to participate in any discussions that could be requested by the constituents, taking into consideration the fact that the Congress of the Republic had set specific dates to receive the agreements, after eight months had elapsed. During that period Congress had granted several extensions in view of the additional time requested by employers and workers, without counting more than ten months that had been granted by the Ministry of Labour and Social Welfare in 2016 for views to be provided as, with much regret, a communication written and signed by workers had been received indicating that they would not participate in the process of the formulation of the Bill. She nevertheless expressed confidence that the Bill would be approved as soon as possible, noting that it contained the elements pointed out by the Committee of Experts. With reference to collective agreements in the public sector, she emphasized that the administration and control of the quality of expenditure were a priority for the Government which, rather than seeking to limit collective bargaining, was endeavouring to ensure that public resources originating from the taxation of citizens were taken into consideration prior to negotiations, based on rational and transparent budgetary measures. She reiterated her concern and consternation at the loss of human lives as a result of the violence in the country, including those of trade unionists, and indicated that specific cases had been investigated in which the victims had been trade unionists and it had been scientifically proven that there was no trade union motive. In conclusion, she reiterated the readiness, will and commitment of the Government and called for further transparent, honest and truthful dialogue.

The Employer members thanked the Government for its detailed explanations and welcomed the action it had been taking to make progress on the issues discussed. They referred to the report submitted in March 2017 by the Special Representative of the ILO Director-General in Guatemala to the Governing Body, highlighting the manner in which the social partners were being involved. With regard to the nine indicators identified as the basis for follow-up to the Roadmap, the Employer members recalled that the Tripartite Committee on International Labour Affairs was working to identify problems and seek solutions in conjunction with the social partners, and expressed the hope that such reviews would continue to be conducted regularly. They also drew attention to the fact that in March 2017, the President of the Republic had held a meeting with workers and employers with the aim of drawing up an action plan to continue the process of the implementing the Roadmap, and they expressed the hope that the President would remain involved in the process. The Labour Commission of the Congress had provided support to members of Parliament to raise their awareness of fundamental principles and rights at work. Awareness-raising campaigns on freedom of association had also been carried out with employers, and had been extended to cover various sectors, with the aim of achieving the objectives of Agenda 2030 for Sustainable Development. Three meetings had also been held with journalists, columnists and opinion makers. With regard to judicial bodies, there had been progress in developing rules of procedure for labour and social welfare courts and regulations on the enforcement of sentences. It was to be hoped that, with the Supreme Court of Justice, progress could be made on a code of labour procedure. They also highlighted the bipartite agreements concluded by the social partners and emphasized the importance of the Government accepting and implementing those agreements to deepen understanding between the social partners. Some actions should be taken urgently, such as strengthening the investigations into clarification of the facts and prosecutions of the murders of trade union activists and leaders, a significant increase in the percentage of reinstatement orders, trade union registrations, the more effective use of the Committee for the Settlement of Disputes before the ILO in the area of Freedom of Association and Collective Bargaining and, lastly, the expansion of the mass awareness-raising campaign. In March 2017, the Governing Body had called for further engagement in constructive social dialogue to achieve the full implementation of the Roadmap. That course of action should be endorsed by the Conference Committee, and should be included in its conclusions. The conclusions should also include support for dialogue between the social partners at both the national and international levels and the adoption of the draft legislation that had been developed at the earliest possible juncture. With regard to freedom of association and civil liberties, the Employer members considered that there was a need for more in-depth consideration of the causes of violence that affected trade union members, including by the Committee of Experts itself, because it seemed that there were no trade union motives. Concerning legislation they recalled that issues involving the right to strike should not be included in the Committee's conclusions, and that the Government was under no obligation to act on them. Regarding trade union registration, they said that the trade unions themselves needed to take responsibility and make constructive commitments in the dialogue with the Government to make progress with regard to registration, as the workers had rejected specific proposals from the Government to improve the registration system. It was hoped that the workers would support the development of a joint proposal for improvements in the registration system in Guatemala. With regard to the dispute settlement mechanism relating to free-

dom of association, they considered that it was for the Government to determine the modalities. They also considered that it was for the Government to decide how the campaign to strengthen freedom of association and collective bargaining should be implemented. Concerning the *maquila* sector, they considered that there were no specific indications of non-observance of the Convention, and that that issue should be regarded as settled. Indeed, much had been done in the context of the codes of conduct in the sector. Moreover, specific sectoral action did not come within the scope of the Convention. The number of trade unions existing in a sector could not be the sole indicator, since there were both positive and negative aspects to freedom of association, and agreement was needed in that sector. Lastly, they reiterated that the case should be dealt with in the Committee on Freedom of Association as part of Case No. 2609 and by the Governing Body.

The Worker members noted with concern that, despite some isolated achievements, not enough progress had been observed in Guatemala. The Government had failed to implement the conclusions adopted in 2016 by the Committee, including those related to the need to investigate violence motivated by trade union activities of the victims and to punish perpetrators. It was clear that not enough financial and human resources had been allocated to the Special Investigation Unit for Crimes against Trade Unionists of the Office of the Public Prosecutor. Without resources, it was unlikely that the protocol for the implementation of immediate and preventive security measures for trade union members could be properly implemented. In terms of legislative changes, the latest Bill submitted to Congress to bring the legislation into conformity with the Convention did not fully resolve the issues raised by the Committee of Experts. The Committee for the Settlement of Disputes before the ILO in the area of Freedom of Association and Collective Bargaining had not been able to operate fully. The Ministry of Labour and Social Welfare had introduced new obstacles for the registration of trade unions. The levels of non-compliance with court orders in cases of anti-union dismissal were unacceptable. There was no effort so far to reach out to broader Guatemalan society through the mass media. On the contrary, the Government had attacked a number of collective bargaining agreements in the public sector. Public sector unions were being stigmatized by the Government as if they were working against the national interest. The Worker members urged the Government to: (1) continue to provide prompt and effective protection for all trade union officers and members who were at risk and redouble its efforts to combat impunity, by ensuring that the Special Investigation Unit for Crimes against Trade Unionists of the Office of the Public Prosecutor was provided with appropriate financial and human resources; (2) through ILO assistance and consultation with the social partners, review the Bill submitted to Congress to bring the legislation into conformity with the Convention; (3) undertake, in consultation with the social partners, an evaluation of the terms of reference and operation of the Committee for the Settlement of Disputes and include in that process an examination of the complementarity between that Committee and the judicial mechanisms for the protection of freedom of association in the country, together with an analysis of their effectiveness; (4) eliminate the various legislative obstacles to the freedom to establish trade unions and, in consultation with social partners, and with the support of the Special Representative of the Director-General in Guatemala, revise the procedure for processing applications for registration; and (5) disseminate the awareness-raising campaign on freedom of association in the mass media and cease immediately to stigmatize and denigrate existing collective agreements in the public sector through the media.

Conclusions

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

The Committee noted the persistent allegations of acts of anti-union violence, including physical aggression and murders, and the insufficient progress in combating impunity.

Taking into account the discussion, the Committee called upon the Government of Guatemala to:

- **continue to investigate, with the involvement of the Public Prosecutor's Office, all acts of violence against trade union leaders and members, with a view to identifying and understanding the root causes of violence, understanding whether trade union activities was a motive, determining responsibilities and punishing the perpetrators;**
- **continue to strengthen the operation of the Conflict Resolution Committee, including in relation to the complementarity between the Conflict Resolution Committee and the judicial mechanisms for the protection of freedom of association;**
- **eliminate the various legislative obstacles to the free establishment of trade union organizations and, in consultation with the social partners and with the support of the Special Representative of the Director-General, review the handling of registration applications;**
- **continue to provide rapid and effective protection to all trade union leaders and members who are under threat so as to ensure that protected individuals do not personally have to bear any costs arising from those schemes;**
- **ensure the effective operation of the Investigation Unit for Crimes against Trade Unionists of the Office of the Public Prosecutor by allocating the necessary resources;**
- **increase the visibility of the awareness-raising campaign on freedom of association in the mass media and ensure that there is no stigmatization whatsoever against collective agreements existing in the public sector;**
- **continue taking the necessary steps to fully implement the roadmap adopted on 17 October 2013 in consultation with the social partners;**
- **continue to engage with the Special Representative of the Director-General in Guatemala in pursuing the implementation of the Memorandum of Understanding and the roadmap.**

The Committee called upon the Government of Guatemala to report progress to the Committee of Experts before its next meeting in November 2017.

KAZAKHSTAN (ratification: 2000)

A Government representative stated the 2015 Law on Trade Unions and the 2015 Labour Code were intended to strengthen the organizational basis of the trade union movement and expand its role in defending the rights and interests of workers. The Constitution and the Law on Trade Unions prohibited both unlawful interference by the State in the affairs of public associations and any acts that prevented a trade union from being founded or carrying out its activities. Discrimination against citizens on the grounds of their membership of a trade union was forbidden in Kazakhstan. Trade unions were founded on the basis of equality among their members. All trade unions were equal before the law. Trade unions operated independently and adopted their own by-laws, decided on their own structure, determined their own priorities for action and formed their own trade union committees. Under the legislation, trade unions acted independently of state bodies at all levels and of employers and their associations, and were neither controlled by nor accountable to them; trade unions had the right to work with international trade unions and other organizations active in defending the rights and freedoms of workers and to conclude cooperation agreements.

Today, there were two national trade union centres in the country, with a membership of nearly 3 million workers. This was almost half of all employed workers in the country. In addition, the country had 38 sectoral, 23 regional and 404 local trade unions, and 20,000 first-level trade union organizations. Regarding the work under way to address the observations made by the Committee of Experts in respect of the 2016 conclusions of the Conference Committee, a roadmap on the development of a concept note for a draft law had been adopted; a special working group with the participation of all social partners had been formed to improve legislation on trade union activities; this group had already formulated basic approaches and amendments to current legislation in line with the Committees' observations and conclusions. In September 2016, Kazakhstan hosted an ILO direct contacts mission (DCM). The mission had welcomed the willingness of Kazakhstan to continue working to bring national legislation into conformity with the Convention and acknowledged the openness and transparency displayed by the Government during the discussion of issues raised. The mission noted the positive progress in relation to the proposed amendments to the Law on Trade Unions and the Labour Code. During the DCM and the subsequent mission by the International Trade Union Confederation (ITUC), national approaches to amending legislation were discussed. To date, the following measures have been taken. First, regarding the procedures for founding trade unions, the working group, taking into account international practice, and the growing number of small and medium-sized enterprises in the country, drafted a bill to reduce the number of founding members from ten to three. Second, in relation to the trade union registration procedure, he recalled that the current legislation provided for a two-step process: (1) primary registration, within two months after the founding; and (2) confirmation of trade union status within six months following registration. The working group proposed to replace the current complicated two-stage registration procedure with just a one-stage procedure. Third, with regard to the restriction on the right to strike, the working group had proposed to amend section 176 of the Labour Code, which established a total ban on strikes at enterprises classified as hazardous production facilities so as to allow strikes at such facilities, provided that minimum service would ensure that the main equipment could continue working uninterrupted, and industrial safety was ensured. The conditions and criteria for classifying an enterprise as a hazardous production facility were set out in sections 70 and 71 of the Law on Civil Protection. All the proposed legislative amendments had been approved by national trade unions and employers' associations. The concept note for a draft law was examined and approved on 26 May 2017 by the interdepartmental committee on legislative activities that reported to the Government. A draft law was being prepared for submission to Parliament. The Government was also planning to consider amendments to the Law on Trade Unions, with regard to the trade union affiliation system, as well as the Law on the National Chamber of Entrepreneurs (NCE), with regard to the Government's membership in the NCE. In September 2016, during the DCM, as well as in early 2017, the Government had requested technical assistance of the Office in this regard. It was now awaiting its official reply to begin examining, with the ILO support, the second package of legislative amendments. The Government would take all the necessary steps to ensure that the national legislation met all the requirements of the Convention.

The Employer members pointed out that despite the very clear direction provided by this Committee in 2016 and the commitment of the Government, and notwithstanding the long-standing concerns expressed by the Committee of Experts in its observations adopted in 2006, 2007, 2008, 2010, 2011, 2014, 2015 and 2016, it appeared that the Government had still not taken action on the serious issues related to the workers' and employers' organizations freedom of association, in particular, the freedom to establish and join organizations of their own choosing without prior authorization. They stressed their deep concern at the Government's continued failure to ensure that the Law on the National Chamber of Entrepreneurs of 2013 provide employers' organizations full autonomy and independence without the interference of the Government. The establishment of the NCE by this Law constituted a serious obstacle to the employers' organizations' freedom of association. They expressed their deep and continued concern that the five-year transitional period provided for by the Law resulted in the interference with the freedom and independence of employers' organizations, and the broad ranging duties and responsibilities of the NCE. They further noted with deep concern the Government's failure to amend this Law to ensure that employers' organizations had full autonomy and independence. Taking into account the findings of the DCM and the Government's commitment to improve the situation, the Employer members were of the view that the Government needed to take some preliminary steps to remedy the situation immediately. Action to be taken by the Government to remove obstacles to the freedom of association of employers' organizations could include: (1) removing the all-encompassing mandate of the NCE to represent employers' needs; and (2) deleting the provision in the Law on the NCE on the accreditation of employers' organizations by the NCE, which put employers' organizations in a subordinate position vis-à-vis the NCE and allowed it to arbitrarily refuse accreditation of an employers' organization. The Employer members also expressed their concern with regard to the barriers to freedom of association of workers' organizations, namely with respect to their registration. Expressing their deep commitment to the principles of freedom of association and the right of workers and employers to establish and join organizations of their own choosing, they urged the Government to take action, with the ILO assistance, to address the concerns raised by this Committee without any further delay. Finally, in light of the repeated comments of the Committee of Experts on this case, the Employer members recalled their disagreement with the Committee of Experts' views concerning Convention No. 87 and the right to strike and further recalled that "the scope and conditions of this right were regulated at the national level" and that there was no consensus on this issue in the Conference Committee.

The Worker members recalled the examination of this case at the previous session of the Conference and expressed concern at the constant deterioration of the situation in Kazakhstan in relation to freedom of association. The Government did not seem to have heeded the strong signal sent by the Committee at its previous session. The direct contacts mission that visited the country in September 2016 had not been able to convince the Government to bring an end to the prosecutions that were still being pursued against certain trade union leaders. Although there had been certain positive political signals, they had not been reflected in practice. For example, after agreeing to register the Confederation of Free Trade Unions of Kazakhstan (KNPRK) following an abnormally long registration process, the Government had revoked its registration, which meant that any activity by the union was unlawful and would render it criminally liable. The Government had also ordered the arrest of trade union leaders and initiated legal proceedings, and heavy penalties had been imposed on them. Such intimidatory practices were intended to destroy the capacity of trade unions to take action. These serious issues were the subject of a complaint to the Committee on Freedom of Association and demonstrated the extent of the progress required to defend freedom of association,

which was the subject of the Convention that was not respected in the country. The failings in the application of the Convention had mostly been addressed on previous occasions. With reference to the prohibition on prison staff and firefighters from establishing or joining trade unions, the Government claimed that only personnel with military or police status were covered by this prohibition. The Government should not make use of this justification to circumvent or abuse the exception recognized for the police and the armed services in relation to the freedom to establish and join organizations. The duties of firefighting and prison personnel did not justify their exclusion from the rights and guarantees of the Convention in view of the principle of the restrictive interpretation of exceptions to the freedom to establish organizations, as emphasized in the General Survey of 2012 on the fundamental Conventions. Although it was acceptable for the establishment of a trade union to be subject to registration, that could not be a requirement for the exercise of lawful trade union activities. And yet, following the entry into force of the new Trade Union Act, Kazakhstan was requiring the registration or re-registration of trade unions and considered activities by an unregistered trade union to be unlawful. Moreover, registration procedures were often so long that they were prejudicial to freedom of association. The willingness shown by the Government to simplify the registration procedure should nevertheless be welcomed, and it was to be hoped that this simplification would also guarantee real freedom to establish organizations. Turning to the requirement for local and sectoral unions to join higher level organizations, it was essential to recall that workers had the right to decide in complete freedom and independence whether or not to be affiliated with or to join a higher level union structure. The thresholds for the establishment of higher level organizations were currently too high, and amounted to an obstacle to their establishment. To be in conformity with the Convention, such thresholds should be set at a reasonable level. The Act on the National Chamber of Entrepreneurs also contained restrictions on the freedom of association and right to organize of employers' organizations, which were in violation of the Convention. These violations of freedom of association jeopardized one of the fundamental principles of the International Labour Organization, namely social dialogue. Article 3 of the Convention set out the right of organizations to organize their activities and to formulate their programmes. It was clear that the national legislation restricted this freedom of action for a number of organizations which fell into the category of organizations engaged in "dangerous industrial activities". The nebulous nature of this concept and the possibility for a large majority of enterprises to declare their work as being "dangerous industrial activities" meant that it was not possible to determine precisely the activities that were covered by this provision. This uncertainty in practice implied that most action carried out by trade unions could be considered unlawful. A trade union leader had been imprisoned and convicted, for the first time, under section 402 of the Criminal Code, which criminalized the continuation of a strike declared unlawful by a court. Strong emphasis should be placed on the fact that workers who participated in peaceful trade union action were only making use of an essential right, and must not therefore be liable to penal sanctions. Such sanctions should only be possible if, during trade union action, violence was committed against persons or property, or other serious violations of criminal law occurred, and only under the laws applicable to such acts. The establishment of a minimum service should be a real and exclusive minimum service, and should not be an obstacle to the freedom to engage in trade union action. It was also essential for the social partners to be able to participate in the definition of the minimum service. However, the legislation was in breach of these principles, and also prohibited trade unions from accepting direct financial assistance from international organizations. It appeared that joint cooperation projects and activities were fully authorized in practice. Yet, the information provided by the ITUC included reports of refusal by the authorities to register trade unions on the sole ground of their affiliation to international trade union organizations, without there being any question of direct financing. The legislation was therefore still not in conformity with Article 5 of the Convention. As noted by the Committee of Experts, requiring the approval of the public authorities to receive funding from abroad was contrary to the freedom of organizations to organize their administration. In the view of the Worker members, purely and simply prohibiting the receipt of financing from international organizations was also contrary to the freedom to organize their activities. In view of the above, they firmly called on the Government to bring an end to any interference in the affairs of representative organizations and to guarantee the independence and autonomy of such organizations so as to ensure harmonious social dialogue in the country.

The Employer member of Kazakhstan recalled that the recommendations of the ILO supervisory bodies were binding on his country as the legislation placed international law above the national legislation. In this respect, he thanked the social partners and this Committee for their common goal of making the world a better place. His organization, the NCE, actively contributed to this endeavour through, for example, developing, in accordance with international standards, a concept for national social corporate responsibility in the sphere of labour, socio-economic development, employment and security. The NCE, one of the social partners, had signed a general tripartite agreement for 2015–17, 16 regional agreements and six branch agreements (14 branch agreements were being drafted). The NCE shared the responsibility for ensuring freedom of labour and productive employment. The issue of compliance with the Convention had been discussed by the NCE. In this respect, he pointed out that there were no cases of Government interference in the activities of the NCE or its member associations, as the legislation in force prohibited all interference in the activities of public organizations. Out of 53 members of the NCE presidium, only three represented the Government. In a way, the Government depended on the NCE as no law could be adopted without its expert opinion. The NCE was created taking into account international experience. Its structure was based on the continental model, in particular, that of France, Germany and other democratic States. In accordance with the Law on the NCE, the Government transferred over 50 of its functions to the NCE and its member associations. Pursuant to the recommendations of the Committee and the 2016 DCM, the NCE advised the Government to repeal the provision allocating three seats to the Government in the presidium of the NCE. To conclude, he underlined that the NCE was an independent and autonomous organization, which strived, with the ILO technical assistance, to become one day an example of full compliance with international standards.

The Worker member of Kazakhstan indicated that work had been carried out to address the comments of the Committee of Experts. In particular, in the framework of consultations with the Government, the social partners, including the Federation of Trade Unions of the Republic of Kazakhstan (FPRK), made proposals for the amendment of the Law on Trade Unions. On this basis, a law to amend certain provisions had been drafted. Pursuant to the draft, the minimum number of founding trade union members would be reduced from ten to three and the second stage of the registration procedure during which the union was required to confirm its status would be repealed. The FPRK was aware that two member organizations of the KNPRK

had not been re-registered; three FPRK member organizations had not been re-registered either. Furthermore, taking into account the comments of the Committee of Experts on the right to strike, section 176 of the Labour Code would be amended so as to provide for the minimum services at the enterprises classified as hazardous to ensure the safety and to maintain the functioning of the main equipment. The speaker recalled that the FPRK, together with the Confederation of Labour (KTK), had taken an active part in the development of the Labour Code and the Law on Trade Unions. The legislation allowed for systemic reform of trade unions, and strengthening and expansion of the social partnership framework. Collective agreements and the sectoral agreements, having the status of legal acts, played a key role in regulating labour relations, determining decent wages, ensuring safe working conditions and increasing social benefits and guarantees. The FPRK was grateful to the ILO for the technical assistance provided so far in the form of seminars, conferences and summer schools. The FPRK was concerned at the situation of trade union leaders, Mr Eleusinov and Mr Kushakbaev, who had received harsh penal sentences and, together with the KTK, called on the Government to demonstrate lenience in their respect.

The Government member of Malta speaking on behalf of the European Union (EU) and its Member States, as well as Montenegro, Bosnia and Herzegovina and Norway, firmly believed that compliance with ILO Conventions was essential for social and economic stability in any country and that an environment conducive to dialogue and trust between employers, workers and governments contributed to the creation of a basis for solid and sustainable growth and inclusive societies. The EU was actively engaged in the promotion of universal ratification and implementation of the core labour standards, as part of the Action Plan on Human Rights and Democracy, adopted in July 2015. The speaker welcomed the EU–Kazakhstan Enhanced Partnership and Cooperation Agreement, which included commitments to effectively implement the ILO fundamental Conventions. The Committee had discussed this case in 2016 and, on that occasion, had made a series of requests to the Government to amend the Law on Trade Unions, which limited the rights of workers to form and join trade unions of their own choosing, as well as provisions of the Labour Code, the Constitution and the Penal Code. The speaker welcomed the fact that an ILO DCM had visited the country. However, he expressed deep concern over recent developments in the country related to trade unions, notably the cancellation of the registration of the KNPRK, as well as the imprisonment of two trade union leaders. His group called on the Government to ensure that trade unionists could exercise their rights without impairment as guaranteed by the Convention. In this regard, Kazakhstan needed to take effective measures to ensure that the workers' right to establish and join organizations of their own choosing was fully respected, and notably to amend the Law on Trade Unions. The speaker encouraged the Government to consider suspending any delisting procedures until the Law had been amended and to ensure that trade unionists could exercise their rights without any hindrances. The Government's intention to amend the Labour Code regarding the right to strike was noted with interest and it was hoped that the Government would take the necessary measures to amend the Labour Code and the Penal Code in consultation with the social partners, so as to ensure that the right to strike was also fully respected in the country. The Government was also encouraged to take the necessary measures in line with the Committee of Experts' comments to: (1) authorize workers' and employers' organizations to receive financial assistance from international organizations of workers and employers; (2) ensure the autonomy and independence of free and independent employers' organizations in Kazakhstan, by amending the Law on the National Chamber of Entrepreneurs. The Government was further encouraged to continue to cooperate with the ILO in order to proceed with the reforms needed and to comply with ILO Conventions. He finally expressed his group's full commitment to cooperation and partnership with Kazakhstan.

An observer representing the International Trade Union Confederation (ITUC) said that he represented the KNPRK, which had been recently liquidated, in spite of a two-week hunger strike by some of its members which was found to be illegal by the court and stopped by the police. Fines of €12,000 were imposed for the damage caused by the strike and, on 20 January 2017, Mr Amin Eleusinov, Chairperson of the Union of Oil Workers of the Oil Construction Company (OCC), and Mr Nurbek Kushakbaev, Vice-President of the KNPRK, were detained and taken under arrest on criminal charges. Both leaders had been sentenced to two and two-and-a-half years in prison and prohibited from engaging in trade union activities after their release. Mr Kushakbaev was convicted for having called for an illegal strike. Ms Larisa Kharkova, the Chairperson of the KNPRK, was also subject to criminal prosecution with the threat of imprisonment. The Committee needed to adopt conclusions on the basis of which work could be undertaken to restore the fundamental rights in the world of work for each employee and each organization in Kazakhstan.

The Government member of the United States recalled that in the last two years, this Committee reviewed Kazakhstan's implementation of the Convention and urged the Government to amend its legislation, including specific provisions that set onerous registration rules on unions and inhibited the freedom and functioning of independent trade unions. While positive steps had been taken by the Government to heighten its engagement with the ILO and welcoming the 2016 DCM, he notes that serious failure to comply with the Convention continued. In this regard, he recalled that in January 2017, the Committee of Experts reiterated the need to modify certain provisions of the Law on Trade Unions and the Law on the NCE to ensure the full autonomy and independence of employers' organizations. He expressed deep concern at the dissolution of the country's largest independent trade union, the KNPRK; the lodging of charges against Ms Kharkova, the KNPRK Chairperson, and the imprisonment of two labour activists, Mr Eleusinov and Mr Kushakbaev, both of whom had been imprisoned apparently for exercising their basic worker rights. He urged the Government to take steps to support freedom of association and specifically to: (1) make the necessary changes in the labour legislation in accordance with the recommendations of the ILO supervisory bodies; (2) allow all workers' and employers' organizations, and in particular the KNPRK, to register and operate in a manner that is consistent with Kazakhstan's international obligations; and (3) drop the charges and release those labour officials and activists who had been arrested and imprisoned for exercising their right to freedom of association. He looked forward to the swift resolution of these issues and encouraged the Government to expeditiously avail itself of ILO technical cooperation to that end.

The Worker member of France said that independent trade union activists in Kazakhstan were constantly harassed, intimidated and persecuted. They were subjected to police interrogations, placed under surveillance and arrested on the grounds of their trade union activity. In 2011, the police had brought a bloody end to a strike lasting several months in Zhanaozen, leaving 17 dead and many injured. Seven independent trade unionists had been imprisoned for having exercised their fundamental right to strike. Dozens of people had been charged and their trials had taken place in extremely tense conditions. Since then, the

repressive atmosphere had intensified and an organized and systematic attack on trade unionists had been observed. Trade union leaders in the oil sector, including Amin Eleusinov, a trade union representative in the LLL oil company, and Nurbek Kushakbaev, vice-president of the Confederation of Free Trade Unions of Kazakhstan (KNPRK) had recently been arrested for having merely mentioned the possibility of a strike in a speech. Article 24 of the National Constitution, however, recognized the right to strike. Journalists had been refused access to the trial, and there had appeared to be no formal investigation under way. It had subsequently emerged that the alleged culprits had been under telephone surveillance since 2015. They were detained in inhumane conditions: placed in quarantine for an entire month; and forbidden from sitting on their beds or lying down, so as to wear them down psychologically in the hope of obtaining a false confession and quashing the trade union movement. The president of the KNPRK, Larisa Kharkova, had been questioned daily by police and had been placed under surveillance on spurious grounds, which had a de facto impact on the time she was able to spend on trade union activities and on her freedom of movement. On 7 April 2017, the vice-president of the KNPRK had been sentenced to two and a half years in prison and banned from any public activity for a further two years following his release, as well as being fined the equivalent of €75,000 on top of some €2,400 in court costs. Such cases were unfortunately far from isolated examples. The Committee on Freedom of Association had drawn attention to the fact that such methods constituted a serious attack on trade union rights and a grave breach of freedom of association. Kazakhstan must immediately put an end to the anti-union climate, meet its international commitments and apply the ILO's recommendations on freedom of association. She concluded by demanding the immediate release of the trade unionists arrested for their trade union activities, calling for judicial proceedings against them to be halted and for their sentences to be set aside. The case was very serious and required special attention.

The Government member of Cuba welcomed the information supplied by the Government and observed that the report of the Committee of Experts had mentioned the development of a draft law which sought to better regulate social relationships in the sphere of trade union activities, in compliance with the Convention. She highlighted the fact that the report had confirmed the existence of union pluralism in the country, demonstrating the Government's willingness to comply with the Convention. Likewise, she emphasized that the technical assistance required by the Government should be provided, as had been suggested by the direct contacts mission.

An observer representing IndustriALL Global Union indicated that Kazakhstan remained a country with a very poor record of trade union and human rights. The recent developments in the country showed how the authorities of the country undermined the ability of workers to organize and collectively bargain for their rights, despite the fact that in addition to ratification of the ILO Conventions, the Constitution of Kazakhstan recognized the right to freedom of association and the right to strike. After the Zhanaozen massacre in 2014, Kazakhstan had adopted a new Law on Trade Unions. The Committee of Experts had commented repeatedly that this Law limited the free exercise of the right to establish and join organizations and the right of workers to freely decide whether they wish to associate or become members of a higher level trade union structure. After the adoption of this Law, the registration of the KNPRK had been revoked and workers had seen their organizations dismantled for unclear and unjustified reasons. Trade unions at the sectoral level had faced similarly lengthy and burdensome registration procedures. When trade union activists and workers from the Oil Construction Company had organized a peaceful mass protest, including a hunger strike, against the dissolution of the union of their choice, the local authorities and management had suppressed the protest. The Chairperson of the Oil Construction Company Workers' Trade Union, Mr Eleusinov, and one labour inspector, Mr Kushakbaev had been arrested on 20 January 2017. On 7 April, Mr Kushakbaev had been sentenced to two-and-a-half years in a corrective labour colony for his appeals to strike. The judge had also satisfied the Oil Construction Company's demand to collect 25 million Kazakhstani Tenge (KZT) (US$80,000) from Mr Kushakbaev for alleged harm caused to the company by workers' hunger strikes, although there was no disruption of work. Mr Eleusinov had been sentenced to two years of imprisonment and would have to reimburse KZT8 million (over US$25,000). Upon his release, he would be forbidden to conduct any civil or union activity for five years. At the same time, the Oil Construction Company management had started massive layoffs of employees who had participated in the protests. This company formed part of KazMunaiGas, the largest state oil and gas company in Kazakhstan, infamous for their involvement in Zhanaozen massacre. The speaker expressed her deep concern about the repression of trade union activists. These were blatant violations of the ILO Conventions on freedom of association. The abovementioned Court decisions based on employers' lawsuits represented a dangerous precedent of a further criminalization of trade union work in Kazakhstan. The escalating crack-down on trade unions called for special attention from the ILO and the international community.

The Government member of Turkmenistan welcomed the legislative measures taken by the Government with a view to fulfilling its international obligations under ratified Conventions. The Government collaborated with the ILO in a constructive manner, including through consultations with ILO experts with a view to creating the conditions for complying with the provisions of the Convention.

The Worker member of the United States recalled that thousands of workers in Kazakhstan's oil and gas industry went on strike to protest unsafe work conditions and low pay. In December 2011, the country's law enforcement forces brutally repressed the strikes by opening fire on unarmed protesters and criminally prosecuting strikers. Six years later, exercising the right to strike in Kazakhstan, a right guaranteed by the Constitution, remained extremely dangerous. The 2015 Labour Code, while recognizing the right to strike, sharply circumscribed it. Workers in a number of industries were prohibited from striking. A recent Human Rights Watch report had found that Kazakhstan courts routinely declared strikes illegal and that it was extremely difficult, if not impossible, for workers to meet the onerous requirements in order to strike legally. For example, before striking, workers must engage in cumbersome mediation procedures with their employer. In at least one instance, a company had unilaterally terminated the mediation process and faced no liability, despite the union's complaints to the authorities. Workers and union leaders faced serious liability for engaging in an illegal strike. The 2014 Penal Code criminalized "calls to continue a strike that had been ruled illegal by a court". This offence carried a maximum prison sentence of three years. Courts had also subjected strikers to significant administrative fines of up to 33 per cent of an average worker's annual salary. In addition, the Labour Code allowed employers to discipline workers who participated in an illegal strike, even before the declaration of the strike illegal by a court. In January 2017, about 300 employees of an oil company began a hunger strike to protest the court mandated liquidation of the KNPRK. The workers notified municipal authorities in advance and continued to perform their jobs. Still, the company petitioned a court to declare the strike illegal. The

court took advantage of the 2016 amendments to the Code of Civil Procedure which had established extremely short time frames for the consideration of illegal strike cases. In just two days, the court declared the hunger strike illegal. The strikers were detained and imposed significant fines. The court subsequently found that the strikers must reimburse the company for supposed losses from the strike, resulting in additional hefty fines. Union leaders were also arrested, convicted and imprisoned in connection with the strike. These leaders were still in prison. Kazakhstan's current limitation on strikes and criminalization of participation in strikes was in violation of the Convention, and must be remedied.

The Government member of Switzerland said that her Government supported the statement made by the European Union and recalled that the independence, autonomy and freedom of the social partners were essential to achieving effective social dialogue and contributing to economic and social development. In law and in practice, any restriction on the right of workers and employers to establish and join organizations of their own choosing was a cause for concern. The right to organize and to join unions applied at all levels of the union structure, and Switzerland encouraged the Government to follow the Committee's recommendations in order to guarantee freedom of association in law and in practice.

An observer representing the International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) recalled that the issue of freedom of association in Kazakhstan had been acute for several years and needed to be considered in the context of the general atmosphere that existed in the country since 2011 when the longest labour conflict in the post-Soviet era had ended in the city of Zhanaozen, resulting in many injured and fatal cases amongst the oil workers claiming increments to their wages. Had the Government complied with the Convention, this strike would not have ended with acts of provocation and the use of armed force but with signing an agreement. The General Prosecutor's Office recognized that the police forces exceeded their authority and illegally used weapons, which resulted in the deaths and injuries of people. An investigation had found that a number of police officers were found guilty of beatings and brought to justice. There could not be freedom of association in Kazakhstan until these events were given a clear assessment by the State; until the legitimacy of the demands and actions of oil workers were recognized; and until the verdicts against trade unionists were dropped. The establishment of the principle of freedom of association was not only a means to improve working conditions, but also a means of ensuring peace and was a prerequisite for continued progress. However, the Government refused to comply with the provisions of the Convention. The reform of the labour legislation that followed the Zhanaozen events was designed to further restrict the rights of workers, and to destroy any opportunities for the activities of independent trade unions that were not under the control of the State. One should not forget about those who tried to realize this right in Zhanaozen during seven long months in 2011, those who died for this right and those who were still waiting for the cancellation of sentences and the restoration of justice. The recently opened criminal cases; the recent arrests of trade union leaders; and the unprecedented pressure on them and their families to obtain confessions on trumped-up charges was a continuation of the general course chosen by the authorities back in 2011. The speaker concluded by indicating that these constituted systematic and large-scale repressions, which had been going on for more than six years and affected thousands and tens of thousands of workers.

The Worker member of Norway, speaking on behalf of trade unions in the Nordic countries, expressed his deep concern at the lack of progress on amending the Law on Trade Unions, despite the fact that the Committee had urged the Government to bring it into full conformity with the Convention in 2015 and 2016. In that regard, he recalled that certain provisions of the Law made it difficult to exercise trade union rights, and that formalities prescribed in the Law were applied to delay and discourage the establishment of trade unions. He urged the Government to ensure, both in law and in practice, that workers had the right to freely join and establish trade union organizations and to organize their activities free of interference by the public authorities. He further urged the Government to enforce the Committee's recommendations to amend the Law to ensure its conformity with the Convention.

The Government member of Canada, while acknowledging the strides Kazakhstan had made since independence in developing its economy and improving the standard of living of its people, noted with significant concern the observations of the Committee of Experts. This was the third consecutive year that the Government had been called to appear before the Conference Committee to discuss its implementation of the Convention. In view of the considerable challenges regarding the exercise of freedom of association rights, including difficulties with the trade union registration process, she urged the Government to resist pressure to restrict personal rights and freedoms, and to take concrete measures to protect labour rights by amending and enforcing labour legislation in line with ILO labour standards, including Convention No. 87. She encouraged the Government to seek technical assistance from the Office in this respect. Canada remained committed to working with the Government towards these ends as a partner.

The Worker member of Honduras expressed concern about what was going on in Kazakhstan in terms of continuing violations of the Convention and, in particular, the criminalization of the right to strike. He stressed that the ILO should fix its gaze on the country so that it did not continue violating workers' rights and encouraged the Government to conclude agreements in all sectors in order to restore peace and harmony.

The Worker member of the Russian Federation indicated that the worsening of the situation of workers in neighbouring countries sometimes constituted an example for his Government. Many of those States, including the Republic of Kazakhstan, were, together with the Russian Federation, part of the Single Eurasian Economic Community, where the harmonization of the legislations of the participating countries was in progress. In 2016, concerns had been voiced about the deliberately complicated procedure for registering trade unions in Kazakhstan. The attention of this Committee had been drawn to the inconsistency of certain provisions of the national legislation with the ILO fundamental Conventions. He also called on the Government to make efforts to bring the legislation regulating the activities of trade unions into line with the requirements of the Convention. Regretfully, those concerns were justified. The situation over the past year had deteriorated significantly. In fact, one of the national trade union centres, affiliated to the ITUC, the KNPRK, had already been dismantled. State bodies had exerted direct and systematic pressure on trade unionists and leaders, including through arrests and imprisonment for the exercise of their legitimate trade union activities. Mr Eleusinov and Mr Kushakbaev had been arrested and brought to justice. Despite the content of official accusations, their imprisonment was in fact directly related to their legitimate trade union activities. Ms Kharkova was under criminal prosecution on far-fetched grounds and faced imprisonment. Such measures were used to prevent the development of an independent trade union movement in Kazakhstan so as to stop workers from trying to collectively defend their labour, social and economic rights. In 2011, the authorities of Kazakhstan had

shot at a peaceful protest action by the workers of the transnational oil and gas company in Zhanaozen, killing 16 people and imprisoning dozens of participants. The speaker deeply regretted that the Government had not assumed its responsibility for this event and continued to show disdain for its own international obligations, and called on the Committee to consider including this case in a special paragraph of its report.

The Government representative thanked the delegates for the attention paid to the Government's statement, the comments made, and calls and wishes expressed. The Government regretted that the events many speakers referred to had taken place and understood the concerns expressed in this regard. In replying to questions raised during the discussion, he indicated that, unfortunately, six trade union associations saw their registration withdrawn by the decisions of the courts: the KNPRK, headed by Ms Kharkova, its two branch trade unions, one branch trade union of the FPRK, one branch trade union of the KTK; and an independent trade union "Decent Work". The reason for the delisting of all six unions was the same: they all had failed to confirm their status within the allocated six-month period. All they needed to do was to involve in their ranks at least one affiliate organization in nine of the country's 16 regions. Unfortunately, they could not get such support from the workers. While the Government was working on abolishing the "two-step" registration procedure, 467 trade union associations had successfully passed this procedure. The Government and the Ministry of Labour had always had good working relations with the KNPRK. The latter actively participated in all working groups on the development of the current Law on Trade Unions and its amendments. Its Chairperson, Ms Kharkova, had regularly participated in the meetings of the Republican Tripartite Commission, the highest tripartite body in the country, and was a signatory of the General Agreement on Social Partnership between the Government, trade unions and employers' associations for 2015–17. Moreover, during the ITUC mission to Kazakhstan in August 2016 to discuss the KNPRK ITUC membership, the Government supported the KNPRK. Thus, the Ministry of Labour regretted the situation and conducted a number of consultations with the justice authorities in this respect. The Ministry of Labour was ready to assist, together with the justice authorities, in the re-registration of the abovementioned trade unions, should they so desire. To date, two of the six abovementioned trade unions had passed the first stage of registration. Concerning the financing of trade unions, while the Constitution forbade direct financing of trade unions by international organizations (for example, by paying salaries, purchasing cars and offices), there were no prohibitions for trade unions to participate and carry out international projects and activities (such as seminars, conferences, etc.) jointly or with the assistance of international workers' organizations. All trade union associations had always received such help. Regarding the cases of prosecution of three trade union leaders, while understanding the concern expressed, as a representative of the executive branch of the Government, he could not comment on the decisions of the judiciary. He assured that his Government would continue its work to improve the legislation and practice on the basis of the comments and requests expressed during the discussion.

The Worker members firmly encouraged the Government to address the various failures in how the Convention was being applied, such as denying trade unions the choice of structure that they could adopt. The Government should amend its legislation and practice, with a view to: proceeding with the registration of the KNPRK and its member organizations without delay; withdrawing unconditionally all charges against trade union leaders and members who organized and participated in peaceful trade union activities; respecting the narrow interpretation of exemptions from the freedom to establish and join trade union organizations and allowing judges, firefighters and prison staff to establish and join a trade union organization; removing restrictive criteria and registration procedures which limited freedom of association; respecting the independence and autonomy of trade unions and abolishing the requirement for sectoral, territorial and local trade unions to be affiliated to a higher level trade union; reducing the membership threshold for the establishment of a representative organization; respecting the freedom to manage representative organizations and lifting the prohibition on financial assistance from international workers' or employers' organizations; ensuring that a minimum service was genuinely and exclusively a minimum service and that workers' organizations could participate in defining that service; and specifying the organizations that carried out "dangerous industrial activities", for which strikes were illegal. The Worker members strongly urged the Government to receive a high-level tripartite mission in order to implement those recommendations.

The Employer members expressed their appreciation for the information provided by the Government and urged it to: (1) ensure that in the new legislation, workers had the right to join and establish organizations and that trade union registration procedures were simplified; (2) in an effort to make progress to ensure that employers' organizations' freedom of association rights were respected, remove the all-encompassing mandate of the NCE to represent all employers' interests and delete the provisions in the Law on the NCE regarding the accreditation of employer organizations by the NCE; and (3) allow trade union and employers' organizations to benefit freely from and participate in joint cooperation projects and activities with international organizations. Finally, they encouraged the Government to welcome a high-level tripartite mission in order to ensure that those goals were met.

Conclusions

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

The Committee noted the grave issues in this case concerning this fundamental Convention referring in particular to the revocation of the registration of the voluntarily unified KNPRK, as well as the infringement of the employers' freedom of association by the Law on the National Chamber of Entrepreneurs (NCE). The Committee also noted the serious obstacles to the establishment of trade unions without previous authorization in law and in practice. The Committee was concerned over the persistent lack of progress since the last discussion of the case by the Committee in June 2016 despite an ILO direct contacts mission visiting the country in September 2016.

Taking into account the discussion, the Committee called upon the Government of Kazakhstan to:

- **amend the provisions of the Trade Union Law of 2014 consistent with the Convention, on issues concerning excessive limitations on the structure of trade unions which limit the right of workers to form and join trade unions of their own choosing;**
- **amend the provisions of the Law on the National Chamber of Entrepreneurs in a manner that would ensure the full autonomy and independence of free and independent employers' organizations, without any further delay. In particular remove the provisions on the broad mandate of the NCE to represent employers and accredit employers' organizations by the NCE;**
- **allow trade unions and employers' organizations to benefit from and participate in joint cooperation projects and activities with international organizations;**

- **amend legislation to lift the ban on financial assistance to national trade unions and employers' organizations by international organizations;**
- **take all necessary measures to ensure that the KNPRK and its affiliates are able to fully exercise their trade union rights and are given the autonomy and independence needed to fulfil their mandate and to represent their constituents;**
- **amend legislation to permit judges, firefighters and prison staff to form and join a workers' organization;**
- **ensure that applications for union registration are acted upon expeditiously and are not denied unless they fail to meet clear and objective criteria set forth in the law.**

The Committee calls on the Government to effectively pursue ILO technical assistance to address these matters.

The Government should accept a high-level tripartite mission before the next International Labour Conference in order to assess progress towards compliance with these conclusions.

Social Security (Minimum Standards) Convention, 1952 (No. 102)

UNITED KINGDOM (ratification: 1954)

A Government representative shared information about the welfare system in the country. As the United Kingdom had just held a general election, information could only be provided on the existing welfare law. Further information would be provided in the Government's report on the application of the Convention in time for the next session of the Committee of Experts in 2017.

In relation to the key findings on Articles 16, 22, and 62 of the Convention concerning the adequacy of benefits, she indicated that her Government believed that its welfare safety net was adequate and that it balanced the requirements of a sustainable and affordable welfare system that supported the most vulnerable in society. Contribution-based benefits for unemployment and sickness represented one part of the overall welfare system, which included a mixture of income-related and social assistance benefits, such as housing benefits and tax credits. The main rates of the contribution-based Jobseekers Allowance and contributory Employment Support Allowance provided an income supplement to those who were not in employment. Additional support was available for those on low incomes and with limited capital. Moreover, the welfare system was based on the circumstances of those in receipt of benefits and targeted at those most in need. When assessing the adequacy of the welfare system, it was important to consider the support system as a whole.

The Committee of Experts had made comments on the inclusion of Child Tax Credits (CTCs). The CTCs were not actually a form of social assistance, but rather a form of social security. They were in the scope of the Convention and should therefore be included by the Committee of Experts in the relevant calculations when next considering compliance with the Convention. It was worth noting that many of those claiming the contribution-based Jobseekers Allowance and Employment Support Allowance were also claiming other benefits such as the Housing Benefit or Personal Independence Payment. Regarding the request of the Committee of Experts to undertake an actuarial study, she indicated that the Government regularly undertook assessments of the benefits it provided, including of the various income-related and social assistance benefits available for those on low incomes and with limited capital. Those studies indicated that working age contributory benefits along with income-related and social assistance benefits for those of working age accounted for almost 3 per cent of the GDP of the United Kingdom in 2016. Detailed explanations concerning the welfare system in the United Kingdom would be provided in response to the comments of the Committee of Experts.

The Worker members recalled that social security was one of the principal institutions that had emerged during the 20th century. For workers, it represented one of their greatest achievements and an extremely valuable heritage in that it expressed the spirit of the Declaration of Philadelphia and represented a tool for combating poverty anywhere, which constituted a danger to prosperity everywhere. Social security represented an act of civilization affirming that a truly modern society could not accept that men and women should be deprived of protection and be exposed to risk and need. The case of the United Kingdom indicated the extent to which these concepts and principles needed to be recalled and emphasized, including in the most industrialized countries, where social security had represented, and still represented, a major achievement in protecting workers from the changing fortunes of life, particularly by providing them with an income when they were out of work. Indeed, the importance of social security systems was not in question. A more common subject of discussion was the methods and means used to achieve the objective of such systems, and the extent to which these were attained.

In this regard, Convention No. 102 was a particularly original instrument, which established an internationally accepted definition of the very principle of social security by fixing the objectives to be achieved, not only the means of implementation. It established a minimum obligation for States in terms of results, and the Convention made it possible to measure progress attained on the basis of the specific results achieved. Another important feature of the Convention was that it was very flexible and offered a broad range of options and "flexibility clauses", enabling its progressive implementation according to economic development. Moreover, each country had the possibility of combining contributory and non-contributory benefits, and public and occupational systems, so as to ensure the guaranteed minimum standard of protection. It had served as a model for the European Code of Social Security, a Council of Europe instrument which incorporated the minimum standards established by the Convention as its initial basis, the application of which was monitored by the Committee of Experts, thereby bearing witness to the independence, impartiality and objectivity of the latter.

The social security system in the United Kingdom was based on three levels: contributory benefits, income-based benefits, and various tax credits and means-tested social assistance benefits providing additional protection against poverty. This last aspect of social protection had recently been reformed, as a result of which all tax credits and means-tested social assistance benefits had been merged into a system known as "universal credit", which was considered to be a social assistance benefit rather than a social security benefit, and did not therefore fall within the scope of the Convention. Even though a member State was free to declare benefits provided by the national social security system for which it accepted the obligations arising out of each part of the ratified Convention, this flexibility did not authorize a Government to claim that social assistance benefits did not fall within the scope of the Convention, because Article 67 of the Convention had been specifically included in order to assess whether the rate of such benefits was sufficient to meet the requirements of the Convention. The Committee of Experts had noted that the United Kingdom, by not taking account of the benefits constituting the "universal credit", was in violation of the Convention with respect to sickness benefit, unemployment benefit and survivors' benefit. The second point of the observation concerned the fact that contributory benefits did not reach the EUROSTAT at-risk-of-poverty threshold. The Government seemed unconcerned, as in its reply to this comment

it considered that the social security net was "adequate". However, a policy that sought to keep the basic living standard of persons who were receiving benefits and were not working below the absolute poverty threshold had the effect of using social security as a financial means of coercion towards employment. This kind of policy was a thing of the past and was incompatible with a modern vision of social security, one of whose objectives was precisely to prevent or reduce poverty.

Even though these remarks had been made in the context of the European Code of Social Security, they were still fully relevant to the present discussion and the Government should be called upon to perform the necessary calculations to establish the cost in terms of percentage GDP that would result from increasing these benefits so that the United Kingdom met its obligations. It should be noted that the "universal credit" system might prove insufficient to ensure the persons concerned a decent income since, according to the latest estimates, the reform would result in a reduction in income for a larger number of households (3.2 million) and would benefit fewer households (2.2 million). An alarm bell was sounding which needed to be taken seriously. The new forms of work and the proliferation of precarious situations needed to result in the strengthening, not weakening of social protection. The Government was therefore called upon to take the necessary steps to prevent this country, which had been the second to ratify Convention No. 102, from offering a terrible example of its application today.

The Employer members welcomed the Government's announcement that it would report more fully on the application of the Convention in time for the next meeting of the Committee of Experts, including information on the ongoing revision of the social security system. They welcomed the inclusion of this technical Convention among the individual cases to be discussed by the Conference Committee. The Convention had been adopted by the International Labour Conference in 1952 and had been ratified by the Government in 1954. The United Kingdom had accepted Parts II–V, VII and X of the Convention. The Committee of Experts had considered the application of the Convention by the United Kingdom seven times since 1995, including in its most recent observations in 2016. This was the first time that the application of the Convention by the United Kingdom was examined in the Committee.

The Convention was lengthy and complex, which could also be said about the comments adopted by the Committee of Experts. The Employer members wished to emphasize that the role of the Committee of Experts was to make observations on the application of ratified Conventions – in the case at hand, exclusively on Convention No. 102. The Committee of Experts' reference to other binding or non-binding instruments (including the European Social Code of Social Security and the European Social Charter) as well as to the assessment of the Committee of Ministers of the Council of Europe had created confusion as to the standards against which the Government was being assessed. They understood that there was an agreement between the ILO and the Council of Europe. However, the application of the European Code of Social Security was subject to a reporting mechanism to the Council of Europe. The mandate of the Committee of Experts in relation to the foundational work of this Committee was the basis on which Conventions had to be assessed. The assessment of the requirements of Conventions should be carried out in a clear and transparent manner. However, the manner in which the current observations of the Committee of Experts were drafted created confusion, partly because the Committee of Experts had referred to the Code and the Convention interchangeably without providing an explanation about "the Code" and why it was referenced. They expressed the hope that the Committee of Experts, in order to ensure that the ILO supervisory system was transparent and user-friendly, would take these points into consideration.

Concerning the obligations pursuant to the Convention, the Employer members noted that two main issues had been identified by the Committee of Experts which required further response from the Government. The first was whether non-contributory benefits fell outside the application of the Convention, and whether social assistance benefits fell within or outside the scope of the Convention. The second issue was whether or not the level of benefits fell below the minimum obligation under the Convention. Depending on the outcome of the first issue, an analysis of the second would be necessary. It would be helpful to know which minimum wages applied to be able to examine more fully the obligations under the Convention. In addition, the Employer members noted that the Government, in designing social benefit levels, had sought to find a balance between effective benefits on the one hand and incentives to work on the other. They had understood the Committee of Experts had to be critical of this motivation as being outdated and unreasonable. The position of the Employer members was that striving to maintain a balance between effective benefits and incentives within a sustainable system was in fact a legitimate and reasonable goal for the Government. The Convention was a flexible instrument and, in the view of the Employer members, allowed for such considerations to be made. They concluded by stating that they looked forward to the additional information and data to be provided by the Government before the next session of the Committee of Experts to enable a clearer understanding of compliance with the Convention.

The Worker member of the United Kingdom stated that current social security benefits in the United Kingdom had failed to meet the minimum requirements of the Convention. Recognizing that the Conference Committee's consideration of the record on social security in the United Kingdom was not best timed in light of its proximity to the general election, she clarified that underlying the technical issues raised in this case were inadequacies in the existing social security provisions in the United Kingdom.

She drew attention to four areas of concern. First, the current social security benefit did not provide an adequate safety net for the most vulnerable in society, and failed to even meet the lowest EUROSTAT at-risk-of-poverty threshold of 40 per cent of median equalized income in the United Kingdom and in the European Union as a whole. The findings of the Committee of Experts had indeed been supported by the latest national statistics, which had confirmed that 70 per cent of working-age adults in working families were living in poverty. In addition, the value of out-of-work benefits had also failed to keep pace with earnings, with unemployment benefits falling from about 20 per cent of average earnings in the 1970s to less than 15 per cent at present. Second, although the Committee of Experts in their conclusions focused on out-of-work benefits, the United Kingdom was currently experiencing record levels of in-work poverty with more than 7 million people, including 2.6 million children, facing poverty despite being in a working family. Third, she stated that no attempt was being made to improve the provision of social security. Instead, recent government proposals had sought to cut the level of protection in future years, with many working-age benefit rates due to be frozen until 2020 and with reduced support for families with children envisaged. In this context, she drew attention to the introduction of Universal Credit in the United Kingdom, which would be significantly less generous than existing tax credits, with cuts to the proposed level of work allowances. Fourth, the social security system had failed to keep pace with changes in the labour market of the United Kingdom, in particular to increase in insecure forms of work such as zero-hours contracts, agency work and the emergence of online platform

work (the so-called "gig economy"). Those in insecure work were significantly more likely to qualify for in-work benefits due to their low rates of pay, but such workers faced serious difficulties in accessing benefits due to the fluctuating nature of their working hours.

In addition, the current tax system in the United Kingdom might create incentives for employers to increase their reliance on forms of insecure work in order to reduce costs and avoid liability for employment-related taxation, in the form of national insurance contributions. Employers might also reduce their tax liabilities by employing individuals on a self-employed basis or even misclassifying workers as self-employed. She also addressed the question of the interpretation of ILO Conventions raised by the Employer members, referring to the mandate of the Committee of Experts as agreed by the social partners in February 2015 and March 2017. The agreement confirmed that the Committee of Experts could undertake an impartial and technical analysis of how Conventions were applied in law and practice by member States, while being cognizant of different national realities and legal systems.

In conclusion, the speaker called on the Government to take all steps necessary to comply with the Convention, including increasing the levels of benefits. The Government, in consultation with national social partners, should carry out a review of existing social security arrangements with a view to alleviating poverty levels, assessing whether existing rules incentivize the use of insecure work and ensuring that all working people benefit from effective social protection. The findings of such a review should be communicated to the Committee of Experts.

The Employer member of the United Kingdom requested the Committee to take into account the current situation in the country as a result of the elections that had been held only one day prior to the discussion of the case in the Committee. Following the dissolution of Parliament and until the formation of a new Government, civil servants could not take any action or make any announcements that showed affiliation to a political party (so-called "Purdah" rules), which necessarily restricted what the Government could do with regard to the case before the Committee. In the future, the Committee should take into account the existence of national elections to form a government when selecting countries for supervision, due to the clear risk of prejudice to the country concerned, especially those countries with rules similar to the "Purdah" rules. The Employer members of the United Kingdom had not sought the supervision of this case.

Moreover, given that the Committee of Experts had agreed to examine the European Code of Social Security, urgent clarification was required as to whether the social partners were expected to make future observations not only on the application of the Convention, but also on the Code. Clarification was also required regarding the status of the Technical Notes prepared by the Office concerning the state of application of social security provisions of the international treaties on social rights ratified by the United Kingdom. The observation of the Committee of Experts included references to the European Code of Social Security and the European Social Charter, in accordance with the arrangements between the ILO and the Council of Europe. However, the mandate of the Conference Committee was limited to supervision of ILO Conventions and Recommendations only, and the Government had been placed on the shortlist only with respect to the Convention. It was not the Committee's mandate to supervise the observation of the Committee of Experts in respect of the European Code; this was the role of the Council of Europe. While understanding the logic of having a coherent analysis of the European Code and the Convention, the dual observation made by the Committee of Experts rendered supervision of the application of the Convention challenging.

At the time of the entry into force of the Convention in 1955, the Employers' group had highlighted that the option of choosing branches of social security was incompatible with the principle of specific and comparable obligations in the ILO Constitution, and that there should be different Conventions for each branch of social security. As more than 60 years had passed, the supervision of obligations established in 1955 against national circumstances in 2017 was clearly unsatisfactory. He therefore questioned the up-to-date status of the Convention and whether it should be the subject of the Standards Review Mechanism process.

The Committee of Experts had observed that current sickness benefits, unemployment benefits, and survivors' benefits fell below the permitted level prescribed in the Convention. He understood that the Government had disagreed on this point, insisting that social assistance benefits were not social security benefits and therefore should not be included in the calculation of overall protection levels. There was thus a clear conflict of interpretation; the Experts appear to concede that social assistance benefits fall out of the calculation, which was of concern because the Experts should not determine the meaning of the provisions of the Convention and then apply them. While anticipating that the Government would consider the Committee of Experts' comments, which provided non-binding guidance, and this Committee's conclusions in respect of Convention No. 102 only, he emphasized that the Government could balance its social security scheme in a manner determined at the national level while respecting its international obligations.

The Worker member of Australia indicated that the most significant shift in the world of work was the rise of precarious employment over the last two decades. In 2011, it was estimated that half of all jobs worldwide were considered precarious. The exponential rise in precarious employment posed a series of challenges for social security schemes. For example, where the scheme was based on a model of full-time, permanent work, it could exclude precarious workers when they were unemployed, sick, disabled, or in retirement. Even when precarious workers were formally protected, the lack of continuity in employment might result in inadequate coverage or limited benefits during unemployment and retirement. Gaps in social protection of this character led to further precariousness, as workers were forced to enter unregulated forms of employment in order to survive. This was not consistent with the obligations under the Convention.

It was therefore vital for governments to review social security arrangements to ensure that social safety nets provided the support necessary for workers in precarious or insecure employment. The level of insecure work in the United Kingdom suggested that some analysis and review should be undertaken to ensure that these workers were protected by social safety nets. The number of workers in the United Kingdom in positions where they could lose their jobs at short or no notice had grown by almost 2 million in the past decade. More than one in ten workers now faced precarious employment conditions. Half of the biggest group of precariously employed workers, the self-employed, were in low paying jobs, and took home less than two-thirds of average earnings. Two million self-employed people now earned below £8 per hour. The social partners in the United Kingdom should therefore undertake a review of the social security system to ensure that the growing numbers of insecure workers were adequately catered for by the social security system.

The Worker member of France considered it essential to recall the provisions of the preamble to the ILO Constitution and the Declaration of Philadelphia, which affirmed that universal and lasting peace could be established only if it were based upon social justice, and that poverty anywhere constituted a danger to prosperity everywhere. The

Committee of Experts considered the level of unemployment benefits to be well below the minimum rate guaranteed by the Convention. Independent research carried out by the Joseph Rowntree Foundation showed that claimants of unemployment benefit had an income that was far below the minimum standard at which people could live under acceptable conditions, meet their basic needs and participate in society. The latest official statistics showed that 70 per cent of adults of working age in unemployed households lived in poverty (defined as less than 60 per cent of the median income after deduction of housing costs). Young adults received a particularly low level of benefit. In 2016, a single person of working age claiming unemployment allowance received 39 per cent of the income required for a basic standard of living. This allowance had decreased by 41 per cent since 2010. Couples with children received 61 per cent of the standard minimum income, or 62 per cent less than in 2010. The rates and terms of unemployment benefit had been amended by the austerity reforms, which had contributed to the impoverishment of the population. The press reported over 2,000 food banks in the United Kingdom that provided three meals per day for 1.1 million persons living in conditions of extreme poverty, including 436,938 children. The rising numbers of people dependent on food banks showed that poverty levels had increased, partly due to the system for calculating unemployment benefits, which was reducing benefit levels to next to nothing. Combined with the drastic rules governing entitlement to unemployment benefits (for example, requiring persons to carry out 35 hours of job search a week at the job centre, and taking away the benefits of those who arrived over ten minutes late for their job centre appointments), the situation of the unemployed was extremely precarious. Austerity policies were not only completely at odds with the provisions of Part IV of the Convention, but they also ran counter to the ILO's founding texts, which affirmed that "poverty anywhere constitutes a danger to prosperity everywhere" and that "the war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare".

An observer representing the International Transport Workers' Federation and the AFL–CIO emphasized that, in current times, the protection provided in the Convention was needed more than ever. The number of self-employed people in the United Kingdom had grown by 26 per cent over the last decade to 4.8 million, with 1.7 million estimated to be receiving earnings lower than the national minimum wage. An ever-increasing number of workers were misclassified as independent contractors, as many companies in the gig economy did not recognize the existence of employment relationships with their workers, thus depriving them of their rights, including those relating to social security entitlements. National courts had recognized this in some cases, finding that workers had been wrongly classified as self-employed. The British tax authority also stated that it would take all necessary steps to ensure that companies who wilfully misclassified their workers would pay the appropriate social security contributions. The speaker called upon the Government to clarify the law so as to deter the misclassification of workers in the gig economy by strengthening remedies and enforcement against misclassification, as well as establishing a strong statutory presumption of employee status. In terms of social protection, rather than redesigning the social security system to accommodate ever-increasing flexibility for employers, the Government should minimize insecurity at work. Even if platform-based drivers were classified as "workers", they were often considered self-employed for tax purposes. Additionally, in terms of Universal Credit, it was unclear whether a "worker" would be considered as a self-employed independent contractor or as an employee. The Government had to act urgently to ensure that platform workers were adequately covered by the social security system. In this respect, he called on the Government to conduct a tripartite review of the social security system and to consider novel solutions, including the strengthening of government-managed or worker-negotiated portable benefits, in order to ensure that workers in the gig economy were given the social protection they deserved.

The Worker member of Sweden speaking on behalf of the trade unions of the Nordic countries, agreed with the observation of the Committee of Experts that the level of social security in the United Kingdom was significantly low and did not meet the minimum rates required by the Convention. There was a wealth of evidence that those on sickness benefits in the United Kingdom fell well below a minimum income standard required to provide individuals with a decent standard of living. The social security system provided for different forms of benefits for those unable to work due to sickness, subject to different qualification criteria. There were serious problems with these benefits: (i) the level of statutory sick pay was low; (ii) those in low-paid and insecure work were at risk of losing out on statutory sick pay; (iii) the entitlement was income-related and employed workers had to earn £113 per week to qualify; (iv) those employed in insecure work, including zero-hours contracts and agency work often lost out because they did not earn enough to qualify; and (v) statutory sick pay only applied from the fourth day of sickness.

The speaker deplored the fact that, despite concerns that the existing level of benefits contributed to high poverty levels, the Government had introduced further cuts in 2017. Workers receiving the Employment and Support Allowance, who were expected to be able to return to work within a rather short time, had had their benefits cut by nearly 30 per cent since April 2017. While the Convention provided for the progressive increase in the level of social security, developments in the United Kingdom seemed to go in the opposite direction. Regarding the comments made by the Employer members of the United Kingdom concerning the status of the Convention, she recalled that, although the Convention had been adopted in 1952, the case at hand had proven that the Convention and its application were very much needed for leading a life in dignity in case of illness. She therefore urged the Government to adjust the national legislation to meet the requirements set out in the Convention.

The Government representative thanked the Conference Committee for its careful consideration of the issues raised by the Committee of Experts and of the information submitted by her Government. She affirmed that her Government had taken due note of all the questions and comments made, and undertook to address these, as appropriate, in the report to the Committee of Experts.

The Employer members noted that the submissions of the Government had been brief in light of the national circumstances surrounding the recent elections. They encouraged the Government to provide the required information to the Committee of Experts, including the requested statistics to enable it to better analyse the situation concerning the application of the Convention by the United Kingdom. They looked forward to further consideration of the application of the Convention, once this information had been submitted.

The Worker members referred to a number of views expressed during the discussion to the effect that the Convention had become "obsolete" and considered that, if every country that failed to comply with a Convention used this argument, no Convention would be given effect. They also considered it useful to recall that the Social Protection

Floors Recommendation, 2012 (No. 202), reaffirmed the importance of Convention No. 102, indicating in its preamble that these standards were of continuing relevance and continued to be important references for social security systems, and encouraging more ratifications of this up-to-date Convention. As reaffirmed during the last meeting of the Standards Review Mechanism in October 2016, the ratification of the Convention was encouraged. They added that the mandate of the Committee of Experts was described in detail in its report, and was recognized by employers and workers. In the case of the United Kingdom, the Committee of Experts had merely recalled the existence of Article 67 of the Convention and the meaning of this provision, based on the preparatory work. This examination concluded that the significance of this provision was beyond question. The only point worthy of attention was the violation of the Convention by the United Kingdom and the fact that the Government should be called upon to take the necessary measures to come into compliance with the Convention. This required a review of the current social security system, in consultation with the social partners, with the aim of substantially reducing poverty levels through an increase in social security benefits, and ensuring that the current system did not lead to an increase in precarious forms of work, but instead guaranteed sound and effective social protection for all workers. It was vitally important for the Government to give priority to this case, as the issue of poverty and lack of protection could not be left unanswered. Social cohesion and the balance of society as a whole were at stake.

Conclusions

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

The Committee encouraged the Government of the United Kingdom to transmit to the Committee of Experts the additional information requested, including the relevant statistics, in order to enable the Experts to make a fresh evaluation of the application of the Convention in the country.

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

BAHRAIN (ratification: 2000)

A Government representative stressed the Government's willingness to positively interact with all comments and its commitment to the application of international labour standards. Article 18 of the Constitution of Bahrain stated, that people were equal in human dignity and equal in rights and duties under the law, without distinction as to race, origin or language, religion or creed. The legislator defined the rights and duties of all individuals governed by the law without any discrimination. For example, the Labour Law for the Private Sector No. 36 of 2012 regulated the relationship between employers and workers in general and did not distinguish between a national and a migrant worker or between men and women. It was also expressly prohibited for employers to discriminate with regard to wages for reasons of gender, origin, language, religion or creed. Bahrain had a distinct system for managing the labour market and regulating the relationship between employers and workers, based on partnership and transparency. It had taken the following pioneering initiatives in the region to promote the rights of workers according to international labour standards: (i) the right of an expatriate worker to move from one employer to another without the consent of the employer; (ii) the introduction of a flexible work permit system, which allowed any expatriate worker working in an unfair situation to apply independently for a personal work permit without being associated with an employer, in accordance with the established regulations, thus avoiding any exploitation and guaranteeing access to all aspects of legal care and protection; (iii) the introduction of a national referral system to combat trafficking in persons, which ensured the monitoring of any case or complaint related to trafficking, as well as providing support to the victims and safeguarding their legitimate rights; (iv) the right of all workers to benefit from the system of unemployment insurance without distinction based on categories or nationalities; (v) recognition of the right of representation for all workers in trade unions regardless of their nationality, of the right to strike to defend their legitimate interests, full-time trade union activities and the protection of trade unionists from dismissal because of their trade union activities; (vi) application of the basic provisions of the Labour Law concerning labour contracts, protection of wages, annual leave, end of service indemnity and exemption from litigation fees to domestic workers; and (vii) implementation of the Decent Work Agenda in cooperation with the ILO.

Many international reports had praised Bahrain's pioneering steps in terms of labour market regulation, and labour-exporting countries had expressed recognition during official meetings of the care and protection enjoyed by expatriate workers in the Bahraini labour market. The speaker pointed out that the comments of the Committee of Experts did not address the existence of serious violations or breaches but were limited to some formal points, which did not conflict with the existing trends and policies in the country. The comments concerned the lack of a comprehensive definition of discrimination in the Labour Law and the Legislative Decree No. 48 of 2010 regarding the civil service, the lack of a definition of workplace sexual harassment in the Labour Law, and the need for procedures to protect expatriate workers.

With regard to the Committee of Experts' comments on the lack of a comprehensive definition of all forms of discrimination in line with the Convention, the speaker stressed that actual violations had not been identified. However, the Government was ready to cooperate with the ILO and examine the possibility of developing a comprehensive definition of discrimination in these two laws in accordance with international labour standards and specific constitutional and legislative mechanisms and procedures. All national laws were in conformity with the Convention. Section 39 of the Labour Law was very explicit and clear in the definition and prohibition of discrimination. Section 168 of that law as well as Act No. 17 of 2007 on vocational training did not differentiate between workers in determining an employer's obligations regarding vocational training. There were a number of mechanisms available to workers in the private sector to submit complaints in accordance with the protection of their interests and their right to work, such as the mechanism for settling individual and collective disputes under the Labour Law. The worker was entitled to file an administrative complaint alleging discrimination or resort to the judiciary. As for public sector employees, the law required the formation of an internal committee in all government agencies to handle complaints filed by employees subject to the civil service law. If the complaint was not settled, the civil servant could file a complaint with the Civil Service Bureau about any measure taken by the employer and had the right to appeal the decision to the courts.

Secondly, regarding the Committee of Experts' comments on the need to legally prohibit sexual harassment at work and to provide for remedies and deterrent sanctions, the Government representative indicated that sections 81 and 107 of the Labour Law and paragraph 33 of the Schedule of Violations and Penalties in the Legislative Decree regarding the civil service laid down the penalty of dismis-

sal if a worker or employee violated public morals or honour. The Supreme Council for Women (SCW) monitored any violation of women's rights. There had been no cases of sexual harassment in the workplace, and he believed that the Worker and Employer members of Bahrain shared this position. Should the Organization or any other party have information on any such case, the Government was fully prepared to study and respond to it firmly.

Thirdly, with regard to the Committee of Experts' comments concerning the protection of migrant workers, the speaker stated that national labour legislation provided legal protection in terms of regulating labour relations in line with international labour standards. The Ministry of Labour and Social Development and the Labour Market Regulatory Authority (LMRA) did not tolerate any practices of exploitation of migrant workers in the labour market. Many support services had been put in place for migrant workers in the event of abusive practices by employers, such as mechanisms for submitting individual complaints to the Ministry of Labour for the purpose of amicable settlement and direct call centres in the LMRA, which operated in several languages and could inform the worker about his or her work permit status via various electronic means so as to ensure employers' compliance with their licences. At the same time, expatriate workers had the right to asylum. The Government had issued awareness-raising publications in 14 different languages to be distributed to expatriate workers prior to their arrival and had established a special unit, the first in the region, to support and protect expatriate workers, which operated in seven languages and included a shelter centre that provided integrated services for migrant workers who were victims of exploitation by employers. The concerned bodies were also in contact with foreign embassies to resolve any outstanding problems and help them to regularize the situation of expatriate workers. A grace period had been implemented in 2016, during which the Government had allowed expatriate workers to regularize their legal status before the competent authorities.

Regarding the freedom of movement of expatriate workers, the Government representative indicated that the freedom of movement regime had been in place in Bahrain since 2009. Between 2015 and 2016, approximately 60,000 migrant workers had moved from one employer to another. Section 25 of the LMRA Law No. 19 of 2006 and Ministerial Decision No. 79 of 2008 regarding the procedures for the transfer of foreign workers to another employer were explicit and clear in this matter. Workers had the right to move from one employer to another without obtaining the employer's consent, while complying with the conditions and deadlines stipulated in the Ministerial Decision. The addition by the employer of a clause in the employment contract prohibiting the worker's transfer before a certain period of time had passed nevertheless did not nullify the right of the worker to move to another employer. The procedure required the observance of such period and the employer who claimed to be harmed could resort to the judiciary as a result of the worker's non-compliance with the employment contract. However, no such cases had been registered at present.

The speaker recalled that the Governing Body had decided in March 2014 to close the complaint procedure under article 26 of the ILO Constitution, in view of the historic consensus of the tripartite partners who had signed the Supplementary Tripartite Agreement of 2014 under the auspices of the ILO, in particular with respect to financial settlements for the remaining cases of dismissals, and provision of insurance coverage for the period of the interruption. He expressed his Government's appreciation for the role played by the Organization in the signing of the two tripartite agreements. The Government, via the national tripartite committee, which included representatives of the Bahrain Chamber of Commerce and Industry (BCCI) and the General Federation of Bahrain Trade Unions (GFBTU), had made every effort to settle 98 per cent of the cases, by reinstating the dismissed workers to their jobs in the public and private sectors while preserving all their rights and pension benefits. One hundred and fifty-six of 165 unemployed persons on the list annexed to the Supplementary Tripartite Agreement of 2014 had been reinstated in their former or similar jobs or sometimes paid financial compensation. As for the few remaining cases, the national tripartite committee had found that they were either cases of dismissal unrelated to the events of February and March 2011 or that the workers had been convicted on criminal charges unrelated to work. Lastly, it was ensured that no worker would be harmed due to the interruption of payment of insurance contributions, in accordance with the 2014 Supplementary Agreement. The majority of large companies, at their own initiative, had generously covered all insurance contributions during the period of absence from work.

The Employer members recalled that the Government had ratified this fundamental Convention in 2000 and that the Committee of Experts had presented four observations on this case in 2008, 2009, 2012 and 2016. In June 2011, a complaint had been filed under article 26 of the ILO Constitution by some Workers' delegates at the Conference concerning the non-observance by Bahrain of the Convention. According to the allegations, in February 2011, suspensions and various forms of sanctions had been imposed on workers and trade union members, as a result of peaceful demonstrations demanding economic and social changes. The complaint alleged that the dismissals had taken place on the grounds of the workers' political opinion.

Subsequently, a Tripartite Agreement and a Supplementary Tripartite Agreement had been signed in 2012 and 2014, respectively, by the Government, the GFBTU and the BCCI. At its 320th Session (March 2014), the Governing Body had invited the Committee of Experts to examine the application of the Convention by the Government, and to follow up on the implementation of the agreements reached. According to the Tripartite Agreement of 2012, the national tripartite committee that had been put in place to examine the situation of the dismissed workers should continue its work. Under the Supplementary Tripartite Agreement of 2014, the Government, the GFBTU and the BCCI had agreed to: (i) refer to a tripartite committee those cases that had not been settled and which related to financial claims or compensation and, in the absence of consensus, refer them to the judiciary; (ii) ensure social insurance coverage for the workers for the period of interrupted services; and (iii) reinstate the 165 dismissed workers from the public service sector, in major corporations owned by the Government or certain private companies. The Government had not furnished any information to the Committee of Experts in respect of measures taken to implement the agreements. In this regard, the Employer members, having noted the information provided, urged the Government to report to the Committee of Experts on the specific measures taken to implement the Tripartite Agreement of 2012 and the Supplementary Tripartite Agreement of 2014.

They also referred to the comments of the Committee of Experts concerning: the absence in national law of a definition of discrimination that includes all prohibited grounds listed in the Convention; the limited protection against discrimination under the Labour Law; and the lack of a prohibition against discrimination in the Legislative Decree regarding the civil service. The Employer members, welcoming the commitment expressed by the Government in this regard and encouraging collaboration with the ILO, urged the Government to draft, with technical assistance from the Office, a definition of discrimination which includes all of the prohibited grounds set out in the

Convention. They also encouraged the Government to include a prohibition against discrimination in the Legislative Decree regarding the civil service and to ensure the protection of equality of opportunity and treatment in employment. Welcoming the Government's indication that existing legislation prohibited all forms of discrimination, they requested the Government to provide copies of the relevant laws and regulations.

With reference to the comments of the Committee of Experts concerning the absence of a legal definition of and prohibition against sexual harassment, the Employer members noted the Government's indication that sections 81 and 107 of the Labour Law and paragraph 33 of the Schedule of Violations and Penalties in the Legislative Decree regarding the civil service penalized sexual harassment by dismissal, and that the issue was being monitored by the SCW. Emphasizing that the Convention prohibited discrimination based on sex and that national legislation should therefore prohibit sexual harassment at the workplace, the Employer members urged the Government to provide additional information in this regard, in particular on the operation of the mentioned provisions in practice, the manner of presenting complaints, and the monitoring by the SCW.

With regard to the comments of the Committee of Experts concerning the protection of migrant workers, such as domestic workers, against discrimination in employment, the Government had referred to measures taken in relation to mobility and trafficking of migrant workers and freedom of association. They encouraged the Government to provide additional information that was more responsive to the Committee of Experts' comments, regarding the manner in which migrant workers were protected against discrimination in employment in line with the Convention. The Employer members encouraged the Government to engage with the ILO to work towards full compliance with the Convention.

The Worker members said that certain comments by the Committee of Experts concerning the application of this fundamental Convention on discrimination were a particular source of concern. They emphasized that the unjustified differences in treatment implied that not all persons were equal, and this was a direct violation of human dignity. As all societies faced the issue of discrimination, it was essential to establish the mechanisms necessary to eliminate it all over the world, as required by the Convention.

In February 2011, demonstrations had taken place in the country calling for economic and social change, in the context of the "Arab Spring". From a complaint submitted at the 100th Session of the Conference in June 2011, it emerged that suspensions and sanctions had been imposed on individuals who had taken part in these movements. The years 2012 and 2014 had seen the adoption of a Tripartite Agreement and a Supplementary Tripartite Agreement, respectively, establishing a tripartite committee, the objectives of which were, inter alia, to: (i) reinstate the dismissed workers; (ii) settle claims for financial compensation; and (iii) ensure social security coverage for the period of interrupted service. It should be recalled that freedom of expression was essential to maintain the vitality of society and to achieve human progress. Hence, no individuals should be exposed to discrimination or suffer unfavourable treatment solely on account of their political views, especially when such views were contrary to the prevailing climate of opinion. The setting up of a tripartite committee was testimony to the wish shared by the different stakeholders to find a solution that was acceptable to everyone. Unfortunately, the Government had not provided any information on the implementation of the agreements in practice. Such information should be supplied and the agreements should be applied in full. To avoid any recurrence of such a situation, legislative measures, such as the inclusion of political opinion in the list of prohibited grounds of discrimination, needed to be adopted.

With regard to national law, it was essential for it to contain a precise definition of discrimination, specify all prohibited grounds, cover all sectors of the economy and all categories of workers – including agricultural and domestic workers – and expressly forbid direct and indirect discrimination, in all forms of employment and occupation, including in access to vocational training and conditions of employment. The current legislation was inadequate to effectively combat all forms of discrimination under the Convention. Moreover, no information had been supplied on the manner in which the Government ensured that workers were adequately protected against discrimination, particularly via labour inspection or the courts (number of cases handled, penalties imposed, etc.). It should also be noted that entire sectors, such as the education sector, were subject to separate treatment and were deprived of the most fundamental freedoms, such as freedom of association.

With regard to sexual harassment, the Worker members stressed that this was a particularly serious form of discrimination that undermined the integrity and well-being of workers and that the resources allocated to tackling it should be commensurate with the scale of the problem. The Government referred to the provisions of the Penal Code. However, as the Committee of Experts had emphasized, criminal prosecution was not enough to eliminate sexual harassment which needed to be explicitly prohibited by labour legislation, which should prescribe dissuasive penalties and provide for adequate compensation.

Migrant workers accounted for 77 per cent of the country's workforce and were in a particularly vulnerable situation, which meant that it was vitally important that they should enjoy protection against discrimination on the grounds listed in the Convention. The efforts of the Government should be commended regarding the now recognized right for workers to change employers without prior authorization from their previous employer, and also regarding the possibility to file individual complaints without having to pay legal costs. However, there was a need to ensure that the rules adopted to that end did not have the effect of increasing these workers' dependence on the employer by subjecting them to additional conditions and restrictions. The Government should also supply information on the following points: (i) the activities of the Labour Market Regulatory Authority regarding requests for transfers, according to sex, occupation and country of origin of the workers, and also cases of refusal and the grounds put forward; and (ii) measures to raise migrant workers' awareness of the machinery for asserting their rights.

With regard to the direct request of the Committee of Experts, the Worker members also highlighted the issue of equal opportunities for men and women, particularly the prohibition on access to certain occupations imposed on women by the relevant legislation. That prohibition went beyond what was necessary to provide maternity protection. Moreover, certain initiatives of the SCW referred to in the Government's report, such as the adoption of the National Plan for the Promotion of Women, should be commended, whereas others continued to convey stereotypes and preconceptions relating to the occupational aspirations and abilities of women. While they were aware that there were close links between the current situation and historical and social factors and that it was therefore not easy to make changes, the Worker members emphasized that only a determined, proactive policy offering robust choices could be the means of significant change to current structures. They also called on the Government to take the necessary steps to draw up a national plan for the elimination

of discrimination on the basis of race, colour, religion, political opinion, national extraction and social origin, as provided for by the Convention.

The Worker members underlined the pioneering role that Bahrain had often played in the region, particularly in relation to national decent work programmes and the gradual abandonment of the *kafala* system. In order to continue in the direction of greater respect for human rights and social justice, these accomplishments needed to be maintained and reinforced, and the action necessary for implementing the Convention needed to be taken.

The Employer member of Bahrain emphasized the Government's willingness to launch continuous initiatives to protect and guarantee the right of workers to enjoy an appropriate healthy environment, access to justice and equal treatment, regardless of nationality or category. He commended the valuable cooperation between the Government and the social partners to give concrete expression to the principles of labour market transparency and migrant workers' right to change employers. A new flexible work permit system had been established, allowing migrant workers to obtain work permits on an individual and direct basis without being linked to an employer, as well as to have access to employment insurance without discrimination based on nationality. Migrant workers' freedom to join unions was also guaranteed by this system. Moreover, domestic workers were now covered by the Labour Law's basic provisions, including by the principles concerning labour contracts, protection of wages and annual leave.

The BCCI, as a party to the Tripartite Agreement of 2012 and the Supplementary Tripartite Agreement of 2014, had followed all developments and progress made in implementing the agreements, such as the reinstatement of 98 per cent of the dismissed workers. The speaker welcomed the efforts made by the ILO and its Governing Body in supporting the implementation of the agreements and the cooperation between the social partners. The involvement of Bahrain's employers in the efforts made with a view to reinstating the dismissed workers was commendable. Employers had covered insurance premiums during the unemployment period, an initiative which went beyond the above-referred Agreements. The national employer representatives, through intensive meetings and constructive dialogue in the national tripartite committee formed to follow up the implementation of these agreements, had contributed to overcoming the difficulties generated by the settlement of all the dismissal cases which occurred in 2011. There had been no reports of discrimination against workers who had returned to work.

With respect to the Committee of Experts' observations on the issue of migrant workers, he emphasized the absence of cases of discrimination among workers of different nationalities or categories. The private sector had succeeded in achieving rapid growth by providing jobs for migrant workers with stable working conditions and without discrimination. As for sexual harassment at the workplace, the existing legal instruments addressing this issue were sufficient to provide protection. The BCCI had committed itself to allowing migrant workers to move freely from one employer to another, in accordance with existing law.

The speaker encouraged the Government and the national workers' representatives to continue holding fruitful tripartite meetings, which would bring about further initiatives and actions promoting decent work opportunities, achieving equality and combatting discrimination in accordance with national legislation and international labour standards. He welcomed the resumption of development cooperation programmes between the Government and other stakeholders.

The Worker member of Bahrain underlined the importance of social dialogue. The collaboration between the GFBTU and the International Trade Union Confederation (ITUC) had been crucial to defend the rights of workers and showed that the ILO was the best agency to promote social justice and achieve equality for workers in Bahrain. He welcomed the efforts of the ILO Director-General, who had reaffirmed the right of workers to proper representation. With regard to discrimination, five elements were to be highlighted.

First, a project entitled "1912" initiated in 2009 for the reinstatement of university graduates, had been interrupted in 2011, following the unjustified dismissal of 63 university graduate girls based on their political views, and at the same time recruited other graduates based on their loyalty to the Government. Second, the Government had encountered obstacles in the implementation of the Tripartite Agreement of 2012 and the Supplementary Tripartite Agreement of 2014, on the basis of which the complaint filed in 2011 under article 26 of the ILO Constitution had been withdrawn. On 28 May 2017, after a two-year hiatus, and following repeated calls from the GFBTU, the national tripartite committee established to implement the Tripartite Agreements at the national level had been restored. Also on the same day, the Deputy Minister of Labour gave the GFBTU representative a list of dismissed workers to be reinstated in their jobs, which demonstrated that the tripartite agreement had not been finalized. Third, workers in the public sector were encountering discrimination. A Government Decree of 2002 was still in force, despite repeated calls for its repeal. It deprived thousands of public sector employees of their right to organize. Fourth, since the 2011 complaint, the Government had dissolved free trade unions and had imposed parallel trade unions at the local and international levels. The GFBTU had been hindered from meeting with international experts when international meetings were planned. For instance, the Government had attempted to modify the composition of the delegation of Bahrain to the International Labour Conference. Despite ILO supervision, many programmes had been impeded. The Decent Work Programme in Bahrain had been frozen by the Government. Fifth, the GFBTU had called for the rectification of the imbalanced labour market and the implementation of the 2012 and 2014 Tripartite Agreements. Legislation that protected against discrimination based on gender and nationality was welcomed as it upheld the rights of workers, especially migrant workers. In the food industry, there had been cases of girls forced to engage in prostitution and cases where the workers were paid only in food.

The speaker expressed doubts with regard to the possibility for migrant workers to file a complaint and denounced the absence of appropriate legislation, as well as the lack of implementation of the Tripartite Agreement of 2012 and the Supplementary Tripartite Agreement of 2014. The Government was called upon once again to implement the agreements. The Government had delayed this implementation, despite ILO supervision. The decision adopted by the Ministry of Labour providing for the reinstatement of workers had still not been applied. The representatives of the GFBTU were not allowed to participate in meetings at the ILO Office in Beirut, and workers were banned from organizing at their workplace, which led to a further deprivation of their rights.

Employer organizations targeted workers who tried to establish trade unions at the workplace under the GFBTU umbrella, and forced other workers to establish trade unions under the other Federation placed under Government supervision.

The Government member of Malta, speaking on behalf of the European Union (EU) and its Member States, as well as Albania, Bosnia and Herzegovina, Montenegro, Norway and Serbia recalled the EU's engagement in promoting the universal ratification and implementation of the ILO fundamental Conventions, as part of its Strategic Framework

on Human Rights and Democracy. The case had already been discussed by the ILO Governing Body, following a complaint filed by Workers' delegates under article 26 of the ILO Constitution. Pursuant to the allegations presented in the complaint, suspensions and other sanctions had been imposed on trade union leaders and members, in retaliation for the peaceful demonstrations of February 2011 that had called for economic and social change. In March 2012, a Tripartite Agreement had been reached under the auspices of the ILO and a national tripartite committee had been created. Updated information should be provided regarding the settlement of the cases covered by the tripartite agreement, in particular in relation to the reinstatements and financial compensation of the workers that had been dismissed. Moreover, the Labour Law did not cover domestic work and similar jobs, which were mainly held by migrant workers. In addition, the law did not provide a clear and comprehensive definition of discrimination in employment and occupation. The Government was urged, in line with the observation of the Committee of Experts, to include a definition of discrimination covering all workers in all aspects of employment and prohibiting both direct and indirect discrimination, on the basis of all the grounds covered by the Convention. Civil servants also had to be protected against discrimination, including through the amendment of the Legislative Decree regarding the civil service. Furthermore, migrant workers were particularly exposed to discrimination in employment and occupation, and within this specific group, domestic workers, mostly women, were especially vulnerable. As domestic work was often viewed as a private matter, there were no precise legislative or administrative provisions regulating the relationship between domestic workers and their employers, which exposed them to abuses. The Government was urged to continue its efforts to raise awareness, and to take additional measures to protect migrant workers and ensure their access to complaint mechanisms. The speaker noted with interest the process initiated by the Government to abolish the *kafala* system. The Government was called upon to ensure that any regulation of the right of migrant workers to change employer did not impose conditions or limitations that would increase the migrants' dependency on their employers. Lastly, although prohibited in the Penal Code, sexual harassment in the workplace was not regulated under the Labour Law. Given the sensitivity of the issue, difficulties relating to the burden of proof and the limited range of behaviours covered under the Penal Code, the Government was called upon to include additional provisions in the labour law or the civil law, to prevent sexual harassment in the workplace, provide remedies to victims and establish dissuasive sanctions for perpetrators.

The Government member of Kuwait, speaking on behalf of the Gulf Cooperation Council (GCC), noted his appreciation for the Government's efforts to guarantee the rights of workers regardless of their category or nationality, and to create an environment of justice and equality, free from discrimination. He welcomed the practical initiatives launched by the Government in collaboration with other relevant partners, such as: the labour market management system, in cooperation with the social partners; establishing conditions allowing migrant workers to freely change employers and allowing those subject to exploitation or unfair working conditions to obtain work permits without being tied to a specific employer; the inclusion of all workers in unemployment insurance plans, without discrimination on the basis of nationality; the freedom to join trade unions guaranteed by law to all without discrimination; the inclusion of domestic workers' working conditions in the Labour Law; and the other achievements praised in the report of the Committee of Experts. The speaker also expressed appreciation for the efforts made by the Government to settle the claims of the persons dismissed in February and March 2011, its commitment to implementing the Tripartite Agreements of 2012 and 2014, and the reinstatement of the dismissed workers with the support of the social partners. In addition to this remarkable achievement, and as a result of fruitful social dialogue and of the Supplementary Tripartite Agreement of 2014, the continuation of pension rights and the obligation of companies to pay employees' premiums throughout the dismissal period had been secured. The Government had undertaken several initiatives to protect migrant workers, such as ensuring free access to complaint mechanisms and to the judiciary, and providing protection in the private sector under the Labour Law. On behalf of the GCC, the speaker welcomed these efforts to combat discrimination, achieve equality and justice for workers and regulate the labour market, and trusted that this progress would continue. Reaffirming support for continued tripartite dialogue and initiatives promoting decent work opportunities, equality and non-discrimination in accordance with national legislation and international labour standards, he called upon the ILO to intensify its development cooperation programmes and thereby contribute to strengthening the commitment of GCC member States to the application of international labour standards.

The Employer member of the United Arab Emirates noted with great satisfaction the steps taken by the Government in protecting workers and providing them with decent working conditions. The measures adopted by the Government to implement the Convention included the enactment of the Labour Law. The provisions on the relationship between employers and workers did not distinguish between a national and a migrant worker or between men and women, and prohibited discrimination in regard to wages. Furthermore, all workers benefited from the unemployment insurance system, without discrimination on account of nationality. The Government had also created a number of complaint mechanisms, available to workers in the private and public sectors.

With regard to sexual harassment, section 107 of the Labour Law provided for the dismissal of workers or employees who violated public morals. This legislation afforded protection against sexual harassment by word or deed. Turning to the protection of migrant workers, the Government had created a special unit, the first in the region, to support and protect migrant workers according to international standards. The unit included a shelter centre, where integrated services were provided to migrant workers who had been victims of abuse. On the implementation of the Tripartite Agreement of 2012 and the Supplementary Tripartite Agreement of 2014, the Government had, according to its indications, succeeded in settling more than 98 per cent of the cases of dismissals in the aftermath of the events of February and March 2011. Moreover, the Government had ensured the reinstatement of the workers concerned without prejudice to their acquired rights and pension benefits, and most major companies had voluntarily covered all insurance contributions during the period of absence from work. This initiative had benefitted the workers and had contributed to the rebuilding of trust between workers and employers.

The speaker concluded that these steps reflected the genuine will of the Government to establish a working environment that protected the dignity of workers and enabled employers to cooperate with all parties. The measures adopted to combat discrimination evidenced the efforts undertaken by the Government to offer migrant workers working conditions equal to those of nationals. The Committee of Experts was called upon to acknowledge the Government's progress in implementing the Tripartite Agreement of 2012 and the Supplementary Tripartite Agreement of 2014, as well as in prohibiting discrimination in employment and occupation in the country.

The Worker member of Norway, speaking on behalf of the trade unions of the Nordic countries, was pleased to note that the delegation from the GFBTU had arrived in Geneva, following the lifting of its travel ban. Seventy per cent of the workforce of Bahrain was composed of migrant workers, who were exploited and deprived of their principal economic and social rights. As underlined by the Committee of Experts, the Labour Law excluded domestic workers from the scope of the non-discrimination provisions. This was unacceptable and made domestic workers even more vulnerable to exploitation. She deplored the remaining limitations on the possibility for migrant workers to change employers. The very low number of requests for transfers of employers accepted by the LMRA shared by the Government was concerning. Thousands of workers had not been paid salaries for many months, a situation that had deeply affected the workers concerned and their families abroad who were waiting for remittances. The previous year, thousands of migrant workers had engaged in a strike over non-payment of their salaries, and more recently, large numbers of construction workers had protested over unpaid wages. According to the GFBTU, no major progress had been made on the issue of wage arrears. The Migrant Workers Protection Society (MWPS) had been supplying food and emergency kits to the affected workers living in labour camps. The speaker fully supported the recommendations of the Committee of Experts and urged the Government to take urgent action to ensure the payment of wages. In the absence of effective measures of protection against discrimination, including access to remedies, Bahrain's labour legislation had to ensure the legal protection of all workers, particularly of migrant workers. The Government should exert pressure on companies to ensure their compliance with the legislation in force to protect the rights of all workers. The Government was urged to implement the Tripartite Agreement of 2012, as well as the Supplementary Tripartite Agreement of 2014, and to reinstate the workers dismissed during the peaceful demonstrations.

The Government member of Egypt appreciated the steps taken by the Government, notably the legislation enacted, the measures adopted concerning sexual harassment, such as the establishment of the SCW, and the measures taken to ensure the protection of migrant workers against discrimination in employment. He encouraged the Government to undertake more efforts to ensure compliance with the Convention and make use of the technical assistance of the Office in this regard.

The Worker member of Tunisia shared the views of the Worker members and the Worker member of Bahrain concerning violations of the Convention. In the absence of appropriate national legislation, Bahrain's ratification of the Convention was meaningless. Laws intended to apply the Convention in practice did not meet its requirements. Workers in the country were discriminated against because of their nationality, sex, religious affiliation, opinions, status in the country or relations with the ruling authorities. Foreign workers and women were victims of discrimination. Workers were paying dearly for the fall in oil prices, which had led to higher taxes and inflation. The situation with regard to individual liberties and freedom of association had deteriorated since 2010. There had been cases of trade unionists being detained or dismissed.

The Government member of Bangladesh noted the Government's efforts to address the comments of the Committee of Experts and to improve working conditions, particularly with regard to protecting workers from sexual harassment. The Government's initiatives to ensure a transparent labour market management system, including the free movement of expatriate workers, were welcome. Moreover, it was encouraging that all workers, including domestic workers, were covered by the Government's unemployment insurance scheme. He also appreciated the progress made by the Government and the social partners in the national tripartite committee in addressing the issues raised in the complaint. The ongoing social dialogue should be encouraged, as it was crucial for the enforcement of national legislation, the promotion of decent work and the fight against all forms of discrimination. The speaker encouraged the ILO to provide technical assistance to the Government with a view to achieving sustainable compliance with international labour standards. He hoped that the Conference Committee would take into account the significant efforts undertaken to address the issues raised by the Committee of Experts.

The Worker member of the United Kingdom, speaking also on behalf of Education International, recalled that, after the Arab Spring marches of 2011, the leaders of the Bahrain Teachers Association had been accused of political activism and arrested, and the union itself had been dissolved. Its President, Mr Mahdi Abu Dheeb, had been imprisoned and only released after five years, following significant international pressure, with a travel ban imposed against him, which prevented him from speaking freely. She emphasized that discrimination was still firmly in place. Teachers unions and other public sector unions remained banned. Many teachers involved in the peaceful protests had been discriminated against and dismissed. Contrary to previous statements, 120 teachers who had lost their jobs and livelihoods had still not been reinstated. There might be many more, as the current illegal status of the Bahrain Teachers Association gave rise to a general fear that prevented people from speaking out. Instead of reinstating the dismissed teachers, the Government had recruited about 9,000 teachers from other Arab States. In contrast to its usual practice, the Government applied a different treatment to these expatriate teachers, granting them a fast-tracked route to employment as well as a lighter workload and employing them on more favourable terms and conditions. There was also clear evidence of systemic discrimination against Shia public sector workers in terms of recruitment and conditions of employment. In her view, the situation had not improved since the Committee's previous discussion of this case. The steps agreed upon through tripartite discussions had not been taken by the Government, and Bahraini teachers still faced continued discrimination in access to employment and conditions of work, and in the exercise of their fundamental right to freedom of association.

The Government member of Pakistan welcomed the steps taken by the Government and its constructive engagement with the supervisory mechanisms of the ILO. While the Committee of Experts underlined that the Labour Law did not cover all forms of discrimination and did not provide sufficient protection against sexual harassment, it did not point out any serious violations regarding these two points. According to the explanations provided by the Government, however, the national legislation defined and prohibited discrimination based on all the grounds enumerated in the Convention and ensured protection against sexual harassment. The speaker appreciated that the Government allowed the free mobility of expatriate workers, combatted human trafficking, covered all workers under insurance schemes and included domestic workers under the main provisions of the Labour Law. Moreover, irrespective of their nationality, all workers had the right to join trade unions and go on strike to defend their legitimate interests. The speaker also welcomed the efforts made in collaboration with the social partners and the work done by the national tripartite committee to resolve more than 98 per cent of the cases of dismissals related to the events of February and March 2011 as well as the initiatives taken by the major companies with regard to insurance contributions. Finally, he encouraged the Government to continue social di-

alogue and invited the ILO to provide more technical assistance in the region to support member States in their efforts to comply with labour standards.

The Worker member of the United States stressed that following the popular uprisings of 2011, the Government had revoked the citizenship of hundreds of workers and activists, in clear violation of the Convention, by way of ministerial orders. In 2014, the Government had amended the citizenship laws to grant the Ministry of the Interior the authority to revoke the citizenship of individuals who had failed in their "duty of loyalty" to the State. While the newly stateless activists could appeal the decision, Human Rights Watch reported that the court system had failed to provide fair trials and impartial verdicts. The revocation of the citizenship of political dissidents by the Government had had significant consequences for trade unionists. Workers who had lost their citizenship had also lost their jobs, their housing, their children's right to education, access to social security and other government benefits. Children born after the Government had revoked their parents' citizenship had also lost their right to Bahraini citizenship. Moreover, in October 2015, the Government had issued a legislative royal decree that had deprived these persons and their beneficiaries of their pensions with immediate effect.

The speaker provided the examples of two activists whose citizenship had recently been revoked, in order to illustrate the situation. Habib Darwish had remained in the country, awaiting the decision from the court of appeal, at constant risk of deportation and unable to obtain a work permit. The Government had accused him of causing "damage to the security of the State". Although he had worked for his employer for 25 years, during which he had been contributing to his pension fund and to social insurance, he was prohibited from accessing his retirement benefits. Hussain Kheirallah, had allegedly been forced to leave the country immediately and was deported to Lebanon, without being given an opportunity to say goodbye to his family, who had lost access to social insurance and to his pension fund. Mr Kheirallah believed the Government had revoked his citizenship because of the following: (1) he reported that he was tortured after providing first aid to demonstrators; (2) he believed the Government wanted to send a message to Bahrainis of Persian descent; and (3) in retaliation for his union activism. Many workers had lost their retirement savings, nationality, jobs, housing, and, in some cases, their families because of their political opinions, their union activism, or their ethnicity.

The Government representative indicated that he disagreed with the statement of the Worker member of Bahrain concerning the establishment of a trade union by the Government and denied that the Government had imposed any new trade unions. Concerning the construction company that had faced financial difficulties leading to wage arrears, wages had been paid without discrimination between local and migrant workers. This payment had occurred after an agreement had been signed between the private company concerned and the Ministry of Finance. The news regarding the payment of wages would soon be published in the newspapers.

With regard to sexual harassment, the Committee of Experts had mentioned that this issue was only regulated in one provision of the Penal Code. However, sexual harassment was also regulated under sections 81 and 107 of the Labour Law and paragraph 33 of the Legislative Decree regarding the civil service. These provisions provided that the worker found guilty of sexual harassment should be dismissed. A copy of these laws was at the disposal of the Committee.

Concerning discrimination, section 39 of the Labour Law prohibited discrimination in wages based on sex, origin, language, religion or creed, and there were no cases of discrimination in practice. The Government had taken note of all the interventions. All interventions made in the Committee would be taken into consideration by the Government to improve the situation of the labour market and promote decent work in Bahrain. The Government was committed to respecting the conclusions adopted by the Committee, to improving the definitions contained in the Labour Law and to ensuring compliance with the Convention, in particular with respect to the definitions of discrimination and sexual harassment, the protection of migrant workers and the free movement of the labour force.

The Government welcomed the decision of the Governing Body that it provide information to the Committee of Experts on the application of the Convention and the implementation of the Tripartite Agreements of 2012 and 2014. The Government was committed to providing information in this respect in its report for 2018 and to achieving results with ILO technical assistance. The Ministry of Labour and Social Development was discussing and coordinating with the ILO Regional Office in Beirut in this regard.

In conclusion, the speaker hoped that the Committee would take into consideration the achievements of the Government and emphasized that the Government was fully ready to cooperate with the Conference Committee and the Committee of Experts in providing all the information requested.

The Worker members emphasized the fact that the explanations and clarifications provided by the Government representative strengthened their conviction that the Government was determined to ensure observance of the Convention. However, specific action was indispensable. It was essential that the Government fully implement the 2012 and 2014 Agreements, in accordance with a precise timetable, and that it supply information on the measures taken in this regard. It also needed to make the necessary legislative amendments to cover all the grounds of discrimination listed in the Convention and to prohibit indirect discrimination. The Government should also provide information on the application of the legislation and take the necessary steps to extend it to all sectors. In particular, the discrimination which existed between the private and public sectors had to stop. Special attention needed to be given to migrant workers so as not to impose discriminatory conditions on them which would increase their dependence. More information should be supplied by the Government on the action taken vis-à-vis migrant workers to inform them of their rights and on the activities of the Labour Market Regulatory Authority relating to immigration.

The Worker members encouraged the Government to draw up a national action plan for combating all forms of discrimination, availing themselves of ILO technical assistance. They also asked for a direct contacts mission to be sent, in view of the situation described in several interventions made within the Committee. The Government should base its action on the principle that the straightest, shortest and surest path – one from which no government should ever depart – was to ensure equality before the law.

The Employer members welcomed the Government's commitment to ensure compliance with the Convention. Regretting the Government's inactivity in reporting the measures taken to implement the Tripartite Agreement of 2012 and the Supplementary Tripartite Agreement of 2014, they encouraged the Government to report to the Committee of Experts in this respect. Certain issues required legislative attention in terms of drafting new provisions or amending existing ones. The Employer members encouraged the Government to ensure that the definition of discrimination protected workers both in the private and public sectors, included all prohibited grounds for discrimination required by the Convention and provided protection of equality of opportunity and treatment in employment, including for women. They also encouraged the Government

to ensure that sexual harassment was adequately prohibited in national labour legislation and to provide clarifications as to existing complaint mechanisms in this area.

Conclusions

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

The Committee noted the Government's stated commitment to ensure compliance with Convention No. 111. The Committee noted with concern the Government's failure to provide information to the Committee of Experts in regard to measures related to implement the Tripartite Agreements of 2012 and 2014.

Taking into account the discussion, the Committee called upon the Government of Bahrain to:

- **report on the measures taken to implement the commitments contained in the Tripartite Agreements of 2012 and 2014 in connection with the Government's efforts to comply with Convention No. 111 to the Committee of Experts for its November 2017 session;**
- **ensure that legislation covers all recognized prohibited grounds of discrimination set out in Article 1(1)(a) of the Convention, in both direct and indirect forms, and undertake measures to ensure that discrimination in employment and occupation is prohibited in law and practice;**
- **ensure that migrant workers as well as domestic workers are included in the protection of anti-discrimination law;**
- **ensure equality of opportunity and treatment of employment of women;**
- **ensure sexual harassment is prohibited in the Labour Code and provide information regarding how complaints of this nature may be advanced to the Committee of Experts for its November 2017 session.**

In this regard, the Committee calls upon the Government to accept an ILO direct contacts mission to address the Committee's recommendations. The Committee requested that the Government reports in detail on the measures taken to implement these recommendations to the next meeting of the Committee of Experts in November 2017.

The Government representative welcomed the conclusions and assured the Committee of his Government's commitment to present a report for examination by the Committee of Experts at its next session. As to the recommendation for a direct contacts mission to visit the country, the Government representative sought clarification as to the terms of reference of this visit and in which way it differed from a technical team visit which his Government had already accepted. He concluded by assuring the Committee of his Government's readiness to cooperate with the ILO.

The representative of the Secretary-General invited the Government representative to contact the secretariat after the closing of the session to obtain detailed information on the direct contacts mission, including its terms of reference.

Employment Policy Convention, 1964 (No. 122)

SUDAN (ratification: 1970)

A Government representative expressed appreciation for the work of the Committee in examining the implementation of international labour standards. The speaker confirmed his Government's commitment to comply with international labour standards and indicated that it had taken considerable efforts to comply with Articles 1, 2 and 3 of the Convention. These efforts included the development of a roadmap for the formulation of a national employment policy and the definition of its guiding principles and strategic goals in consultation with the social partners. Following the Government's request, an ILO/UNDP project had been concluded for the development of the roadmap as well as a project to strengthen technical and vocational skills of men and women, which was based on seven working papers drawn up by international experts in 2013, based on visits, meetings and roundtable workshops with the competent officials. These activities had resulted in important recommendations to guide the development of a national employment policy. In 2014, a 35-member working group of the High-Level Advisory Committee was established by Ministerial Decree No. 33 (2014) of 28 August 2014 and tasked with the development of a national employment policy, with the technical assistance from the ILO. A national expert was appointed to draw up the principal guidelines for the elaboration of the policy. The High-Level Advisory Committee, in cooperation with the ILO, had finalized a draft national employment policy by the end of 2016, which aimed to contribute to lowering the unemployment rate and alleviating poverty in Sudan, for submission to the competent authority, the Council of Ministers, for approval in January 2017. The speaker reconfirmed his Government's commitment to its international obligations and its renewed efforts to achieve the goals of the five-year Economic Reform Programme (ERP) 2015–19. Information was also provided on the following measures: microfinance programmes; the provision of decent work opportunities to ensure productive employment in conditions of dignity; the establishment of effective employment policies in line with the needs of the labour market through improvement of the investment and employment climate for small enterprises, in addition to self-employment projects, employment programmes in the service sector and employment-intensive projects; linking educational policies and programmes with employment policies and plans, in line with the needs of the labour market; the submission to the Minister of Labour and Administrative Reform of a final draft of a national employment policy developed in consultation with the social partners for transmission to the competent authorities; the re-nationalization of the wheat-growing sector in the Blue Nile and Northern regions leading to effective production and employment creation; the establishment of agricultural projects in the Blue Nile region resulting in the activation of more than 2,000 farms; and public–private partnerships to reactivate the textile sector, leading to the creation of jobs for over 3,000 workers. The five-year ERP, 2015–19, contained additional elements, including plans for export products and a programme to revive Sudanese cotton cultivation and agriculture in the Blue Nile region, involving 2,400 farms. The Government had adopted a comprehensive employment policy through a national dialogue process, which was expected to have a considerable impact on organizational and political structures, including on the entities responsible for implementing the necessary policies that required coordination, such as the Ministry of Finance. This led to the establishment of an Agency for Indicative Planning, which would revise some of the economic policies that had a direct impact on employment creation at the national and local levels. The speaker recalled positive developments in Sudan's foreign relations, including expectations regarding the lifting of the economic embargo next month, which would require the Government to reset its priorities, especially its investment plans, which had a direct impact on employment opportunities. Finally, the speaker expressed the hope that he had provided the Committee with the necessary clarifications.

The Employer members stated that this was the first time the Committee had examined the application of Convention No. 122 by Sudan. This priority Convention required governments to formulate an active employment policy, in consultation with the social partners. Sudan was a country in transition from a conflict to a post-conflict situation that

had encountered multiple challenges and with wide disparities in development between its different regions. The country had endured military conflicts and 20 years of sanctions, natural disasters, and struggles in terms of economic growth, especially in its productive sectors; all factors that had contributed to high unemployment rates and inflation. These conditions had clearly affected the development of a national employment policy. Nevertheless, the Government had taken steps towards the development of an active national employment policy. These steps had been supported by the ILO, UNDP and other international organizations, as well as by the social partners. In respect of Articles 1 and 2 of the Convention, many measures had been taken. In 2011, the Government carried out a Labour Force Survey with the assistance of the ILO to identify indicators for the formulation of a national employment policy. Moreover, a tripartite recovery programme envisaged increased funding for education for the poor; increased microfinance funding and increased funding for agriculture and industry; and measures to promote youth employment and reduce the number of workers in the informal economy. In 2012, the Government launched the National Rural Women's Development Programme and established the Department of Women, Children and Persons with Disabilities. In 2014, the Ministry of Labour established a Coordinating Unit for Intensive Employment focusing on the creation of sustainable jobs for youth and vulnerable persons. In 2015, the Government approved the five-year ERP, 2015–19, which aimed to improve macroeconomic policies, investment opportunities and the competitiveness of national goods. In 2016, the Government had submitted a report showing the impact of these initiatives on employment. In relation to Article 3 of the Convention, the following actions were taken: (i) a tripartite National Advisory Committee for Labour Standards was established; (ii) the social partners were updating the National Jobs Charter to take new parameters into account and improve its implementation; and (iii) the social partners, in collaboration with the Government, were working to implement the Paid Training Programme, a programme to train 400,000 graduates in all sectors of economic activity. The Employer members welcomed these initiatives to promote economic growth, eradicate poverty, create jobs and encourage investment. The private sector, as a driver of employment, required an enabling environment to increase trade, facilitate export, and support diversification of the economy. This would only happen when necessary reforms were realized to combat bureaucracy, corruption and illegal practices and build a more conducive, transparent regulatory system. Given the urgency of the situation in Sudan, the Employer members called on the Government to develop a coherent national employment policy, linking all social and economic strategies together. The Government was encouraged to implement a coordinated and transparent action plan which clarified the roles and responsibilities of the social partners to enable them to work together to achieve measurable goals. They also called on the Government to build the capacities of the social partners to work together to implement the national employment policy.

The Worker members recalled that the promotion of employment was included in the mandate for the establishment of the ILO. The preamble to the ILO Constitution indicated that the prevention of unemployment was a measure to be taken to improve labour conditions. In order to address that concern, the ILO had developed several instruments, including Convention No. 122. Articles 1 and 2 of the Convention required member States to adopt as a major goal an active employment policy designed to achieve certain objectives and to take the necessary measures to meet those objectives. In the case of Sudan, the Committee of Experts had noted that the Government had provided information on the application of these provisions, including the Labour Force Survey carried out in 2011 and the development of a roadmap and concept papers on the formulation on an employment policy. The Worker members recalled the inextricable link between full, productive employment and decent work. It followed that, in addition to the quantitative objectives, such as the number of jobs fixed by the Government, it was also important to set more qualitative objectives intended to promote all dimensions of decent work. The Government was therefore invited to follow up the request of the Committee of Experts to provide further information on the formulation and implementation of an active employment policy, taking into account the dimensions of decent work. With regard to the application of Article 2 of the Convention, the Government had referred to a survey carried out in 2011 within the framework of the development of the five-year ERP 2015–19, which allowed for the collection of useful data, particularly on unemployment in the country and its breakdown in rural and urban areas, and by sex. The Government was therefore requested to continue in that direction with a view to gathering reliable and up-to-date statistical data. Lastly, with regard to consultation held with the social partners on employment policies, the Government had set up the National Advisory Committee for Labour Standards. Recalling that the concept of the social partners entailed the representatives of both employers and workers, the Government was invited to ensure a balanced representation on that Committee, including, in particular, workers occupied in the informal sector and rural areas. The Convention did not stipulate either the form that this consultation should take or the time when it should take place. However, it was clear that specific consultation should be held at a time when it was still possible for the different partners to influence the development of the measures to be taken. The Government was therefore invited to give full effect to the Convention by replying to the Committee of Experts' observations and the present Committee's conclusions.

The Employer member of Sudan indicated that the employers' organizations in Sudan had repeatedly been consulted on the development of a national employment policy and workers' organizations had participated in various meetings in this regard. Sudanese employers were now engaged in consultations regarding the Act on private–public partnership. The Committee of Experts had noted the five-year plan, 2015–19, and noted that the reduction in several productive sectors had affected employment. In the past, Sudan was a successful wheat producer and the challenge was to revive this sector. Increased investment in cotton farming was called for and there had been an injection of funds by the private sector, particularly in the Blue Nile region. Employers were vital to employment promotion in this sector. Investment policies had helped certain manufacturing industries and had created employment opportunities in some sectors. In the state of Khartoum, the private sector in the textile industry established new enterprises, which had resulted in the creation of 2,400 jobs. Increased production in the oil sector resulted in the launch of several new industries and a relative increase in production in the established enterprises. Moreover, there had been measures taken in relation to animal husbandry and agro-industrial projects. Several projects had also been introduced in the food industry to rehabilitate enterprises. Furthermore, mills to produce processed foods at reasonable prices had been established. A review of policies on technical vocational education and training were being carried out to ensure that areas that were no longer relevant were not retained in revised training curricula.

The Worker member of Sudan indicated that workers' organizations in Sudan had been part of the consultation process in relation to the development of a national employment policy. For instance, representatives of workers' organizations had been represented in the Higher Council for

Employment and in the National Committee for the Civil Service. The speaker stated that the Government had provided support for microfinance initiatives and for the establishment of a labour bank for workers. The Government had also provided subsidies to ensure that workers' basic needs were met, in addition to providing support for housing and implementing social protection measures. In conclusion, the speaker emphasized that the Sudanese workers' organizations were closely associated with all measures aimed at the implementation of the Convention and they would continue to play their part in all efforts aimed at the socio-economic development of the country.

The Government member of Kuwait, speaking on behalf of the countries of the Gulf Cooperation Council (CCG), welcomed the detailed information provided by the Government in connection with the most recent observation of the Committee of Experts on the application of the Convention. Technical assistance provided by the ILO was also welcomed. The speaker expressed the hope that such assistance would continue in order to provide the Government and the social partners with the necessary support to fully implement the provisions of the Convention. In conclusion, the speaker called upon the ILO and the Government to continue the dialogue and collaboration in this regard.

The Worker member of Nigeria said that employment participation was at the heart of dignity, well-being and shared prosperity for people, communities and economies. Referring to the definition of unemployment as persons who were currently not working but were willing and able to work for pay, currently available to work, and had actively searched for work, it was fair to mention that Sudan's 20 per cent unemployment rate posed a serious cause for concern. The effects of unemployment on individuals, households and communities were well known, especially in relation to poverty and inequality. The situation was worse for young people who were unable, through gainful employment, to unleash their potential and skills to better their lot and contribute to family and community well-being. It was desperation in some cases that pushed young persons to engage in dangerous journeys across the Sahara Desert and the Mediterranean Sea. The letter and spirit of the provisions of the Convention aim to help to improve opportunities for the creation of decent, gainful and productive employment through a well-articulated employment policy. The development of a roadmap by the Government demonstrated its willingness to achieve the goals set forth in the Convention. The Government was however urged not to delay the process of adopting a national employment policy.

The Government member of Algeria thanked the Government representative of Sudan for the detailed information presented on the application of the Convention, which clearly reflected the Government's political will and its efforts to develop a national employment policy, taking into account the capacities, and the economic and social conditions in the country, in the spirit of the Convention. He recalled the steps taken by the Government towards the development of a national policy in partnership with national experts, social partners and concerned parties, while emphasizing the importance of ILO technical assistance. The Government was encouraged to continue its efforts to develop and implement a national employment policy targeting the elimination of unemployment and the creation of decent work.

The Government member of Qatar expressed appreciation for the information provided by the Government, which confirmed its commitment to apply the provisions of the Convention. The speaker wished to commend the important steps taken by the Government, which moved closer towards the adoption of a national employment policy, in consultation with the social partners. Reference was made to the measures that had been adopted by the Government, in consultation with the social partners, and national and international investors, to create decent job opportunities through programmes aimed at promoting full and productive employment. The Government was committed to implement the Convention. The speaker hoped that the Committee would take these efforts into consideration. In conclusion, the ILO was encouraged to provide technical assistance in support of these efforts.

The Government representative thanked all the participants in the discussion and emphasized that his Government was committed to continue its cooperation with the ILO. A national employment policy would soon be adopted. A report on the application of the Convention would be submitted to the Committee of Experts in time for its next session, as well as reports on fundamental Conventions and other ratified Conventions. In response to the statements made, the speaker reiterated his Government's commitment to adopt and implement a national employment policy, in line with the Convention. In a country that had an economy largely based on agriculture, the Government would continue to take measures to reduce unemployment as part of its poverty reduction strategies. Furthermore, his Government undertook to continue consultations with the social partners, including in the High-Level Advisory Committee, as great importance was attached to social dialogue. In fact, social dialogue was as the only way to implement an effective national employment policy. Data from the labour force surveys would be used to develop indicators for various regions of the country. The speaker assured the Committee that his Government was setting up a planning unit entrusted with ensuring equitable levels of development throughout the country. In conclusion, the speaker reiterated that his Government would continue to fully cooperate with the ILO and the social partners in order to effectively implement the Convention.

The Worker members thanked the Government for the explanations provided and hoped that the points discussed during the sitting would be translated into concrete measures. It was important that the Government should follow up on the observation of the Committee of Experts concerning the provision of further information on the formulation of an active employment policy, taking into account the concept of decent work. In its application of the Convention, the Government was bound to develop methods for the collection of labour market data in order to formulate coherent policies. Such methods could include regular surveys, in the vein of the Labour Force Survey carried out in 2011. Another option could be the establishment of a permanent observatory on employment, responsible for collecting relevant data. Lastly, with regard to consultations with the social partners, the Government was invited to ensure that an appropriate and relevant mechanism was in place that involved the social partners on an equal basis.

The Employer members thanked the Government for the information it had provided in relation to steps taken in order to adopt a national employment policy and to help mitigate the impact of the current situation in the country. They noted the information provided concerning the comprehensive economic and employment measures taken in order to declare and pursue an active employment policy designed to promote full, productive and freely chosen employment. They also took note of the information on positive employment data indicating that many initiatives were undertaken and jobs were created in the public and the private sectors. Employment happened when investment took place; the measure of whether an employment policy was successful or not was firstly whether it encouraged or discouraged investment, and then whether it encouraged or discouraged the creation of jobs. The Employer members called on the Government to: (i) develop a more coherent strategy where all scattered initiatives were structurally

linked together to reinforce each other; (ii) develop a fair and effective governance that entailed processes, decisions and outcomes that ensured real solutions to local problems and secured sustainable development; (iii) apply a more coordinated and transparent national action plan, where all stakeholders and social partners had clear roles and responsibilities to participate and work together to reach more tangible and measurable goals; (iv) build the capacities of employers' and workers' groups, through social dialogue and tripartite cooperation that will help in speeding up the process of adopting and implementing a national employment policy; and (v) continue accepting ILO technical assistance to implement the above-noted objectives and achieve the expected results to fight poverty.

Conclusions

The Committee noted the information provided by the Government representative and the discussion that followed.

Taking into account the persistence of high unemployment and underemployment which principally affects the most vulnerable persons, women and youth, the Committee requested the Government of Sudan to:

- **develop a coherent strategy, in the framework of the national policy, to promote full, productive and freely chosen employment with the participation of representatives of the most representative workers' and employers' organizations;**
- **continue availing itself of ILO technical assistance, so that the capacity of employers' and workers' representatives can be strengthened.**

Finally, the Committee invited the Government to avail itself of ILO technical assistance to implement these conclusions and achieve full, productive and freely chosen employment.

BOLIVARIAN REPUBLIC OF VENEZUELA (ratification: 1982)

A Government representative reaffirmed his Government's commitment to full compliance with the international labour Conventions that had been ratified. Since the last session of the Committee on the Application of Standards, dialogue had been reinforced with the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS). It should be emphasized that, at the request of the Government, a tripartite meeting would be held on 13 June 2017 with the national social partners accredited to the Conference, which would also be attended by the Director-General of the ILO. He regretted that ILO bodies were once again being used to single out countries where policies favoured the workers. The ILO should ensure the transparency of procedures and fair treatment. In its most recent comment, the Committee of Experts noted that the Government had provided indicators reporting a sustained employment policy since 1999 in favour of Venezuelan citizens, including statistics on youth employment. The comment also noted the information provided in June 2016 in the context of the discussion by the Committee on the Application of Standards in relation to the Second Socialist Plan for the Economic and Social Development of the Nation 2013–19 and the implementation of a Bolivarian Economic Agenda. The creation of the National Council for the Productive Economy (CNEP), which included the participation of the most representative workers' confederation in the country and the most prominent employers in the Venezuelan economy, was also mentioned in the comment. This showed that there was a real and true employment policy in the country, which had reduced the level of unemployment, despite the fall in the price of oil, the economic war and the disturbances of public order promoted by opposition factions. He considered that the inclusion of the present case in the list to be discussed in 2017 was not justified, as the Committee of Experts had not commented on any failure of compliance, but had confined itself to requesting examples or additional information. That information, in accordance with the request made by the Committee of Experts, should be provided in the next regular report, and not to the Committee on the Application of Standards. In the absence of any technical justification, it had to be concluded that the inclusion of the present case in the list had political undertones, which ran counter to the principles of objectivity, transparency and impartiality which needed to prevail in the ILO. He added that, despite the insistence of certain employers that his Government should be brought before the Committee on the Application of Standards, that would not result in private, capitalist and individual interests holding sway over those of the working class and the Venezuelan people. Allegations and information were reflected in the comment of the Committee of Experts concerning the alleged absence of employment plans, with references being made to figures that were not known to the Government and were based on imprecise data, subjective considerations and unfounded information that the Government rejected. Other minority trade union organizations had collaborated to provide figures without giving their sources, nor the methods used for their compilation. However, despite all of the above, he said that with the best will and respect for the members of the Committee on the Application of Standards, updated information would be provided on the employment policy of the Bolivarian Republic of Venezuela.

In 1999, when the Venezuelan Government had taken office, the unemployment rate in the country had been 10.6 per cent. In April 2016, the unemployment rate was estimated at 7.3 per cent, as a result of clear and effective policies. As indicated by the Committee of Experts, the current unemployment rate for men was 6.7 per cent, compared with 8.3 per cent for women, which bore witness to the efforts made to achieve parity and equality of occupational opportunities for women and men. The indicators could be consulted on the website of the National Statistical Institute (INE). The Government had led a change of economic model to reduce dependence on the oil market and defeat the economic warfare, through measures including: export incentives; the removal of administrative restrictions and measures to facilitate the repatriation of capital; the initiation of a system of auctions for the purchase of currency at competitive prices, and access to credit for producers. The enterprises that had benefited the most had been small and medium-sized enterprises (SMEs). The Government also provided assistance to businesses affected by opposition factions so as to enable them to recommence and maintain their enterprise through financing. The development plan, which included the employment plan, was known as the Homeland Plan. During the meetings held with FEDECAMARAS, its leaders had expressed disagreement with the Plan, which showed that it included a real employment policy. The national social partners accredited to the Conference could request more information on the effect given to the Convention during the tripartite meeting on 13 June 2017. He regretted that FEDECAMARAS, as well as certain minority trade union organizations, despite the invitation made by the Government to discuss the holding of a National Constituent Assembly, had refused to take part in it. He considered that it was contradictory to call for social dialogue in the ILO and then not to take up the opportunities provided to express their views and opinions. He reiterated his objection to the inclusion of the present case on the list of those to be discussed, particularly as the Convention was a promotional instrument and consultations were not binding, as indicated in the 2010 General Survey on the employment instruments in relation to the content and nature of consultations. He also referred to the views expressed by the Employer members in the Committee on the Application of Standards in 2015 concerning the lack of competence of the Committee

of Experts to assess the validity, effectiveness and justification of the measures adopted in accordance with the Convention and agreed with their views on its promotional nature, as it did not specify the content of employment policy and recognized the need to take into account the national political, social and economic context. In conclusion, he hoped that the discussion would be confined to the Convention under examination.

The Worker members recalled that this was the second consecutive year that the Bolivarian Republic of Venezuela had come before the Conference Committee in relation to the application of the Convention. Although they had previously urged the Government and different sides of the political dispute in the country to resolve the impasse through social dialogue, the situation had deteriorated further. Highlighting the role of social dialogue and tripartism as a possible avenue for peace, the Worker members appealed to all parties to resist the temptation to use the economic crisis and social discontent for political purposes, which would cause greater suffering to the majority of the population. In this regard, they regretted that the Government had not responded to the Conference Committee recommendation that it accept a high-level tripartite ILO mission since 2016. The Bolivarian Republic of Venezuela faced many challenges, including a deep economic crisis that had had a profound impact on employment generation. That state of affairs was also a consequence of past economic decisions. Between 1999 and 2014, the country had benefited from high oil prices, which had allowed the Government to invest in the economy and expand public policies. During that period, the Government had nationalized companies. Such measures had had a positive impact on the creation of jobs, including a decline in unemployment from 14.5 per cent in 1999 to 6.7 per cent in 2014, and had helped foster decent work and reduce informality. High oil prices had also enabled the pursuit of social policies for the poor, and poverty had been reduced from 49.4 per cent in 1999 to 32 per cent in 2013, while extreme poverty had fallen from 21.7 per cent to 9.8 per cent. However, the Government had behaved as if high oil prices would last forever. Throughout the period of economic growth, no effective measures had been taken to end the dependence of the economy on the export of a single product. To the contrary, dependence on the hydrocarbon sector had grown dramatically with oil accounting for 96 per cent of the country's total exports. It would be difficult to reduce the country's historical dependence on oil overnight, but efforts to break dependency had not been sufficient. It was no surprise that the economy had been seriously affected by the collapse in international oil prices at the end of 2014. The collapse of the economy had resulted in a deeper crisis; hyperinflation; currency speculation; and shortages in, and hoarding of, food and medicines, which in turn had impacted on the quality of employment, increased both job insecurity and informality, with negative consequences on the standard of living of the poorest groups. Some estimates suggested that GDP had contracted significantly in 2016 and that the agricultural sector had declined, further exacerbating food shortages. The decrease in the number of jobs created had also affected workers. According to government data, unemployment had risen to 7.5 per cent in 2016. Such figures could have been even higher, as underemployment or precarious forms of employment had not been taken into account by official statistics. If workers with reduced working hour contracts had been considered in these data, unemployment would have been around 11 per cent.

With reference to the Government's comments on the Second Socialist Plan for the Economic and Social Development of the Nation 2013–19, the Worker members invited the Government to provide details on how this programme had taken account of the relationship between employment objectives and other economic and social objectives. The Committee of Experts had referred to Resolution No. 9855 of 22 July 2016, which had been adopted under the State of Exception and Economic Emergency declared by the Government. They felt that in such a context, the Government should have ensured that no worker would be temporarily placed in another enterprise without his or her consent. With regard to the participation of the social partners, the Worker members recalled Article 3 of the Convention and several instances in which the attention of the Conference Committee had been drawn to the lack of measures to enable effective social dialogue. The economic crisis could only be overcome if the social partners joined in the decision-making process in relation to employment policy. Among the conclusions in the report of the ILO tripartite high-level mission in 2014, the Government had been called upon to establish a tripartite round table with the participation of the ILO to deal with all matters related to industrial relations, including the holding of consultations on legislation concerning labour, social and economic matters. Reiterating the need to implement the commitments made by the Government to the Governing Body, they regretted that the Government had not fully implemented these commitments, in particular the elaboration of a concrete schedule of meetings with employers' and workers' representatives. The Worker members expected to see tangible progress, in line with the objectives that had been set out in the agreed workplan, to ensure ILO standards were implemented and monitored with the full involvement of the social partners.

The Employer members observed that, for the second successive year, the case under examination concerned the application of a priority Convention which sought the promotion of employment policies. They added that in the present case the issue did not relate to the lack of replies by the Government, but more their evasive nature. In its latest comment, the Committee of Experts addressed two different aspects, namely, in relation to Articles 1 and 2 of the Convention, employment policy, labour market trends, the transitional labour regime, youth employment and the development of SMEs and, with regard to Article 3, the participation of the social partners, which was possibly the most relevant issue. Observations on these subjects had been made by various organizations, in addition to FEDECAMARAS, the most representative and historical employers' organization, including the National Union of Workers of Venezuela (UNETE), the historical workers' organization, the General Confederation of Labour (CGT) and the Confederation of Autonomous Trade Unions (CODESA). With reference to the observations made, there were common issues, such as the absence of statistical data. They were grateful for the information provided by the Government representative in relation to unemployment and noted that they had endeavoured to obtain official data without success. It would be useful for the INE to analyse the provisions of the Labour Statistics Convention, 1985 (No. 160), which had not yet been ratified by the Bolivarian Republic of Venezuela. It would probably be helpful to examine Convention No. 160 with a view to its ratification, as it was instrumental in the formulation of an appropriate employment policy. The absence of information could be caused by the incapacity of the Government to produce data, or the desire to conceal it, neither of which was ideal.

The World Bank had recently noted the existence in the Bolivarian Republic of Venezuela of a fiscal deficit estimated at the end of 2016 as being over 20 per cent of GDP; one of the highest inflation rates in the world; the depreciation of the currency, which was being sold on the black market; and a reduction of international reserves by over half, at US$1.3 billion. From an economic perspective, the

country was suffering from a process of exhaustion from stagflation. On the demand side, private consumption was severely affected, suffocated by the fall in real income, the scarcity of basic consumer necessities and the ever higher transaction costs of doing business. Confidence levels were at rock bottom and the high levels of uncertainty, combined with the lack of availability of capital goods, had resulted in a major fall in investment. Although there were no data on gross capital formation or precise figures for direct foreign investment, there were reports in the news of very representative international enterprises that were leaving the country. There was also a general contraction of supply, due to price controls, controls on the profit margins of producers and service providers, and restrictions on the purchase of currency, despite recent liberalization measures, which had affected the purchase of intermediary goods and capital goods. That had been prejudicial to the manufacturing industry, construction, the agricultural sector, services, retail trading, transport, storage, financial and insurance services. The *Economist Intelligence Unit* had recently made an analysis of the consequences of the announced increases in the minimum wage. In 2015, it had been increased three times by between 10 and 20 per cent. In 2016, it had been raised on four occasions by between 20 and 50 per cent. But in 2017, it had been increased twice, without dialogue with the representative organizations, with an adjustment on the last occasion on 1 May of 60 per cent. The analysis concluded that: "The move is highly unlikely to placate widespread anti-Governmental sentiment. The Banco Central de Venezuela (the central bank) is likely to print money to fund the increase in the minimum wage (annual growth in monetary aggregates has already risen from 160 per cent at the start of 2017 to 216 per cent in late April), with a consequent rise in inflation likely to erode purchasing power. Moreover, shortages of food and other consumer items remain widespread, negating the impact of higher wages. … [T]hese developments indicate that inflation will continue to rise, and are in line with our current forecast that inflation will average 562 per cent in 2017, compared with 422 per cent in 2016. This will be a factor contributing to ongoing and increasing popular unrest." The requests made in 2016 by the Committee of Experts had still not been given effect to. The Employer members considered that it was essential to call on the Government to implement all the action and policies that had been requested. These requests were related to procedures in other ILO bodies. With reference to the intervention by the Government representative, they expressed concern at the indication by the Government that the "most prominent employers" participated in the CNEP, rather than the most representative organization of employers. This was a clear violation of Article 3 of the Convention. They emphasized the link between this provision and Case No. 2254, which was before the Committee on Freedom of Association, which had expressed serious concern at the persistence of the situation with regard to social dialogue. In view of the lack of progress, it had been decided to hold a direct conversation with the Government during the Conference. As employers, they hoped for a climate of constructive, inclusive and genuine dialogue.

The Employer member of the Bolivarian Republic of Venezuela recalled that the case was being discussed once again after one year, as the situation in the country was so unsustainable and all the indicators had substantially worsened. The Government had not given effect to the conclusions of the Committee on the Application of Standards, had not engaged in tripartite consultation with a view to drawing up an employment policy, had not established a tripartite dialogue forum and had not accepted the ILO high-level tripartite mission envisaged by the Conference Committee. The Government maintained that it had held meetings with employers in the CNEP, but FEDECAMARAS had not been invited to participate. Accordingly, the agreements concluded with individual or sectoral employers' and workers' organizations could not replace the institutional participation of FEDECAMARAS and could not be regarded as committing other employers through the discussion of the transversal issues and structural reforms required by the country in the economic field. The measures decided by the CNEP had not had a positive effect. Indeed, the opposite was true, in view of the lack of genuine dialogue, as illustrated by the closure of so many enterprises due to the absence of raw materials, the lack of economic viability or the failure of the Government to fulfil its financial and commercial obligations. She referred to the major fall in imports and the significant shortages of food and medicine which, in some cases, amounted to between 80 and 100 per cent. By the end of 2017, the accumulated contraction of GDP was estimated to have reached over 30 per cent over a four-year period. At the end of 2016, imports had fallen by 45 per cent. Productive capacity was stagnating at around 60 per cent. According to the latest INE figures on the labour force, in one year since April 2016, the losses included 110,000 employers and 224,500 jobs in comparison to 2015. There were no more up-to-date figures, as the main official macroeconomic indicators had not been published for 17 months. It was estimated that the economically active population had fallen by 198,000 persons, with a significant decrease among women and young persons aged between 15 and 24 years. The economically inactive population had risen by 612,000 persons.

According to the figures of the Economic Commission for Latin America and the Caribbean (ECLAC), foreign investment in Latin America in 2015 was approximately US$134 billion, of which the Bolivarian Republic of Venezuela only received US$2 billion (approximately 1.9 per cent). It was not by chance that in 2016 over 45 transnational enterprises had declared losses in their operations in the Bolivarian Republic of Venezuela, or had definitively ended their operations in the country. Over and above the economy, the country was immersed in a deep-rooted political and social crisis, verging on a humanitarian crisis. Many Venezuelans were dying due to the lack of medicine and 9.6 million were eating two or fewer meals a day. The 2016 Living Conditions Survey (ENCOVI) had found that 93 per cent of households did not have sufficient income to cover food and that 82 per cent of the population was living in poverty. Some 88 per cent of young persons wished to leave the country in search of better opportunities elsewhere. It was therefore understandable that there had been over 70 uninterrupted days of street protests. The loss of over 70 lives, mostly of very young people, was to be deplored. She told the Government that it was now time to engage in genuine social dialogue, and not merely information meetings without a set agenda, action or specific objectives. She added that in parallel the threats and insults were continuing against the leaders of FEDECAMARAS through the State social communication media, in which they were accused of being murderers, conspirators and instigators of coups d'état. She emphasized that FEDECAMARAS agreed to participate in the meeting to be held on 13 June 2017, but had not received a programme for the meeting. Recently, the President of the Republic had accused FEDECAMARAS of joining the opposition because it had refused to participate in the National Constituent Assembly convened by the Government, which had been challenged by various figures, including the Attorney-General of the Republic and several magistrates of the Supreme Court of Justice, and was subject to various legal actions calling for it to be found unconstitutional. She emphasized that FEDECAMARAS was not applying double standards. It would not participate in and validate a pro-

cess intended to dictate a new Constitution without the approval of the Venezuelan people. However, it was necessary to discuss the means of resolving the serious problems that were in the common interest and which affected the whole of the country. In particular, FEDECAMARAS wished to discuss the reactivation of the production system, structural measures to address inflation, the recovery of the purchasing power of wages, plans to attract and maintain investment, the cessation of the forced occupation of enterprises and respect for free entrepreneurial initiative. It was essential and urgent to engage in a process of genuine, effective, responsible, serious and legitimate social dialogue. It was also necessary to build the essential basis of trust for such a dialogue, as an employment policy that was not based on consultation would not be effective, based as it was merely on wage increases every two or three months, which were nullified by inflation. Employers and workers needed to participate in the design of public policies to create the basic conditions to guarantee the sustainability of enterprises and decent work, thereby offering a decent life to Venezuelans. In conclusion, she called on the Committee on the Application of Standards, as the Government had not accepted the high-level tripartite mission requested the previous year, to request the Governing Body to examine once again at its next session the establishment of a Commission of Inquiry.

The Worker member of the Bolivarian Republic of Venezuela denounced the employers' organization FEDECAMARAS for trying to use the Committee for political ends. For the last 15 years, FEDECAMARAS had been refusing to recognize the Constitution of the Bolivarian Republic of Venezuela, the public authorities and the Basic Labour Act (LOTTT), which guaranteed the application of all ILO fundamental Conventions. FEDECAMARAS, far from pursuing a policy that would promote employment and the application of the Convention, had embarked on an economic war with the aim of ousting the Bolivarian revolution from power and, alongside multinationals, of appropriating the country's immense natural resources. In that respect, he highlighted the dismissal of more than 9,000 workers by one of FEDECAMARAS' affiliated enterprises, known for being the largest private sector producer of food in the country. Moreover, he denounced the perpetration of acts of violence by FEDECAMARAS against medium-sized trade and production enterprises, to which the Government had needed to grant bank loans to recover the jobs lost. All such actions threatened to undermine the great progress made by the Venezuelan people, which included larger and permanent pay rises, job stability, the lowest unemployment figures in the region, free and high-quality education, and free access to health care. The President of the Bolivarian Republic of Venezuela had publicly invited Venezuela's entrepreneurs to join the national body for tripartite dialogue, the CNEP, which brought together the workers of the Bolivarian Socialist Confederation of Workers (CBST), some of the employers affiliated to FEDECAMARAS, and the Government, with a view to formulating economic policies that would replace the capitalist model of production. In his speech to the plenary of the Conference on 7 July 2017, the President of FEDECAMARAS had said that legitimate social dialogue should be established in the country; that the State and the public authorities, which should be independent, should be restructured; that there should be a change of economic model; that inflation should be tackled; and that the National Constituent Assembly convened by the President of the Bolivarian Republic of Venezuela was unlawful. Such a statement by the President of FEDECAMARAS was a call to confrontation, not dialogue. FEDECAMARAS had also refused to participate in the initiative for broad, in-depth social dialogue in the National Constituent Assembly. Venezuelan workers, and the people in general, did not want interference in their internal affairs. It was for them to resolve their problems through dialogue. Together with the Government, workers' organizations would ensure that the Convention was applied. In that regard, he highlighted the fierce fight within the framework of the Bolivarian revolution to win many of the rights previously denied by FEDECAMARAS. Among those rights, he highlighted the increase in the minimum wage on 34 occasions in 18 years, which had benefited 14 million workers; the negotiation of 2,177 collective agreements in four years, providing protection for more than 8 million workers; the construction of 1.5 million homes for workers; the provision of buses and taxis for trade unions for collective passenger transport; the constant creation of new jobs in agricultural production; credit support for SMEs; the promotion of workers' production councils as organizations for the working class to direct the planning and monitoring of production processes; and the creation of the CNEP. For all those reasons, he roundly rejected the complaint presented by the employers' organization FEDECAMARAS.

The Government member of Panama, speaking on behalf of the group of Latin American and Caribbean countries (GRULAC), observed that the 2016 report of the Committee of Experts only requested additional information, and did not indicate any alleged violation of the Convention. In its report, the Committee of Experts noted the information provided by the Government on the adoption of various measures within the framework of the Convention, including: the Second Plan for the Economic and Social Development of the Nation 2013–19; the implementation of strategic measures known as the "Bolivarian Economic Agenda"; the creation of the CNEP in 2016 as a forum for tripartite dialogue to address the development of strategic economic areas in the country; and the Act for Productive Youth, No. 392 of 2014. He was confident that the Government would continue to provide information on the application of the Convention and encouraged it to strengthen tripartite social dialogue. He drew attention to the assistance provided by the Office for the tripartite meeting requested by the Government, which would be held the following week during the Conference, with the participation of Venezuelan employers' and workers' delegations.

The Government member of Cuba, expressing support for the statement by GRULAC and welcoming the information provided by the Government, considered that the Conference Committee, when analysing this case, should take into account the information supplied by the Government in its report, which appeared to be noted in the comments by the Committee of Experts in 2016. This information included the employment policy, the main objectives and lines of action of which were reflected in the Plan for the Economic and Social Development of the Nation, 2016–20; the increases in the minimum wage; regulations on employment protection; the adoption of an enhanced plan to protect employment, wages and pensions; a strategy to promote the entry into the labour market of young people; and the creation of the CNEP as a forum for tripartite dialogue on the development of strategic economic areas in the country. The Government had met its obligations in relation to employment policy, despite the climate of violence and the economic and media war, which were being manipulated from outside the country with the aim of destabilizing Venezuelan society. She concluded that there was no justification for the case to be discussed by the Committee on the Application of Standards. As, in accordance with article 22 of the ILO Constitution, the information requested from the Government by the Committee of Experts could be included in the next report, she called on the Committee on the Application of Standards to ensure compliance with legal procedures.

The Employer member of Peru said that the information provided by FEDECAMERAS showed that the economic and employment policy applied in the Bolivarian Republic of Venezuela did not promote employment, and certainly not productive employment, which meant that in practice, employment was not likely to be freely chosen. He added that the Government had repeatedly failed to comply with the requests of the Committee of Experts relating to the establishment of a body for social dialogue with the most representative workers' and employers' organizations. He therefore called on the Committee on the Application of Standards to urge the Government to comply with the Convention and to use all available ILO mechanisms to ensure that the Government consulted the most representative workers' and employers' organizations to draw up economic and employment policies.

The Government member of Nicaragua supported the statement by GRULAC and thanked the Government for the information provided. He reiterated his concern at the attempts to politicize the work of the ILO, considering that the discussion of the case had been forced without any technical grounds. He recalled that the Committee of Experts had not noted any non-compliance with the Convention and had merely requested additional information and examples of application. He referred to the intervention by the Employer members at the 104th Session of the International Labour Conference concerning the role of the Committee on the Application of Standards in relation to the Convention, which should be limited to controlling the existence of an employment policy with the objective of full and productive employment, and that it should not judge the validity, efficiency or justification for the measures adopted. Based on those comments, and in light of the information provided by the Government, there should be no doubt that the Government was in compliance with the Convention. He welcomed the tripartite meeting which, with the support of the ILO Director-General, would be held on 13 June 2017 between the Government and the Venezuelan employers' and workers' delegations. He hoped that the meeting would help to strengthen tripartite social dialogue in the country. Finally, he invited the Committee on the Application of Standards to carry out a balanced and fair evaluation of the case and urged it not to go along with political manoeuvres which distanced the ILO from the noble objective for which it had been founded.

The Employer member of Honduras noted that the country did not have an active employment policy for the promotion of full, productive and freely chosen employment, and that the Government did not maintain social dialogue with the main partners in the country. He recalled that this governance Convention was a priority for the ILO and that, since 1990, the Committee of Experts had made 14 observations on its application. He added that, although in 2016 the Conference had urged the Government to accept a high-level tripartite mission, the Government had not yet given effect to that request. He emphasized that the Committee on the Application of Standards needed to secure from the Government acceptance of the mission or of ILO technical assistance for the establishment of a tripartite round table dialogue. If the Government would not accept either of these proposals within the framework of the Conference, the issue would need to be referred to the next session of the Governing Body to examine the establishment of a Commission of Inquiry to examine the implementation of the Convention.

The Government member of Mauritania indicated that the Government had provided information on the significant efforts made to ensure full employment, and thus to continue guaranteeing the dignity of all the citizens of the country. The Committee of Experts had received the 2016 report on the application of the Convention, which highlighted the progress made in the field of employment promotion. Moreover, the 2016 observations of the Committee of Experts had been confined to asking the Government for further information. The presentation of the employment policy had received the recognition that it deserved, which was undoubtedly why the Committee of Experts had not noted any failure to apply the Convention, confining itself to asking the Government for more precise examples. With a view to consolidating the conditions required for a successful employment policy, the Government had strengthened social dialogue. It was therefore necessary to encourage the employers to agree to associate with the workers and the Government in order to determine the best ways and means of achieving the goals of this policy. In light of the above, it could be deduced that the Bolivarian Republic of Venezuela had a very solid employment policy, with good wages, buoyant youth employment and a satisfactory situation of the elderly and retirees.

The Worker member of Honduras said that, despite the application of labour laws, the country was once again the victim of a political game. He highlighted the significant progress made in social protection and the defence of labour rights, as well as the role that had been played by the CBST. He indicated that, although the report of the Committee of Experts had not mentioned any non-compliance with the Convention, worrying reports from trade unions indicated that some employers affiliated to FEDECAMARAS had been sabotaging the production of goods and services, closing their enterprises and throwing hundreds of workers onto the street. However, he acknowledged the actions of other employers affiliated to FEDECAMARAS, which were maintaining high levels of productivity in their enterprises, respecting the protection of workers and participating with the Government and workers in the CNEP.

An observer representing the International Organisation of Employers (IOE) recalled that the Convention required the declaration and pursuit of an active policy designed to promote full, productive and freely chosen employment. Such a policy should aim to ensure that there was work for all who sought employment, productive work, freedom of choice in employment, and the opportunity for workers to qualify for and use their skills in a job for which they were well suited. It also required consultation with the social partners. Productive and sustainable employment was the basis for decent work, wealth creation and social justice. Employment was the result of investment and a measure of the success of an employment policy was whether it encouraged or discouraged investment and job creation.

This was the second consecutive year that the Bolivarian Republic of Venezuela had come before the Committee. The Government had not implemented the Committee's 2016 conclusions and the situation in the country had since worsened. The opposition-led Congress had reported that consumer prices had jumped 741 per cent year-on-year in February 2017. Since 2014, both overall and extreme poverty had deteriorated to the worst levels seen in at least a decade and a half. Thousands of businesses in the private sector had shut down, jobs had been lost and informality had increased. The social and economic situation in the country was dramatic and had deteriorated further. She called on the Government to comply with the provisions of the Convention in both law and practice, by pursuing an active policy designed to promote full, productive and freely chosen employment. She recalled the role of representative workers' organizations and FEDECAMARAS in this regard, as well as the recommendations of the ILO Governing Body, ILO supervisory bodies and the report of the high-level mission that had visited the country in 2014.

The Government member of the Islamic Republic of Iran observed that the measures taken by the Government demonstrated its willingness to enhance the situation and

deserved due consideration by the Committee. Noting the statistics provided by the Government in its report and the measures taken to promote youth employment, he welcomed the creation of the CNEP to deal with the development of strategic economic areas through tripartite dialogue. The CNEP had already held over 300 meetings. Given that the Convention entailed an array of technical elements, its proper and effective application required technical assistance from the Office. He therefore called on the Office to provide further technical assistance to the Government and reiterated his support for the Government's continued efforts to enhance national conditions.

The Worker member of Colombia said that the Venezuelan working class was migrating due to the lack of opportunities, food and medical services, and he recalled that in 2016 the Conference had deplored the social and economic crisis affecting the country, as well as the absence of an active employment policy intended to promote full, productive and freely chosen employment. The Committee should urge the Government to accept ILO technical assistance and make definite arrangements for a high-level tripartite mission. He concluded that it was unacceptable for those known as coup plotters and terrorists to be brazen enough to protest at an unacceptable situation.

The Government member of the Plurinational State of Bolivia endorsed the statement by GRULAC and emphasized that in its report the Committee of Experts had made no mention of any specific failure to apply the Convention. The Convention did not oblige States to follow a particular economic and social model, but rather encouraged the implementation of employment policies within the framework of each State's sovereignty. She emphasized that public policies aimed at achieving and guaranteeing progressive human rights should be analysed while respecting the sovereign discretion of each State, and that the examination undertaken by the Committee of Experts needed to be objective, exhaustive and limited to legal considerations that fell within its mandate.

The Worker member of Benin emphasized that the observation made by the Committee of Experts in 2017 indicated that the Government had provided up-to-date information regarding the Convention, that an employment policy existed in the form of the economic and social development plan, that the social partners had been informed of this policy, as indicated during the discussion in the Conference Committee in 2015, and that they were heard in the CNEP. For these reasons, the discussion of the case of the Bolivarian Republic of Venezuela was not justified. Thousands of workers were dismissed in other countries without their cases being discussed by the Committee. The employers of Bolivarian Republic of Venezuela wanted to reduce the number of employees in the country. However, they could not dismiss a single worker without authorization from the Government. Minimum wages and pensions had been increased by presidential decree and collective agreements had been negotiated. There were places in the world where workers were far less fortunate, and yet the Conference Committee did not discuss those cases. It was therefore unjustified to condemn the Bolivarian Republic of Venezuela. The employers wanted the country to lose everything that the people had won: gains that were admired by countless workers. Workers the world over stood in solidarity with the Bolivarian Republic of Venezuela.

The Government member of Pakistan appreciated the statement by GRULAC and welcomed the steps taken by the Government to enforce labour standards in the country through legislative and policy measures, and the constructive engagement with the ILO supervisory bodies. The Government's agreement to avail itself of ILO technical assistance to resolve these issues through tripartite dialogue was commended. She noted with appreciation the timely submission of reports and information, and the fact that the Committee of Experts' latest observation did not mention non-compliance. She looked forward to the forthcoming discussions that would be held on 13 June 2017 between the Government, employers and workers, and hoped for a positive outcome.

An observer representing the World Organization of Workers said that the recommendations of the Conference Committee and the other ILO supervisory bodies had been ignored by the Government and that the situation in the country had deteriorated. Almost 7.7 million people were unemployed or working in the informal economy; 60 per cent of households ate only two meals a day; and hundreds of families were now sifting through rubbish to survive in one of the most resource-rich countries in the world. She emphasized the need for change in the country's economic and social policies and expressed support for a high-level tripartite mission.

The Government member of Myanmar commended the Government for the timely submission of its report and noted that the Bolivarian Republic of Venezuela had a sustained employment policy in the framework of its Second Socialist Plan for the Economic and Social Development of the Nation 2013–19. She encouraged objective and constructive dialogue between employers and the Government on compliance with the Convention, particularly on employment policy challenges. She further welcomed the tripartite meeting and hoped to see fruitful results, which would eliminate the need for future examination of the case by the Committee.

The Employer member of Chile recalled that it was the second consecutive year in which the Committee was examining non-compliance with the Convention by the Bolivarian Republic of Venezuela. The international community had witnessed the dramatic deepening of the social and economic crisis, and its effects on workers and employers. The absence of an active employment policy intended to promote productive employment was an obstacle to stimulating economic growth and development, raising standards of living, meeting labour needs and overcoming the serious situation of unemployment and underemployment in the country. In addition, the absence of social dialogue in the country continued to have negative effects on employment, as the Government was still not consulting FEDECAMERAS, the most representative employers' organization, in the formulation of an (as yet non-existent) employment policy. The Venezuelan Government had recently decided to convene a National Constituent Assembly to formulate a new constitution in the country, an initiative which from the outset had been questioned by civil society as it did not respect the procedure set out in the current Constitution. It was in that context that the Government had invited FEDECAMERAS to participate, claiming that in this way it was complying with the requirement to promote social dialogue and to consult, as set out in the Convention. He called on the Government to accept the ILO tripartite mission and to hold genuine tripartite consultations with a view to implementing an active employment policy.

The Government member of the Russian Federation noted the Government's commitment to constructive cooperation with the ILO and the social partners, including FEDECAMARAS. The Government had continuously worked on the basis of tripartite dialogue with the aim of re-establishing trust and forging consensus. The Committee of Experts had not observed any failure by the country with respect to its obligations under the Convention, which made it difficult to understand the reasons for the inclusion of the case in the list. Effective implementation of the Convention depended on the level of economic and social development of each country. It was a framework Convention that could not be analysed in terms of national-level implementation. In this view, the Committee of Experts could

not judge the content of employment policies under the Convention, and repeated examination of this issue by the Conference Committee would not promote ratification of the Convention by other member States. Reiterating his concern at the repeated attempts to use the ILO for political purposes, he welcomed cooperation between the Government and the ILO to implement labour standards in the country and hoped that such cooperation would continue.

The Worker member of the Dominican Republic indicated that successive governments in the Bolivarian Republic of Venezuela had achieved greater distributive justice through wage increases, which had reduced inequality. They had also enabled women and young people to assert their rights, which had decreased unemployment and given many people access to literacy and health care. This had caused irritation in certain sectors that had always benefited from the lack of protection of workers in the region. He considered it important that the Employer members had said that the purpose of entrepreneurship was not to interfere in political issues, but to generate wealth. He recalled that a Venezuelan employer had staged a coup d'état in 2002, lasting 48 hours, with the aim of replacing the legitimately elected Government. He expressed astonishment at the case of the Venezuelan citizen who had been burned alive because he was suspected of being a Government sympathizer, and called for an end to that type of act.

The Government member of Burundi indicated that the observation made by the Committee of Experts in 2017 requested the Government to provide detailed information on certain aspects of the Convention, but did not refer to a failure to comply with it. Under Articles 1 and 2 of the Convention, employment policy was specific to each country, took account of the stage and level of economic development, and was pursued by methods that were appropriate to national conditions and practices. The Convention provided for the consultation of representatives of employers and workers in order to take into account their experience and views. These consultations were not however binding, and the Convention did not create any obligation to negotiate the employment policy. The role of the Committee of Experts and the Conference Committee with respect to the Convention was to ensure that member States had the explicit intention to guarantee full and productive employment, which had clearly been demonstrated by the Government. It was not within the remit of the Committee of Experts to assess the validity, effectiveness or justification of the measures adopted in accordance with the Convention. The latter was a promotional instrument which did not specify the content of employment policy, but took into account the political, economic and social context of the country. It was regrettable that this was clearly a political case brought by the Employers' group against the Government. The discussion of the case yet again by the Conference Committee was unjustified. Lastly, he asked the Government to provide more information on the application of the Convention in its regular report.

The Worker member of Paraguay recalled that, at the previous Conference, the CGT had undertaken to file a complaint against the Government under article 26 of the ILO Constitution for repeated violations regarding freedom of association, discrimination at work and wage protection, with the aim of pressurizing the Government to accept that it was not possible to achieve peace without social justice. Unfortunately, the Governing Body had decided to divide the complaint between the Committee on Freedom of Association and the Committee of Experts. She indicated that the Government was ignoring the recommendations of the ILO, thus exacerbating the situation in the country, which was currently in the throes of a crisis, with the public protesting in the streets and demanding food, health care, medicines, jobs and security. She requested the Government to listen and to adopt the recommendations of the ILO mission that had visited the country, which had noted the absence of an employment policy that was needed to address the increasing poverty affecting an estimated 53 per cent of the population. The imposition of a minimum wage, without consulting the working class, and without complying with the Convention, together with high inflation, had resulted in a fall in purchasing power.

The Government member of Egypt, noting the overview provided by the Government of the measures taken under the Convention, recognized the efforts made to establish tripartite social dialogue with the social partners and to adopt an employment policy that would end unemployment. He encouraged the Government to continue its endeavours to comply with the Convention and to continue to avail itself of ILO technical assistance.

The Worker member of Nicaragua expressed his opposition to the inclusion of the case of the Bolivarian Republic of Venezuela on the list of cases to be examined by the Committee, as it had political overtones and was aimed at undermining the stability of the country. He reiterated the arrogant attitude demonstrated by the employers through its groundless support for the case. This group of employers, which was part of the economic war against the Government, called for dialogue in the ILO, but then declined to attend or impose conditions when the Government or the workers invited it to engage in dialogue to find solutions to economic issues. The case was not based on any violation, as increasing the minimum wage, in response to the employers' approach of side-stepping this right, demonstrated the Government's interest in restoring the purchasing power of workers. Behind the alleged defence of human rights, action was being taken by external forces to create conditions that threatened the peace and tranquillity of the Venezuelan people. The far right had a clear interest in and desire to carry out a coup d'état, and used these forums to create the conditions to justify such action. Those who said that the protests in the country were peaceful were the ones who were burning and looting businesses. He emphasized that a Nicaraguan journalist had been shot during the protests.

The Employer member of Uruguay observed that the questioning of the Bolivarian Republic of Venezuela at the ILO was no longer the sole concern of the Employer members. Complaints were now also being made by workers. He considered that the supervisory system of the ILO offered an opportunity for member States to improve their policies by ensuring conformity with the ratified Conventions. With regard to Convention No. 122, the Committee of Experts had requested the Government to take the various types of action recommended by the Committee on the Application of Standards, which had still not been implemented and should be achieved through social dialogue. Points of contact were urgently needed for the social partners, whether through technical assistance, a mission or a Commission of Inquiry. In view of the situation in the country, he hoped that nothing said in the Committee on the Application of Standards would breed further division, and that the representatives of the Government, workers and employers would make constructive use of the various interventions, especially the aspects which could improve social dialogue.

An observer representing the World Federation of Trade Unions (WFTU) observed that the countries of some of the organizations that were denouncing the Government had not ratified the Convention. They accused the Government of not having a policy for the promotion of full employment, but no member of the ILO had achieved this objective. The Government reported that it was implementing an employment policy in so far as national economic and practical conditions allowed. There were other countries, especially in Latin America and the Caribbean, with worse

employment indicators. In the ILO publication *2016 Labour Overview of Latin America and the Caribbean* it was noted that the unemployment rate in the Bolivarian Republic of Venezuela was 7.5 per cent, which positioned it in ninth place among the 20 countries of the Latin-American region. He considered that the Government was being judged harshly and obligations were being imposed which were not included in the Convention, such as achieving full employment, immediately creating a tripartite social dialogue body and guaranteeing youth employment and employment in SMEs. The accusations were a pretext to call into question all of the Government's actions. Those who took to the streets in the country, paralyzed the economy, impeded work and tried to topple the Government by any means, were the same people who were demanding full employment at the Conference. The ILO must not be used for such purposes. The country's economic and social crisis could not be solved from the outside, but needed to be addressed by its own citizens in exercise of their own sovereign rights. He considered that the Bolivarian Republic of Venezuela should not therefore be one of the 24 cases selected by the Committee on the Application of Standards. He requested that the country not be sanctioned in any way in the conclusions adopted by the Committee.

The Government member of Algeria welcomed the tangible progress made by the Government, particularly its political will to implement employment policy within the framework of a coordinated economic and social policy, and noted with satisfaction the participation of the social partners in the CNEP, a forum for exchange and tripartite dialogue that dealt with the development of the country's strategic economic zones. The Government was encouraged to persevere in its initiative to introduce an employment policy, the purpose of which was to reduce the unemployment rate and ensure the well-being of the country's workers.

The Worker member of Cuba noted that Articles 1 and 2 of the Convention provided for an employment policy specific to each country, taking into account the level and stage of economic, political and social development. He recalled that in the Bolivarian Republic of Venezuela there had been an economic war, motivated by the refusal of a production model that was distinct from interests of capital and was based on social justice. Attempts had been made to heighten social conflict, provoking disturbances of the public order. He considered that in this case precedence was being given to political rather than technical considerations, as neither the letter of the Convention nor the comments of the Committee of Experts left room for much debate. For over 15 years, the country had been on the preliminary or final lists of cases to be discussed by the Committee. On this occasion, the Committee of Experts had not identified any non-compliance. He called on the members of the Committee not to allow a repeat of this situation at the next session of the Conference, as it endangered the ILO's tripartite machinery.

The Government member of Ecuador endorsed the statement by GRULAC and recalled that the Committee of Experts had not identified any non-compliance with the Convention, and had simply requested additional information and examples of the application of the Convention. He therefore considered that there was a political motive behind the unwarranted inclusion of this case. He noted the holding of a significant meeting on 13 June 2017, within the framework of the Conference, between the Government and the Venezuelan employers' and workers' delegations with a view to strengthening tripartite social dialogue in the Bolivarian Republic of Venezuela. He noted, however, that this new call to the Committee on the Application of Standards could tarnish and prejudice the outcome of the meeting and affect the much needed tripartite dialogue in the country. He concluded that any international agenda in support of peace in the Bolivarian Republic of Venezuela, including on labour issues, needed to be designed jointly by the Government and encompass a constructive approach to the channels to be used.

The Employer member of Mexico said that the country was not applying the Convention and that, although the Governing Body had expressed confidence that the Government would promote effective dialogue, the Government had neither drawn up an action plan in consultation with the social partners nor constituted a tripartite round table for dialogue. He emphasized that the Government's word alone was not enough to ensure that it met its obligations.

The Government member of Ghana recalled that the Convention provided a foundation for laws, employment regulations and instruments to govern the world of work, including by providing a platform for ensuring freedom of association and collective bargaining. It was essential for all governments, including the Government of the Bolivarian Republic of Venezuela, to uphold the Convention and help to calm relations between and among partners in the world of work. The Government had taken note of the concerns of the Committee with regard to labour market trends, youth employment and the participation of the social partners, and it had begun to take action in response to the Committee of Experts' requests. Some statistical reports had been supplied on trends, and the Government had furnished information on a 2014 Act on youth employment, which seemed to have provided entry to the labour market and which could go further to ensure decent work. He urged the Government to further engage with the ILO to address the concerns that had been raised and meet the aspirations it had set.

The Employer member of Spain observed that the Committee was considering the Government's failure to apply the Convention for the second time in a row. He emphasized that it was not for the Committee to judge the suitability of the country's employment policies, but to determine whether the Government was formulating such policies in collaboration with Venezuelan entrepreneurs represented by FEDECAMARAS. The economic and social situation in the country was dramatic. The lack of a balanced macroeconomic policy, the absence of a business environment enabling the local production base to create jobs, and the lack of active unemployment policies had resulted in important economic sectors in the country being paralysed and had led to a serious problem of shortages, which was inexorably undermining the country's production base. Moreover, there was no structured social dialogue that would allow the necessary steps to be taken for the country to emerge from the profound crisis it was experiencing. For 17 consecutive years, FEDECAMARAS, the most representative employers' organization in the country, had been excluded from social dialogue. The Government's lack of will to initiate open and constructive social dialogue was thrown most sharply into relief by its unwillingness to accept a high-level mission or assistance from the ILO to establish a tripartite round table, as the Committee had suggested to the Government the previous year. He requested the Committee to recommend recourse to the alternative mechanisms available within the ILO, unless the Government accepted those suggestions within the framework of the Conference.

The Government representative expressed gratitude for the interventions of GRULAC, the Government and Worker members which, in their majority, and with qualifications, had come out in support of his Government. He reiterated that the Convention was promotional in character and only required Governments to adopt an employment policy, without specifying its content. Full employment needed to be based on broad policies which took into account the political context, the level and stage of economic

and social development, inflation and respect for human rights. The methods of application also needed to be appropriate to national conditions and practice. Neither the Committee of Experts nor the Committee on the Application of Standards were competent to judge the validity, effectiveness or justification of the measures adopted in relation to the Convention. He reiterated that the Committee of Experts had not identified any failure of compliance, and yet it had been decided to include the Bolivarian Republic of Venezuela among the cases to be examined, without waiting for the information requested to be provided. That revealed the importance of the political, rather than technical motivations of the employers, and more specifically of FEDECAMARAS. He recalled the continual opposition of FEDECAMARAS, which had even led the coup d'état of April 2002, and had pushed shortly after its failed coup for a strike by employers which had cost US$20 billion and resulted in the closure of enterprises and unemployment for thousands of workers. For over two months, opposition parties in the country had been launching protests, which had mostly ended up being violent, giving rise regrettably to 66 deaths up to the present. It was pitiful that this violence had not been challenged or condemned by FEDECAMARAS or by certain minority trade union organizations. The Government had taken firm steps to operate in an environment of dialogue and peace, but FEDECAMARAS was excluding itself. On every occasion that the case had been on the list to be discussed by the Committee on the Application of Standards, it had been at the behest of the Employer members. Moreover, in past sessions, Employer spokespersons had indicated that the Government would be called up on a permanent basis, irrespective of the Convention. Only the CBST, which was the most representative trade union organization, the Single Confederation of Workers of Venezuela (CUTV) and figures from the CTV had participated in the negotiation process to reform the Constitution. The National Constituent Assembly was the highest legislative body, with broad powers to change the economic model, which was one of the most controversial aspects of the national political process. For that reason, he could not condone the attitude of FEDECAMARAS which, although invited, had refused to participate. He added that the invitation to the National Constituent Assembly was being maintained, with five seats reserved for Employers and 79 for Workers. In conclusion, he expressed the hope that the conclusions of this long discussion would be objective and balanced, and not affected by negative and subjective considerations against the Government. He trusted that it would no longer be necessary to examine the case again in future. He had appeared before the Committee on the Application of Standards with great readiness and in a spirit of democracy, as he would continue to do as often as necessary, to reaffirm that the Government would not place private, capitalist and individual interests over those of the working class and the Venezuelan people.

The Worker members responded to the claim by the Employer members that the increase in minimum wages had contributed to the economic crisis by calling on them to recall the reference to the Declaration of Philadelphia in this Convention, which reaffirmed the need for wage policies and programmes to ensure that a just share of the fruits of progress were provided to all and a minimum living wage was afforded to workers. Positive advances on employment policy had taken place in the country, particularly in the period through 2014, when the Bolivarian Republic of Venezuela had benefited from historically high oil prices, which had enabled increased public spending on ambitious programmes. However, the present economic and political crisis could jeopardize such important achievements. Workers and the poorest in society faced higher rates of unemployment and precarious work, and thousands of workers had been pushed back into the informal economy. This crisis called for social dialogue and tripartism. Recalling that the Government had not accepted the Conference Committee's recommendation for a tripartite high-level mission, they underlined that the Government had also failed to implement a detailed timetable to re-establish tripartite dialogue to deal with economic policy and industrial relations, and had failed to give effect to the recommendation to establish a round table with the participation of the ILO, following the high-level mission in 2014. The Worker members urged the Government to take concrete measures to develop and adopt an active employment policy designed to promote full, productive and freely chosen employment in compliance with the Convention; to establish a structured body for tripartite social dialogue; to take immediate action to build a climate of trust based on respect for employers' and workers' organizations; and to urgently set and implement timeframes for all the commitments that had been made previously to the Governing Body, including consultation with the social partners.

The Employer members said that they had listened carefully to the debate, aware of the interest in the subject, and had noted the clear divergences revealed. They emphasized that, even if there was a situation of non-observance of the Convention, they disagreed with the Government representative's assessment. After reading out Article 3 of the Convention, they emphasized that it was not being given effect in view of the absence of participation of highly representative organizations, such as FEDECAMARAS, CTV, UNETE, CGT and CODESA. The Committee's conclusions should reflect this situation. They welcomed the fact that the transitional labour regime was no longer in force, a situation of which they had not been informed and which had been a source of enormous concern. Moreover, they were concerned to observe that the Committee of Experts had not taken due note of the information that FEDECAMARAS had provided on the subject, which should have been underlined more emphatically. In the context of the current discussion in the Committee, FEDECAMARAS had specifically called for the revival of the production sector, a structural approach to tackling inflation, the recovery of the purchasing power of wages, the creation of plans to attract and maintain investment, an end to forced occupations of companies, and respect for free enterprise. They said that they could not agree to a statement which claimed that an employment policy existed in the country simply because a plan had been established in which there was no participation by third parties. Indeed, the Socialist Plan for the Economic and Social Development of the Nation 2013–19 did not envisage much participation by Worker representatives, or by the most representative employers' organizations. This subject should be examined in the light of the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and, of course, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). It was essential for there to be consultations with the most representative organizations of employers and workers. They vehemently called for the immediate and effective establishment of genuine tripartite consultations for the consensus-based formulation and implementation of an active employment policy. They also called on the Government to accept the technical assistance and the high-level tripartite mission called for the previous year. They considered that it was urgent for measures to be taken, and it was therefore essential for the Committee's conclusions to 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 with deep concern that the Government has not yet addressed the Committee's 2016 conclusions.

The Committee took note of the lack of social dialogue in relation to an active employment policy designed to promote full, productive and freely chosen employment.

Taking into account the discussion, the Committee urged the Government of the Bolivarian Republic of Venezuela, with ILO technical assistance, and without delay, to:

- **develop, in consultation with the most representative workers' and employers' organizations, an employment policy designed to promote full, productive and freely chosen employment, in a climate of dialogue free from any form of intimidation;**
- **implement concrete measures to put in practice an employment policy stimulating economic growth and development, raising standards of living, and overcoming unemployment and underemployment;**
- **institutionalize a tripartite round table, with the presence of the ILO, to build a climate of trust based on respect for employers' and workers' organizations, with a view to fostering social dialogue and promoting solid and stable industrial relations.**

The Committee calls on the Government to comply with Convention No. 122 and to respond to the Committee's 2016 conclusions without further delay. The Committee also asked the Government to report in detail on the measures taken to implement these recommendations before the next meeting of the Committee of Experts in November 2017.

The Government representative thanked the Committee for the efforts made. He nonetheless rejected the conclusions which had been read in the Committee. Such conclusions which contained information which seemed to be biased, somewhat untruthful, unfounded, and unrelated to Convention No. 122, had been assumed to be true. In particular, the conclusions had not taken into account the statements made by the Government, Workers and other Government representatives. Such a state of affairs reflected a shift from objectivity, transparency and affected the Committee's credibility. He consequently believed that the Committee's working methods had to be urgently improved, in order to avoid the formulation of subjective, disproportionate and inapplicable conclusions.

He stated that his Government would continue to comply with ratified Conventions, and develop policies benefiting the working class and the Venezuelan people, and hoped that the results of such efforts would be acknowledged by the ILO. Lastly, he underlined that shortly before the tripartite meeting held with the Director-General, the organization of Venezuelan employers and FEDECAMARAS, the latter indicated it would not attend, arguing that it wished for "a neutral and discrete environment, without any interest of a political nature". He stressed that FEDECAMARAS' self-exclusion from tripartite dialogue, had not only helped the employers of Venezuela but was also at odds with previous statements accusing the Government of being against social dialogue. Finally, he asserted that, on the contrary, the Government had always been willing to engage in dialogue, and invited the Committee to indicate in its conclusions an express appeal to FEDECAMARAS to take part in national and international dialogue.

The Employer members stated that they wished to put on the record without reopening the debate that the tripartite meeting which had been convened the previous day between the Government and the social partners regrettably had not included an invitation to all workers' organizations from the Bolivarian Republic of Venezuela present at the Conference. In light of this climate of imbalance in representativeness, the employers' organization had decided to refrain from participating in the meeting.

Workers' Representatives Convention, 1971 (No. 135)

TURKEY (ratification: 1993)

A Government representative pointed out that Turkey was once again placed on the agenda of the Committee as a result of a misinformed decision, if not a politically motivated one. He further pointed out that the Committee of Experts had not made any comment on the application of the Convention in law and in practice for the last two reporting periods. In this respect, he regretted that the Committee of Experts had not taken note of the protective provisions of the Act on trade unions and collective bargaining agreements (Act No. 6356), nor of the amendments made in 2012 to Act No. 4688 on Public Employees' Unions. The Committee of Experts had referred only to the allegations made by the Confederation of Public Employees' Trade Unions (KESK). To respond to these allegations, the Government needed adequate time to consult several public institutions and to make inquiries. As always, the Government would have provided, in due course, the necessary information. The fact that the Government did not have time to do so did not justify the inclusion of this case in the shortlist. Regarding the legislation in force, he recalled that the amendments made to Act No. 4688 in 2012 introduced the following changes: (i) along with the shop stewards representing the majority trade union, minority trade unions were now also allowed to appoint workplace representatives; (ii) pursuant to section 23, it was now possible to appoint a shop steward at the workplace with less than 20 public servants; (iii) paid time off given to shop stewards to carry out their activities was increased from two hours to four hours in a week; (iv) public employers could not change the workplace of shop stewards, the minority trade unions' workplace representatives, trade union officials, trade unions' branch office officials, trade unions' provincial and district representatives, without clear and precise justifications; and (v) the Act required public employers to provide facilities to the trade union representatives to enable them to carry out their duties during and outside working hours, in a manner that did not hinder management and provision of services. Similarly, the Prime Minister's Circular No. 2003/37 also ordered public institutions to provide offices and noticeboards to trade union representatives, to the extent possible, and allot meeting and conference rooms, if available, for trade union activities, in accordance with section 23 of Act No. 4688.

Addressing the KESK allegations, he recalled that one of the cases concerned related to the transfer of Mr Celik from Ankara National Library to another workplace. Initially, by a letter sent in 2008, the Kultur Sanat-Sen Trade Union had appointed him workers' representative. However, another union member was named representative by a letter received in 2009. The latter person was still the workplace representative and attended the meetings with the administration in 2013, 2014 and 2015. In a different case, the transfer, in January 2015, of Mr Kuruuzum, Kultur Sanat-Sen Trade Union workplace representative in Antalya Provincial Directorate of Culture and Tourism, was revoked in accordance with section 18 of Act No. 4688, upon receipt of his letter in February 2015 indicating that he was a trade union workplace representative. Currently, he worked at the Antalya Provincial Directorate of Culture and Tourism. In another case, the Ministry of Forestry and Water Affairs determined that Tarim Orkam-Sen Trade Union's workplace representative, Mr Sonmez, was very often absent from work without his employer's permission. He was transferred to Ankara Ninth Regional Directorate affiliated

to the Ministry. However, he was reinstated to his previous job by the Ankara Third Administrative Court. In another case, a representative of the Trade Union of Public Administration Employees (BES), Mr Bektas, was transferred from Samsun Tenth Meteorology Region to Cankiri Meteorology Directorate because he had insulted, physically assaulted and threatened a colleague and disrespected his supervisor. His transfer was not related to any trade union activity. The Samsun Sixth Criminal Court of Peace found him guilty of the above acts. At no point did Mr Bektas claim anti-union acts. Furthermore, the employment contract of Haber-Sen Trade Union's workplace representative at the Directorate General of Press and Information, Mr Kaftancioglu, was terminated when he had failed an exam to determine his qualifications. He was reinstated in his previous job by a verdict of the First Administrative Court of Ankara. As the relevant institution appealed to the Court of Cassation, the case was still pending. Further on, Mr Taskesen, Yapi-Yol Sen Trade Union's workplace representative at the workplace in Kahramanmaras was transferred to the workplace in Antalya of the same Regional Directorate in October 2014. The Administrative Court of Kahramanmaras stayed the execution of his transfer in December 2014 and consequently repealed it in March 2015. While the case was still pending, upon his request, he was transferred to his previous workplace in January 2015 and was still working there. From the file of Mr Berberoglu, BES Trade Union workplace representative at the Izmir Guzelbahce Revenues Directorate, it appeared that he had violated the regulation on appearance and attire despite being warned on several occasions. As a result, he was transferred to another workplace of the same public institution in the same city. The Third Administrative Court of Izmir ruled that the decision was in conformity with the law. He retired from the public service in July 2016. Regarding the allegation that no office space was allocated to the BTS Trade Union in four workplaces in 2014, the speaker indicated that an investigation by the Directorate General of State Railways revealed that there was no such application by the said trade union for the allotment of an office in 2014. The Government representative emphasized that the protection provided to workers' representatives by the Convention existed only if they acted in conformity with the existing laws. In case of any grievance, administrative and judicial remedies were in place and functioned effectively in Turkey. Regarding the observation made by the Confederation of Turkish Trade Unions (TÜRK-İŞ) he noted that it did not refer to any discrepancy between the law and the Convention. In conclusion, he recalled that Act No. 6356 regulated the protection of trade union shop stewards. Pursuant to its section 24, an employer could not terminate the employment contract of shop stewards unless there was a just cause for termination. The shop steward concerned and his/her trade union had the right to apply to the competent court, which could order reinstatement without the loss of pay and benefits. Moreover, no major changes in employment, including transfer, were possible without the shop steward's consent.

The Worker members noted that this was the first time the Committee had discussed the application of the Convention in Turkey. It was a pertinent moment to discuss that issue as Turkey was now governed through emergency decrees adopted by the executive with no judicial oversight. The total disregard for the rights of workers and the lack of protection afforded to their representatives was embedded in the overall assault on democratic institutions. Workers' representatives were subject to arrests, dismissals, transfers and other forms of discrimination for defending the rights of those they represented. The Worker members were shocked to hear about the July 2016 coup attempt. While defeated, that violent attack perpetrated by some officials of the military took the lives of almost 240 people who courageously defended democracy over military rule. The Worker members commended the bravery of those citizens, many of whom were trade union leaders and members, and expressed their condolences and solidarity to their families. Even when they did not agree with the politics of certain governments, the Worker members would always stand firmly against those who wanted to impose brute force against an elected government. However, the authoritarian measures the Government had taken in the aftermath of the attempted coup had given rise to equal concern. While those were first targeted against persons who were allegedly responsible for the coup attempt, soon after the drastic measures taken were extended far beyond that group turning into a purge of oppositional voices. Workers' representatives in the public sector became a primary target for arrest, dismissal and harassment. Authorities had remanded more than 47,000 people in pre-trial detention and had closed down hundreds of associations, foundations and other institutions. In September 2016, the Minister of Justice stated that almost 34,000 convicted inmates would be released to make space in prisons. Many of those arrested and detained had absolutely nothing to do with the coup attempt or terrorist groups. They were mere trade union leaders standing up against destructive policies. For example, on 10 November 2016, the Trade Union of the Employees of the Public Health and Social Services (SES) had organized a collective action against unjustified collective dismissals and declared a state of emergency. The police had intervened and many workers, including the leader of SES and members of the central executive committee, had been detained. Even before the attempted coup, trade union leaders had been subjected to arbitrary arrest. Twenty-six members and board members of the SES Muğla Branch, including Huseyin Sarıefe, had been taken into police custody on 11 October 2015 following a protest against a terrorist attack on a trade union rally that had killed more than 100 people. Court proceedings had been initiated against them. The Adıyaman Governorate had launched an administrative investigation against BES Women's Secretary, had changed her workplace and suspended her from her office for reading a press statement on International Women's Day in 2017. Almost 150,000 public servants had been dismissed and banned from public service under emergency decrees. The grounds of dismissal were always general alleging that those dismissed were "members of, connected to, or in communication with a terrorist organization", without any individualized justification or evidence being provided. Trade union officials in public institutions had been systematically targeted by false allegations leading to their suspension and dismissal in an attempt to get rid of trade unions in those institutions. By December 2016, 11,711 KESK members had been suspended from office, including Gülistan Atasyon, KESK Women's Secretary, Fikret Aslan, the President of BES, and Fikret Calagan, SES Executive Committee member. The majority of the dismissals were based on emergency decrees and workers were unable to challenge their dismissals in courts. The Worker members made an urgent appeal to the Government in relation to two colleagues who had been on a hunger strike for 93 days. KESK members, Nuriye Gülmen and Semih Özakça, had been protesting against their unfair dismissal by emergency decree. They were arrested 17 days ago and their health condition was now at a critical stage. In addition to dismissal and arrest, trade union representatives faced other forms of discrimination, such as forceful transfers and disciplinary procedures, often linked to critical social media messages of trade union representatives, which had allegedly "insulted" government representatives. The Worker members emphasized that the scale of abuses against trade union representatives subsequent to the attempted coup was undeniably

unprecedented. There were also more long-standing concerns in relation to the protection of worker representatives. Dismissals of trade union representatives before their official recognition by the Ministry of Labour were frequent given that the protection offered by the labour laws did not extend to the period during which worker representatives sought official recognition. Dismissals and other forms of discrimination had often led to the end of efforts to establish trade unions at those workplaces. In conclusion, the Worker members expressed their deep sadness at the unprecedented attacks against union representatives in all parts of Turkey, and saluted the courage of those workers who put themselves at risk to give a voice to those they represented under extremely severe conditions and hoped that the discussion would help the Government to understand the impact of its policies on trade unionists and those they represented.

The Employer members recalled that the Convention was a technical Convention that sought to protect worker representatives from any act prejudicial to them. They highlighted that, in its brief observation, the Committee of Experts had requested the Government to provide comments on the observations made by the TÜRK-İŞ and KESK containing allegations of dismissal, transfers, disciplinary measures and denial of facilities to workers' representatives. The Committee of Experts had not commented on the legislation establishing protective measures both in the private and public sectors. The Employer members noted the elements submitted by the Government in relation to the individual cases referred to by KESK. They also noted the legislative developments mentioned by the Government regarding the protection on union representatives in the public sector, including protection against dismissal, and understood that workers' representatives enjoyed effective protection against dismissal and other prejudicial acts in the private sector and that Act No. 4688, as amended, prohibited dismissals, relocation and prejudicial treatment due to trade union activities. They considered that information was necessary in order to ensure a full understanding of the situation in the country concerning the application of the mentioned pieces of legislation and encouraged the Government to provide the requested information to the Committee of Experts without delay.

The Worker member of Turkey referred to the history of Turkish labour legislation with regard to the protection of workers' representatives or workplace union representatives. The first relevant legislation was Labour Act No. 3008 adopted in 1936, followed by the Trade Unions Acts Nos 274 and 2821, which had been adopted in 1963 and 1983, respectively. Pursuant to those Acts, employers could not terminate the work contract of workplace union representatives unless they had a justifiable reason clearly stated in writing. That protection had been abolished with Act No. 4773 in 2002, but reinstated by section 24 of Act No. 6356. The same provision, which was still in force, also prohibited employers from changing the workplace and the main job duties of union representatives. Furthermore, if the employer terminated the employment contract of the union representative, a complaint could be filed before the court by the representative or his or her union, within one month from the date of the notification of the termination. The court could direct the employer to reinstate the representative without loss of pay or benefit. Act No. 6356 was in line with the Convention. However, those protections applied only to unions that had already organized more than 50 per cent of the workers and had been recognized as competent collective bargaining agents. At the workplaces where the organizing activities had just started, the workers participating in those activities did not benefit from the same guarantees and were generally dismissed by their employers. They could only receive compensation if they could prove that they had been dismissed on account of their trade union activities. Therefore, it was necessary to extend the scope of the current regulations to those workers. During the military coup attempt, 248 innocent people had been killed. If the coup attempt had been successful, the democratic institutions and civil society organizations including trade unions would have ceased to exist. That was for instance evidenced by the case of the executives of the trade union All Motor Vehicle Transportation Workers' Union (TÜMTİS), who had been accused and detained on false charges. The judges in their cases had eventually been dismissed for being members of the Fetullah Gulen Terrorist Organization (FETO). All parties, including the opposition, were united and asked for the punishment of the criminals of this bloody coup. At the same time, they had concerns about the possible innocent people facing difficulties to prove their innocence before the courts. In that regard, the announcement by the Government of the establishment of a commission to provide access to the legal process for those people was welcome. Terrorism endangered the democratic values and workers' rights and freedoms. In addition to the military coup attempt, Turkey had been the target of frequent terrorist attacks, especially at its south and south-east borders. Under those circumstances, it was not easy to put labour-related issues on the agenda of the country. He looked forward to the end of the state of emergency as soon as the serious threats to democracy were overthrown.

Another Worker member of Turkey noted that, in the wake of the attempted coup, 4,800 public officials, members of the Turkish Confederation of Public Workers' Associations (Türkiye Kamu-Sen), including 39 branch executives and 50 workplace representatives, had been dismissed by an emergency decree for presumed support of the Gulenist movement. No international Conventions or national legislation had been taken into account during the dismissal process, nor had the investigations or disciplinary process been carried out. The right to self-defence had been ignored. The guilty and the innocent had been mixed together. A commission of seven members, mostly from the high courts, had now been established to review those dismissals; however as of yet, no decision had been handed down. Clearly, problems persisted with the implementation of international Conventions and the situation was worsening. He urged the Government to implement ILO standards and respect national legislation.

The Employer member of Turkey recalled that the observation of the Committee of Experts referred to the allegations of KESK, which concerned dismissals, transfers and disciplinary measures against workers' representatives, and regretted that the Government had not responded to these claims. During the attempt to overthrow the Government, over 300 people had been killed and more than 2,000 wounded as a result of the failed coup. The speaker condemned any terrorist attack or unconstitutional effort to seize power and overthrow democracy. Workers' representatives in Turkey enjoyed effective protection against dismissal and any other prejudicial acts. In line with the Convention, these protections applied to all employees regardless of their sector of activity. The national laws and judicial practices also provided for effective and sufficiently dissuasive sanctions to prevent the violation of workers' representatives' rights. For public sector employees, the protection of worker representatives was regulated under Act No. 4688. Section 18 of that Act prohibited all kinds of dismissals, relocation and prejudicial treatment due to the trade union activities of public servants. The Act also extended that protection to the provincial and regional directors of public servants' trade unions. For private sector employees, the union representatives enjoyed a high level of protection in accordance with Act No. 6356. The employment contracts of union representatives could not be terminated without just cause. In addition, if the union

representative was reinstated by a court decision, the employment contract would be presumed to have continued and the wage and benefits would be paid. It was important to examine whether, in the cases referred to by KESK, the representatives had acted in conformity with existing laws. Adequate time would be needed to respond, since the allegations involved several public institutions.

An observer representing the International Trade Union Confederation (ITUC) stated that KESK affiliates faced numerous violations of their rights, including transfers, reassignments to new workplaces, denial of promotions, filing of criminal charges and other legal proceedings against them, suspensions and dismissals, administrative investigations, fines and penalties, mobbing, detentions, arrests and violations of their freedom of speech on social media. In addition, KESK had been targeted by campaigns of discreditation. The state of emergency had been declared on 21 July 2016 on the basis of article 120 of the Constitution. Members of certain unions had been dismissed through emergency decrees. The coup attempt was completely unrelated to the unions affiliated to KESK. While government officials claimed that the dismissals aimed at removing coup plotters from state functions, dismissals targeted opponent democratic forces and trade unions in political conflict with the Government. Thousands of public employees, members and executives of trade unions had been dismissed through an emergency decree and not granted access to justice. There were consistent and serious violations of labour rights. Scientists who had different ideologies than the ones promoted by the Government had been dismissed from academia. The system in place was authoritarian and dictatorial, and aimed at turning unions into branches of the ruling party. Such violations continued and were increasing. The ILO should take an active role before more mass dismissals occurred. Thus, the case should be included in a special paragraph of the Committee's report.

The Worker member of the Netherlands recalled that, as set out in its preamble, Convention No. 135 supplemented the Right to Organise and Collective Bargaining Convention, 1948 (No. 98), and that it sought to protect worker representatives from any act prejudicial to them, including dismissal, based on their status or activities as a worker's representative or on union membership or participation in union activities. Worker representatives at all levels, including trade union officials, could only fulfil their duties if they were free to publicly criticize company or government policies if those policies harmed the interests of workers and if they were able to organize peaceful meetings and demonstrations to express the grievances and demands of the workers and communicate those to the general public. The current year's report for the recurrent discussion on fundamental principles and rights at work also referred to the importance of those civil liberties. Those freedoms and rights were increasingly restricted in Turkey as the media were put under the Government's control or silenced and trade union officials were threatened with arrests on the accusation of insulting the Government or the President. Both the President and the General Secretary of the Confederation of Progressive Trade Unions of Turkey (DİSK) faced those charges and other forms of harassment. Many trade union officials had their telephones tapped, houses raided and computers confiscated and trade union industrial action in Turkey was increasingly harmed not only by dismissal of union representatives but also by violence from the police as well as from employers. Emphasizing that those intimidations precluded the effective representation of workers' interests, she urged the Government to refrain from any action contrary to the Convention and to adopt a policy of protecting and facilitating the role of workers' representatives.

An observer representing the International Transport Workers' Federation (ITF) noted that the protection afforded to worker representatives under section 24 of Act No. 6356 was rendered ineffective by serious limitations on the right to organize. Under that Act, a trade union could appoint a workplace representative only after official recognition of the trade union by the Ministry of Labour, and on the condition that employers had not objected to the Ministry's determination. In reality, an employer's objection could cause delays of up to three years, during which time the employer could dismiss union members or make them resign from the union. In an ongoing dispute between ITF-affiliated union Nakliyat-İş and an international logistics firm, the company had dismissed 168 workers on grounds of redundancy at the same time the union had filed its recognition application with the Ministry. That had not been a coincidence, and numerous examples existed of such situations. Nor were union officials immune from reprisals. After a successful organizing drive in 2007, 14 leaders of TÜMTİS had been arrested on the basis of the company's complaint and sentenced to prison terms for, according to the judicial decision "founding an organization for the purpose of committing crime, violating the right to peaceful work through coercion in order to obtain unfair gain and obstructing enjoyment of union rights". Seven of those arrested remained in prison, and the branch leader Nurettin Kılıçdoğan, had been moved to a high security unit because of his status. Given that the price of joining a union was so high, the speaker wondered where future workers' representatives would come from. Freedom of association could be exercised only in a climate free of intimidation. Arrests of trade unionists, dismissals of workers and union organizers created an atmosphere of intimidation and fear prejudicial to the normal development of trade union activities. The speaker called on the Government to provide an effective remedy to unjustified termination of the employment of workers' representatives and union members, which should include their reinstatement, payment of unpaid wages, and maintenance of acquired rights. He further asked the Government urgently to review the sentences of the TÜMTİS leaders.

The Worker member of Germany, speaking also on behalf of the Worker members of France and Italy, stated that it was unquestionable that a State may, in the face of a risk of a coup or a terrorist threat, be able to declare a state of emergency. However, the proclamation of a state of emergency should never serve to violate human rights and workers' rights, but to defend or restore fundamental rights and the rule of law. Access to free and independent justice should be preserved and no one could be found guilty without a court decision. Human rights, including trade union rights, freedom of association, the right to collective bargaining and the right to strike should not be restricted. The dismissals and arrests of scientists and teachers, many of whom were trade union members or representatives, had already been a reality before the coup. The proclamation of the state of emergency and its extension had escalated the situation and was used to eliminate critical views, including from teachers and employees, independent unions and their representatives in the public administration. Among the thousands of dismissed or suspended trade unionists, many of them were workers' representatives. It was hard to believe that the mass dismissals and the mass arrests including among trade unionists and union officials were aimed at maintaining democratic order. Those persons had not learned the reasons for their redundancies and had found their names published in a Decree. They were dismissed without compensation and excluded from the social security system. As a result of the dismissals, the basis of their economic existence was destroyed and they were stigmatized. They did not have the opportunity to prove their innocence in a transparent, independent and fair trial, and

to take action against unjust dismissals or suspensions. Courts which normally would have been competent to review the dismissals of workers and public servants were not in a position to consider those cases. The Commission of Inquiry, which was set up under pressure of the Council of Europe, was an important step but did not replace access to justice. It was not a sufficient instrument to protect workers' representatives against dismissals and discrimination. In conclusion, the speaker stressed that without an adequate representation of workers, neither freedom of association, nor the right to collective bargaining, nor the right to strike could be effectively respected.

An observer representing IndustriALL Global Union (IndustriALL) expressed deep concern regarding the impact of recent developments in Turkey on fundamental trade union rights and freedoms. A high-level mission of global and European trade unions had recognized that Turkey faced multiple challenges and threats, but had noted that measures adopted under the current state of emergency were disproportionate to the needs of security. IndustriALL demanded that the Turkish authorities stop legally unfounded collective dismissals, suspensions, intimidation and arrests; revert to legislation based on the presumption of innocence, individuality of criminal responsibility, the right to impartial and transparent trial and appeal, and respect for the rule of law and democracy; put in place an inquiry commission on state of emergency measures and ensure that its decisions were subject to judicial review and effective, timely appeal procedures, including at the European level; reinstate those who had been arrested or suspended; restore freedom of expression and speech for the media and associations; and respect and implement ILO core labour standards, in particular Convention No. 135, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and Convention No. 98. The right to strike was threatened in Turkey. Decrees had banned strikes in the glass, metal, banking and pharmaceutical sectors, contending that they threatened national security or public health. The speaker reiterated IndustriALL's support for the democratic values and freedoms set out in ILO Conventions and international and European charters, as well as for the rule of law, and called upon the ILO to monitor the implementation of those as related to trade unions in Turkey.

The Worker member of Niger underscored the importance of analysing the case in a coherent manner and of considering the context in which the various violations had been committed. If the violations had followed the attempted coup of July 2016, that fact should be taken into account. Any attempt to seize power by military means was reprehensible as it set the stage for a whole range of abuse and violations, including of freedom of association. Regarding the situation in Turkey, the ILO needed to provide technical assistance to strengthen social dialogue between the Government and the social partners. It was to be hoped that, at the next session of the Conference, the Worker and Employer representatives of Turkey would be able to report that the situation has been rectified and that the challenge had been taken up.

The Worker member of Brazil expressed sincere solidarity with the workers of Turkey given the current political instability in the country, which could be damaging to democracy and the trade union movement. In the face of systematic and repeated violations of the Convention, it was apposite to quote the Committee on Freedom of Association: "One of the fundamental principles of freedom of association is that workers should enjoy adequate protection against all acts of anti-union discrimination in respect of their employment, such as dismissal, demotion, transfer or other prejudicial measures." However, in the case at hand, the State was committing all kinds of violations against trade unions and their leaders: persecution, unfair dismissal and even arbitrary detention and arrest. Detentions and arrests were the cruellest of the violations committed because they deprived a human being of liberty. Imprisoning a person for their political and trade union beliefs and activities was surely one of the most perverse forms of persecution and violated international human rights treaties. In 2016 alone, at least 292 members of KESK had been arrested by government security forces, and all the accusations made stemmed from trade union activities. Workers were guaranteed neither the respect of their rights nor minimum guarantees against anti-union activities on the part of the Government, which violated not only Convention No. 135 but also Convention No. 87. She urged the Government to revoke the state of emergency and its decrees and to reinstate democracy.

The Worker member of Sweden, speaking on behalf of the trade unions of the Nordic countries, noted that the protection of workers' representatives against prejudicial acts, including dismissals, had been affected by the failed coup attempt and the declaration of a state of emergency. That was especially true for public servants. The state of emergency was still in force. The Government had enacted at least 23 decrees, mostly to dismiss public servants and increase government, police and military powers which, according to the Interior Minister's recent statement, had led to the detention of 113,000 people. In addition, more than 138,000 civil servants had been suspended or dismissed without investigation or the possibility of legal challenge, many of them workers' representatives. By Decree No. 685 of January 2017, the Government had established, for a two-year period, an inquiry commission on the state of emergency measures mandated to review the dismissals. Yet if only half of the civil servants dismissed filed an application, the commission would need to examine more than 100 files per day to complete its work within the allotted time. The speaker called on the Committee to adopt clear conclusions requesting the Government to revert to the rule of law and to provide for an effective redress mechanism for the thousands of civil servants and workers' representatives who had been unfairly dismissed.

The Government representative recalled that 248 people had been killed and more than 2,000 injured, most of them civilians, during the 2016 coup attempt. FETO, the organization behind the coup attempt, had infiltrated the Turkish Armed Forces, the police, the judiciary, education institutions and public administration at all levels and formed a structure parallel to the State with the aim of overthrowing an elected Government and taking over the State through the use of every means, including threats, blackmail, coercion, violence and murders. If it were successful in its heinous attempt on the night of 15 July 2016, no doubt there would be many thousands of executions by the attempted coup perpetrators and the discussion of the Committee would concern murder rather than dismissals. Unfortunately, Turkey was not only facing the threat of FETO but also of other terrorist organizations such as the Islamic State of Iraq and the Levant (DAESH or ISIS), and the Kurdistan Workers' Party (PKK). Following the failed coup attempt, the Council of Ministers declared a state of emergency as of 21 July 2016 in accordance with article 120 of the Turkish Constitution. Pursuant to article 129 of the Constitution, public servants were obliged to carry out their duties with loyalty to the Constitution and the existing laws. The same was required of public servants by virtue of Public Servants Act No. 657. Section 125 of that Act stipulated that acting in cohort with terrorist organizations or helping them or using or making available public means and resources to assist those organizations or making propaganda for those organizations was an act punishable with a dismissal. Section 137 of the Act regulated the suspension during an investigation as an administrative precau-

tion. The fight against terrorism and against the perpetrators of the coup attempt, which aimed to abolish fundamental rights and freedoms and the free democratic order established, was being conducted in conformity with international and national law. Turkey invoked Article 15 of the European Convention on Human Rights, pursuant to which, in time of war or other public emergency threatening the life of the nation, any high contracting party may take measures derogating from its obligations under that Convention. The coup attempt posed a serious and actual threat not only to the democratic constitutional order but also to national security. Thus, it had been necessary to take extraordinary measures to eliminate the threat as a matter of urgency. Waiting months or years for the investigations to bear results was not an option in the wake of a bloody coup attempt and in the face of imminent danger to the national security and hence, known associates and members of the terrorist organizations needed to be dismissed immediately. While there were still threats of new attempts to overthrow the Government, the Government had set up a commission to review the state of emergency decisions. That commission would review the dismissals of public servants who claimed they had been dismissed unfairly by a Decree with the force of law. Those who had been dismissed by an administrative decision had the right to apply to administrative courts. Members of the commission had already been appointed. It would start functioning as soon as it laid down its working principles and methods. Nevertheless, the commission would begin receiving applications before 23 July 2017. Decisions of the commission would be open to judicial review, the last resort being the European Court of Human Rights. In conclusion, he urged the members of the Committee as well as the international community to try to feel empathy towards Turkish people and emphasized that the right to organize and protection against anti-union discrimination was guaranteed by the Constitution and labour legislation. Both unions and workers had judicial means to contest discriminatory actions. Under the Penal Code, pursuant to sections 118 and 135, acts of anti-union discrimination by employers were considered as crimes punishable from one to three years of imprisonment. In addition, labour legislation provided for compensation and reinstatement.

The Employer members appreciated the information provided by the Government representative and called on the Government to provide it to the Committee of Experts without further delay.

The Worker members emphasized the extreme concern about the gravity and systematic nature of the infractions against workers' representatives in Turkey. The de facto suspension of democratic institutions and the rule of law were unacceptable and were a reminder of the times when Turkey had been ruled by the military. The Government needed to urgently get back on the path to democracy. The declaration of a state of emergency did not give free rein to ignore all international obligations. Without the rule of law and due process, there could be no genuine protection for workers' representatives. The discussion before the Committee had demonstrated how workers' representatives had been specifically targeted in the Government's purge of the opposition. The Government was called upon to not renew the state of emergency after July 2017 and to refrain immediately from issuing any further emergency decrees leading to the arbitrary arrests and dismissals of trade union representatives. Those who were detained or imprisoned for representing and defending the rights of workers had to be unconditionally released and afforded compensation. Among them, Nuriye Gülmen and Semih Özakça who had never committed a crime, had to be released without conditions. They were the voice of many others who were unable to speak out fearing retaliation against themselves and their families. The state of emergency had been abused to systematically dismiss and transfer workers' representatives from their workplaces. Workers' representatives who had been dismissed from their jobs or forcefully transferred had to be reinstated without any further delay. Any person suspected of having engaged in terrorist acts had to be charged criminally and judicial proceedings had to be initiated. However, those charges could not serve as a mean to victimize the entire public sector. Furthermore, the Government needed to address the lack of protection from retaliation before the formal recognition of a trade union. The legislative provisions protecting workers' representation from prejudicial acts based on their status, activities as workers' representatives, union membership, or participation in union activities had to be extended to the period during the pendency of the official recognition of the trade union. Recalling that Taner Kiliç, Chair of Amnesty International, had been recently charged with membership of a terrorist organization and was held in pre-trial detention, the Worker members called for his release and urged the Government to reinstate fundamental labour rights, including the protection of workers' representatives.

Conclusions

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

The Committee expressed concern over the allegations in relation to the dismissal and arrest of workers' representatives. The Committee also noted the Government's failure to respond to the allegations of the trade unions in its last report to the Committee of Experts.

Taking into account the discussion, the Committee called upon the Government of Turkey to:

- **ensure that workers' representatives in the undertaking are protected from prejudicial acts including dismissal and arrest, based on their status or activities as a worker representative in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements, in particular during emergency situations;**
- **respond to the allegations of the trade unions stating the dismissal, arrest and discrimination against workers' representatives following the proclamation of the state of emergency.**

The Committee requested that the Government provide detailed information in response to these conclusions to the Committee of Experts for examination at its next meeting in November 2017.

Minimum Age Convention, 1973 (No. 138)

ZAMBIA (ratification: 1976)

A Government representative stated that Zambia was pleased to engage in dialogue on the application of this Convention. With respect to the age of completion of compulsory education, he indicated that consultations were ongoing to revise the Education Act of 2011 which would define the basic school going age and link it with the minimum age for employment in Zambia. The Committee of Experts would be duly notified once the consultations and the revision of the Act were concluded. Concerning the determination of hazardous work, it was stated that Statutory Instrument No. 121 of 2013 on the prohibition of employment of young persons and children (hazardous labour) prohibited the employment of children and young persons under the age of 18 years in hazardous work. Section 3(2) of the Statutory Instrument contained a list of the 31 types of hazardous work prohibited to children and young persons. A National Child Labour Steering Committee – comprising government ministries, employers, trade unions

and the civil society – had been created to oversee child labour activities, as well as the implementation of the Statutory Instrument and other relevant legislation. Monitoring of compliance with the Statutory Instrument had started and had been devolved to the District Child Labour Committees. Work was also being done to develop methods of gathering data on the number and nature of violations reported and penalties imposed. Given the fact that in certain geographical areas, traditional leaders were the voice of authority in their communities; they were also engaged in the implementation of national child labour activities. The ILO was requested to provide ongoing technical assistance and capacity building to facilitate the activities of the District Child Labour Committees to reduce child labour and to strengthen the capacity of the labour inspectorate to monitor child labour, especially in the informal economy, thus furthering the efforts made to fulfil the obligations under the Convention. In conclusion, the speaker specified the measures taken or anticipated in relation to the application of the Worst Forms of Child Labour Convention, 1999 (No. 182), including: adoption of a comprehensive legal and institutional framework to address challenges related to the fight against the worst forms of child labour; the creation of a specialized unit of the National Prosecution Authority to deal with gender-based violence, the prosecution of all cases of sale and trafficking of children and the provision of professional guidance to law enforcement agencies to ensure thorough investigations; the physical presence of the National Prosecution Authority in all provincial centres to ensure timely and effective prosecution of all crimes; an increase in the budgetary allocation to Public Order and Safety from 3.5 per cent in 2016 to 3.6 per cent; and the development of a database providing statistical information on the number of infringements reported, investigations and prosecutions undertaken and penal sanctions applied for offences related to the trafficking of children under the age of 18 years.

The Worker members underscored the particular resonance of examining a case that involved an instrument designed to regulate child labour on World Day against Child Labour. Eliminating child labour had been one of the Organization's main concerns since its creation, and it must remain in a position to combat the economic exploitation of children robustly at all times. The Convention obliged States that had ratified it to specify a minimum age for admission to employment or work, which must not be less than the age of completion of compulsory schooling and, in any case, must not be less than 15 years. Compulsory schooling was one of the best ways to fight child labour, but Zambia's legislation did not specify the age at which compulsory schooling ended. The Government's indication that a review of relevant legislation was under way was a positive step. However, legislation currently in force already gave the competent minister the option of adopting regulations to specify the age for compulsory schooling. That option, if it had been taken up, could have avoided the protracted process of reviewing the education law and policy and ensured earlier conformity with the Convention. The Government should therefore bring its legislation into line with Convention as soon as possible so that it could then guarantee that, in practice, all children could remain in education up to the age of 15. To that end, the Government should be encouraged to continue its reform of education policy and to implement it urgently. If that was not done in short order, there would be a high risk of children finding themselves in the world of work before their time. It was to be noted, in that regard, that the Committee of Experts had been raising the matter of legislative conformity since 2002 and that this Committee had also considered the issue in 2008. The Government had promised to rectify the situation swiftly on several occasions but progress had yet to be seen. It was therefore high time for the Government to implement its reforms, and that with all haste. Concerning the obligation to draw up, in agreement with workers' and employers' organizations, a list of hazardous work prohibited to children under the age of 18, the Worker members welcomed the adoption of Statutory Instrument No. 121 in 2013. As the Committee of Experts had underscored, it was now necessary for the Government to provide information on the application of that instrument in practice. In that respect, the initial information supplied by the Government representative should be welcomed and the Government should be encouraged to continue mobilizing all the resources necessary to identify and punish breaches of legislation and collect relevant data. It should also be recalled, in that connection, that labour inspection had a vital role to play in combating child labour, identifying breaches and punishing those responsible. The Government had said it was strengthening the labour inspection services, but, in practice, its efforts seemed insufficient, to judge by the figure of 1,215,301 children in child labour mentioned by the Committee of Experts. According to other sources, in 2013 the number of children engaged in child labour had stood at 992,722, compared with 825,246 in 2005. The various data showed an increase in child labour, and it was unlikely that the Government had been able to radically reduce the colossal number of children in child labour since 2012. It would therefore be useful to have up-to-date statistics. It was consequently urgent and essential for the Government to take strong measures to drastically bolster all the initiatives it had already taken to support the labour inspection services so that they could address the phenomenon of child labour in the informal economy. The Worker members concluded by emphasizing that the Government could no longer delay in taking the necessary steps to bring its legislation and practice into line with the Convention. It must dramatically increase its efforts and sustain them in the long term.

The Employer members emphasized that the eradication of child labour was an obligation under international law, based on a fundamental moral duty of the Organization's three constituents. Child labour was a phenomenon linked to historical, economic and cultural factors, spanning more than the single issue of employment. Its eradication required the involvement of all sectors in society, and the Organization's Members should support and encourage the numerous efforts made by Zambia in that respect. The case could be considered a case in progress. The Government intended to revise the Act on education to specify ages for the beginning and completion of compulsory schooling. It was hoped that this revision would ensure that the legislation was in line with the Convention. Furthermore, the Government had adopted Statutory Instrument No. 121, which set out a list of 31 types of hazardous work prohibited to children and young persons under 18. Lastly, with regard to labour inspection, a certain number of provinces had adopted programmes to actively combat child labour, based largely on raising awareness among parents, farmers and employers of the issue of child labour and hazardous work. Through these programmes, over 5,000 children had been removed from work and integrated in schools. In addition, over 11,000 teachers had received training. Due note should also be taken of the establishment of the Interministerial National Steering Committee on Child Labour; the increase in the number of public servants hired in the districts to strengthen labour inspection; and inspections carried out by labour inspectors confirming that hazardous child labour existed in the small-scale mining, agriculture, domestic work and trading sectors, generally in the informal economy. In conclusion, the Employer members considered that the Convention was not a mere statement of ideals. It was a realistic and flexible instrument that all countries could ratify and apply in the interest of children's

health and with a view to effective economic development to the benefit of all the Organization's constituents.

The Worker member of Zambia shared the concerns raised by the Committee of Experts, while at the same time acknowledging the progress made by the Government. The challenge of child labour and child trafficking was mainly rooted in poverty, which affected 60 per cent of the population in Zambia. In addition, the informal economy was currently estimated at around 84 per cent, but was probably as high as 89 per cent. Poverty was mainly a rural area-steeped phenomenon in Zambia; for that reason the Committee of Experts had reported a high incidence of child labour in rural areas. The speaker shared the Committee of Experts' view that the dangers faced by children who were not protected from early entry into the labour market were real and becoming increasingly serious, but certainly not insurmountable. Children of less than 18 years of age worked on farms, plantations and in mines with serious exposure to the hazards of chemicals, pesticides and other dangers. Such hazards threatened their health and proper and full physical and psychological development. Consequently, Zambian workers were strongly opposed to child labour and were active in working with the ILO and the social partners on programmes to raise awareness of child labour, especially in rural areas. The speaker urged the Government to focus on the policy of free primary education since education was the key to addressing the challenge of child labour. The Government needed to increase education spending. It was important to establish a comprehensive school system which should provide a clear transition from school to work to ensure that children were at school and not at home or in informal employment. Social welfare programmes including school feeding programmes should be expanded and learning materials should be provided to public schools. Such measures would also help to reduce absenteeism and drop-out rates. The speaker also urged the Government to ensure that teachers were well motivated, supported and mobilized in the fight against child labour. He further shared the concern raised in the report of the Committee of Experts regarding the absence of a clear definition of a "basic school going age" in Zambian legislation. Such legislation should also provide for clear definitions of the terms "child", "young person" and "age for national registration". Finally, policy harmonization at the national level was essential to ensure that different state departments dealing with child welfare, including the bodies in charge of health and education, worked together to address the concerns regarding child labour.

The Government member of Swaziland, speaking on behalf of the member States of the Southern Africa Development Community (SADC), acknowledged the efforts of the Government of Zambia to fully comply with the Convention. She encouraged meaningful and constructive social dialogue among all partners involved in ensuring full compliance with the Convention. In an effort to maximize compliance with ILO instruments, including through the alignment of national legislation with relevant labour standards, the SADC member States requested the ILO to continue providing technical assistance as part of efforts towards the socio-economic development of Zambia. SADC member States were dedicated to promoting international labour standards through subregional means of enforcement, including regional protocols and policies, such as the SADC Employment and Labour Sector Protocol, the SADC Decent Work Agenda and the Regional Indicative Strategic Development Plan. Those regional protocols and policies obliged SADC member States to provide updates on efforts made to comply with international labour Conventions both in law and in practice, and on how they were translated into national decent work strategic initiatives and policies. In conclusion, the speaker expressed the hope that Zambia would be given the opportunity and space, as well as technical assistance, to finalize its consideration of the comments of the Committee of Experts regarding full compliance with the Convention.

The Worker member of Zimbabwe expressed concern about the state of child labour in Zambia, as observed by the Committee of Experts. A number of initiatives had been taken by the Government and development partners, including technical assistance to remedy the problem of child labour; however such initiatives had shown little success. The speaker was particularly concerned that in spite of Zambia's impressive performance in economic growth, its human development indicators were disappointing, as observed by the United Nations Development Programme in its 2015 country report. Although Zambia was among the top five performers in business competitiveness within the SADC, it was one of the five worst performers on human development indicators, with stubbornly high levels of poverty, in spite of GDP growth. Inequality in Zambia was also high: the richest 20 per cent of households accounted for 60 per cent of the total expenditure, while the poorest 80 per cent accounted for the remaining 40 per cent, according to UN figures. While poor households had to spend 66 per cent of their income on food, those better off were spending only 34 per cent. Regarding education, the UN had observed that the primary school drop-out rate was 47 per cent, a figure implying a bleak future for many of Zambia's children. Children who were not attending school had to make a living by any means and thus became entrenched in child labour. Furthermore, the denial of children's rights to accessible and affordable education created a cycle of poverty, which needed to be broken by increasing the chances for good physical, mental, cultural and social development of children so as to enable them to effectively participate in nation-building efforts when they attained adulthood. While the international community had long recognized that child labour was a danger to the well-being, preservation and prosperity of societies and humanity, countries in the region were still grappling with that issue. In light of the above, the speaker demanded that the Government take immediate and concrete steps to eliminate child labour and, in its quest for economic development, strive to provide decent work and income to workers and their families to enable them to send their children to school. The Government of Zambia needed to strengthen its political will, in line with the investments in social development made by their forefathers.

The Government member of Switzerland, recalling the ongoing process to revise the Education Act, encouraged the Government to clearly fix the age for compulsory schooling, in line with the requirements of the Convention. She welcomed the creation of the Inter-ministerial National Steering Child Labour Committee and hoped that the number of children in work would decrease rapidly. Other protection measures needed to be taken, in particular in the fight against the trafficking of children. Those responsible for such acts must be prosecuted. Taking note of the increase in the numbers of labour inspectors, she encouraged the Government to develop an implementation strategy to protect children working in the informal economy.

The Worker member of Nigeria, speaking on behalf of the Organization of Trade Unions of West Africa (OTUWA), recalled the Committee of Experts' comments that despite the efforts made by the Government to tackle child labour, the results had not been satisfactory. Children being at work rather than at school was common in West Africa which undermined their right to full and supportive development. In that regard, he urged the Government to continue to include stakeholders – trade unions, employers, parents and civil society organizations – in the fight against child labour. It was essential to remove children from workplaces and put them into schools and programmes

which supported learning and promoted school attendance which would be helpful to that effect. The Government should also be urged to provide for an adequate legal framework prohibiting child labour, backed up by a strong enforcement system. It was therefore essential to strengthen the labour inspectorate and to ensure the application of sanctions to the perpetrators. The speaker finally pointed out that child labour was widespread in the global supply chain and urged the Government to work with the Zambian employers' association to pursue and ensure due diligence in their supply chains. This was especially challenging in the informal economy. Therefore, it was crucial for the Government to develop and implement programmes that would support the transition from the informal to the formal economy.

The Government member of Zimbabwe supported the statements of the Government representative and of the Government member of Swaziland. The Southern African region had intensified the fight against child labour through the development and implementation of the SADC Code on Child Labour. The efforts made by Zambia in fighting child labour, namely its commitment to revise the Education Act, the establishment of the Inter-ministerial National Child Labour Steering Committee, which also included civil society stakeholders, and the involvement of traditional leaders at the community level in the fight against child labour were commendable. While consultations were still ongoing with respect to the revision of the Education Act, tripartite partners in Zambia were encouraged to continue the dialogue in order to accelerate the process. The speaker requested the continued technical assistance of the Office to the Government in order to develop a national database for monitoring child labour. Strengthening collaboration at the country level through the involvement of tripartite constituents would be instrumental to the elimination of child labour in Zambia.

The Government representative thanked all participants in the discussion and took note of the observations made by the various stakeholders. He noted that, according to the Committee of Experts, insufficient progress had been made but assured this Committee that the Government would do its best to look into the highlighted matters, especially the need to provide more information on the efforts taken to eliminate child labour and ensure consultation and cooperation with stakeholders on any measures taken.

The Employer members underlined the fact that, despite the efforts made to combat child labour worldwide, especially on the legislative front, many children were still engaged in child labour, often in difficult conditions and particularly in the informal economy. Progress to tackle the complex issue had been too slow, and it should be recalled that it was the collective responsibility of the ILO's constituents to guarantee that, in the twenty-first century, fundamental social rights were respected in all member States. In that regard, the Employer members welcomed the efforts made and the multiple initiatives developed by the Government of Zambia to eradicate child labour. However, permanent preventive and remedial measures remained necessary, and the Government must pursue its efforts and in particular: take all the necessary measures to adopt, in the near future, a revised version of the Education Act defining the age at which compulsory primary schooling began and fixing the age of completion of compulsory schooling at 15 years, so as to bring it into line with the minimum age for admission to employment or work; provide information on the application of Statutory Instrument No. 121 in practice, including statistics on the number and type of violations reported and the penalties imposed; ensure that, in practice, no child under the age of 15 years was engaged in child labour; provide free compulsory education for all children, taking into account the particular needs of girls and other vulnerable children; step up the activities of District Child Labour Committees while boosting the capacity and broadening the scope of labour inspection, especially in the informal economy. The Government should continue to provide information on the measures taken in these various areas and the results obtained.

The Worker members recalled that the eradication of child labour, to which the Convention contributed, was one of the ILO's most important objectives. It was therefore necessary to give special attention to the issue, and to expect firm and unwavering commitment from the Government in working towards achieving eradication in the near future. While recognizing that certain headway had been made, the Worker members noted with great surprise and concern that the Employer members considered the case to be one of progress, and yet almost 1 million underage children were working in the country, which had a population of 15 million. To abolish child labour in the short term, the Government should bring its legislation into conformity with the Convention by fixing the age of completion of compulsory schooling at 15 years. To that end, a regulation issued by the competent minister would make it possible to avoid waiting until the legislative review of the Education Act had been completed. It was advisable to pursue education policy reform to ensure that all children had access to compulsory schooling until the age of 15 years. Regarding the legislative reform under way, particular attention should be paid to child labour in the small-scale mining, agriculture, domestic work and trading sectors, generally in the informal economy. The Government was encouraged to provide further information on the practical application of Statutory Instrument No. 121, including statistics on the number and nature of the violations reported and the penalties imposed. It should also provide the labour inspectorate with all of the necessary human and material resources and the legal and functional authority to effectively combat this serious issue. The Government should also maintain up-to-date statistics on child labour and forward them to the Committee of Experts, thereby allowing for an accurate and objective overview of how the situation was progressing. Lastly, the Worker members invited the Government to avail itself of ILO technical assistance in order to implement all of these recommendations.

Conclusions

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

While taking into account the legislative evolution of this case, the Committee underlined the need for the Government to continue its efforts to combat the high incidence of child labour and to pursue an education policy that is in line with the minimum accepted age for admission to employment according to Convention No. 138, which is 15 years of age for Zambia.

The Committee noted with concern that the national legislation does not define the school-going age and the age of completion of compulsory education.

Taking into account the discussion, the Committee called upon the Government of Zambia to:

- **strengthen its efforts to ensure the elimination of child labour both in the formal and informal sectors of the economy, including under hazardous conditions;**
- **take the necessary measures to ensure that the amended Education Act sets the age of completion of compulsory education at 15 years of age, and is effectively implemented in practice, without delay;**
- **provide detailed information on the implementation of Statutory Instrument No. 121 of 2013 on the prohibition of employment of young persons and children (hazardous labour) in practice, including statistics on the number and nature of violations reported and penalties imposed;**

- **strengthen the capacity of the district child labour committees and the labour inspectorate, in particular in relation to small-scale mining, agriculture, domestic work, and the informal economy;**
- **monitor and pay special attention to the special needs of girls and other vulnerable persons.**

The Committee requested the Government to avail itself of ILO technical assistance to ensure the full and effective application of this fundamental Convention, including the adoption of a time-bound action plan to address the issues raised during the discussion, and to report on the measures taken to the Committee of Experts for examination at its next session in 2017.

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

EL SALVADOR (ratification: 1995)

A Government representative emphasized her commitment to compliance with ratified international conventions. She said that, further to the observations of the Committee of Experts and the recommendations of the mediation process on the functioning of the Higher Labour Council on 1 May 2017, the Government has called on the legally registered trade union federations and confederations to make their proposals for Worker representatives to the Council. She noted that, between 12 and 17 May 2017, the Government had received three proposals. The first consisted of eight titular members and their substitutes, which had been made by eight federations and a confederation composed of 39 trade unions with a total of 19,107 members. The second was composed of eight titular members and their substitutes, submitted by 18 federations and two confederations with a total of 108,779 members. Finally, the third consisted of a titular member and substitute, presented by a confederation and 15 unions with a membership of 4,130. She referred to the 2017 decision of the Constitutional Chamber of the Supreme Court of Justice in *amparo* appeal No. 951-2013. Worker representatives to the Higher Labour Council consisted of eight titular members and their substitutes, five of whom came from the first proposal, two from the second, and one from the third. The Worker representatives, who had taken their oaths on 29 May 2017, represented 251 of the 445 active unions (approximately 56 per cent), with 131,926 of the 253,139 registered members (approximately 51 per cent). She observed that none of the complainant organizations in Case No. 3054 had made proposals for the Higher Labour Council. She added that the employers' organizations had requested an extension of 30 days, as from 17 May 2017, to consult their members. The President of the Republic had already appointed the eight members representing the Government. The first meeting of the Higher Labour Council would be convened soon. With regard to the observations of the Committee of Experts concerning the promotion of tripartism and social dialogue, she indicated that the five tripartite bodies and the 17 autonomous institutions were operational. In particular, she referred to the mandate of the Social Security Institute of El Salvador (ISSS), the Social Housing Fund of El Salvador (FSV) and the Vocational Training Institute of El Salvador (INSAFORP). She also provided information on the process for the nomination of representatives to the National Minimum Wage Board (CNSM). She regretted that the employers represented by the National Business Council (ANEP) did not participate in the CNSM as a result of their disagreement with the outcome of the elections for Worker representatives, despite the fact that the representatives had been elected legally and democratically. In conclusion, she reaffirmed the Government's commitment to social dialogue, compliance with international Conventions and social justice, based on the conviction that the social transformations that were desired, and which were being worked towards, could only be achieved with the active participation of all the social partners.

The Employer members thanked the Government for the information provided and recalled that the Committee had not previously examined the application by El Salvador of the Convention, in contrast with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which had been discussed in 2015 and 2016. They recalled that various matters had been examined during those discussions, which had been raised by the Committee of Experts in its observations in 2007, 2013, 2014, 2015 and 2016. They emphasized that the case was of great significance for the Employer members. With reference to the conclusions of the Committee in 2016, they emphasized that the Government had been requested to reactivate the Higher Labour Council and to ensure the full independence of employers' and workers' organizations. The Committee had also called for a direct contacts mission. However, that mission had not taken place. Despite the technical assistance provided, the Higher Labour Council had not been reactivated. The Government indicated that the Council would soon be operational again. Nevertheless, the Employer members still entertained doubts concerning the nomination of its members and non-interference by the Government. They recalled that, to be effective, consultations needed to be held before decisions were taken, with all the necessary information being supplied sufficiently in advance so that views could be formed. The situation in the country was still a matter of concern in relation to the application of the Convention, as effect had still not been given to the Committee's conclusions. There were situations that affected the freedom of association of employers, which were contrary to the provisions of Conventions Nos 87 and 144. They referred to the acts of interference in relation to the election of the members of the CNSM, and noted that on the very day of the elections a directive had been issued, notified and modified. In the view of the ANEP, all of that had been unlawful. They noted that, in the view of the ANEP, the representatives on the CNSM, in the same way as those of the Institute for Access to Public Information (IAIP), were cooperatives, which lacked the necessary legitimacy. The result in both cases was that the members elected were persons or bodies linked to the Government. The most serious issue was the interference in the elections of the Coffee Growers Association of El Salvador (FECAGRO). The Ministry of the Interior was still holding up the necessary credentials for the legal recognition of the change in executive boards for over 50 of the affiliates of the ANEP. During the second half of 2016, there had been a total of 17 marches in front of the headquarters of the ANEP. The situation was of great concern. They added that, in view of the extreme gravity of all the matters raised, the Committee's conclusions should be placed in a special paragraph of its report. A direct contacts mission was still necessary.

The Worker members emphasized their particular concern at the situation in the country, including the levels of violence and poverty. The direct contacts mission called for by the Committee during its examination in 2016 of Convention No. 87 had still not taken place. It was to be hoped that the Government would give effect to the conclusions adopted in 2016. The authorities needed in particular to shed full light on the murder of the trade unionist, Victoriano Abel Vega in 2010. The failings examined this year would certainly have the same origins as those relating to the application of Convention No. 87. While hoping that the increase in the minimum wage in January 2017 would improve the situation of the poorest categories of the population, it was to be regretted that it had been followed by reactions that had stoked social tensions in the country,

namely mass dismissals in certain enterprises and attempts to radically undermine the principle of the eight-hour day. Reference should be made to the constitutional obligations related to the submission to the competent authorities of the instruments adopted by the Conference. The aim of Convention No. 144 is to encourage tripartite consultations at the national level on matters relating to ILO activities. Since 2013, El Salvador had been seriously failing in its compliance with the requirements concerning the submission of instruments. The Government appeared to have failed to establish effective tripartite structures for consultation on matters relating to ILO activities, as required by the Convention. What was important in relation to that obligation was that the social partners were able to express their views before the Government made a final decision. Consultations therefore needed to be held prior to the adoption of the final decision. For that purpose, the Government needed to ensure that the necessary information was communicated sufficiently in advance to the representatives of workers and employers. In that regard, member States had a margin of manoeuvre in determining the nature and form of the tripartite consultation procedures. Under the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152), member States were free to carry out consultations through written communications, although those involved in the consultative procedures needed to agree that such communications were appropriate and sufficient. The Higher Labour Council was the competent body in El Salvador for issues relating to ILO activities. The latest information available appeared to report a solution to the blockage that had affected the operation of this body, due to the disagreement that existed between certain trade union organizations. It was to be hoped that employers' organizations would also nominate their representatives in order to enable the Council to take up its work again as soon as possible. It was essential for the Government to ensure that the solution that was found guaranteed the sustainable operation of the institution in future. With reference to the freedom of representative organizations to select Employer and Worker representatives, as set out in the Convention, the difficulty in the country concerned in particular the nomination of Worker representatives to the Higher Labour Council. It appeared that the dispute that was dividing the various trade union organizations had its origins in the requirement by the Government that trade union federations and confederations should reach consensus on the nomination of their respective representatives to the Council. That totally undermined the freedom of choice of each representative organization in its own right. The solution adopted needed to ensure the nomination of trade union representatives to the Council on the basis of criteria of representativity. It was to be hoped that this solution would be adopted for the long term and would not just be an isolated measure intended to respond to the demands of the ILO. With a view to ensuring the long-term reactivation of the Council, it would be necessary to have pre-established objective and precise criteria and an agreed, clear and permanent electoral process which guaranteed the greatest possible representativity of the organizations. In the event of any challenge, the organizations should also be able to rely on an independent body which enjoyed the confidence of all the parties to decide on the dispute. With regard to tripartite consultations on the submission of instruments to the competent authorities, as envisaged by the Convention, it would appear that the consultation procedure had not yet been established in the country. Such a procedure needed to be implemented in the near future. It was essential for the representative organizations to be able to communicate their views on the action proposed by the Government on ILO standards. The need to determine the consultation procedure to be followed was intimately tied up with the proper functioning of the Higher Labour Council. It would not appear possible to establish this procedure unless all the representatives of the representative organizations had been nominated. A lasting solution therefore needed to be found to ensure the proper functioning of the Higher Labour Council. The improvement of social dialogue would have a calming effect on many of the tensions in the country.

The Employer member of El Salvador said that, despite the Committee's conclusions, the Government was still failing to comply with the Convention. First, he recalled that the Committee had requested the Government to reactivate the Higher Labour Council immediately. On 11 May 2017, after four years of inactivity of the Council, the employers had been requested to designate their representatives to the Council in only four days. An extension of one month had been requested. The nominations were ready and would be communicated to the offices of the Ministry of Labour and Social Welfare that afternoon. Worker representatives had been elected to the Council. The media in his country had published statements by the Worker representatives elected, who had denied knowledge of the rules on which the election had been based. Such actions ran counter to the Convention, as well as the recommendations of the Committee of Experts and the conclusions of the Conference Committee, in which it had urged the Government to ensure the full autonomy of employers' and workers' organizations. He called on the ILO to investigate this matter. Second, he referred to the conclusions of the Committee in 2016 concerning the need to ensure the full independence of employers' and workers' organizations. In that regard, he complained that the Government had withheld the credentials of 25 out of 50 employers' organizations, without which they could not participate in the tripartite consultations, as they needed to be registered with the Ministry of the Interior after electing a new executive board. He noted, for example, that in the recent convocation for the Higher Labour Council, the Government had requested proof that the organizations were duly registered with the Ministry of the Interior. He also complained that, in the short-lists for election as IAIP commissioners, the Government had only issued credentials to cooperative associations, which meant that many employers' organizations had been unable to participate. Moreover, some credentials had been issued illegally to a group of people with government ties, so that one of them could assume the presidency of the Association of Coffee Owners of FECAGRO. That person, with support from the national police, had illegally entered the FECAGRO offices. Finally, he complained that there had been acts of intimidation against members of the ANEP by groups linked to the Government and attacks on the ANEP premises. He expressed regret that the Government had still not accepted the direct contacts mission recommended by the Committee in 2016.

The Worker member of El Salvador indicated that in recent years the trade unions had developed proposals in tripartite bodies with a view to promoting structural changes, the equal distribution of wealth and respect for human rights, and fundamental rights and principles at work, despite corporate interference. The Worker representatives had been elected to the Higher Labour Council, which had not been operational since 2013. Once that blockage had been overcome, it would be important for the Council's rules of procedure to be reformed to establish the procedures and criteria determine the representativeness of Worker representatives. The democratic and transparent composition of trade union and Employer representatives needed to be guaranteed. ANEP should refrain from interfering in trade union representation, and from seeking to promote representatives affiliated to it and attempting to undermine workers' organizations, a situation which had been brought to the knowledge of the Director-General of

the ILO. She urged the Government to develop mechanisms for social action and citizens' participation to ensure that collective action was carried out democratically and to prevent interference from economic oligopolies. The full exercise of freedom of association was essential for compliance with the Convention. Employers should respect the right to freedom of association and allow the establishment of trade unions without restriction or repression of any kind throughout the production chain. In this respect, she emphasized that responsibility for human rights violations lay not only with enterprises at the lowest levels of the production chain but also, and especially, with large enterprises which benefited most from the profits generated in the value chain. She referred to a case before the Committee on Freedom of Association relating to the repression and criminalization of trade unions by employers in the country. In that case, the workers had been dismissed and had been involved in court cases since 2010 to assert their right to strike and to conclude collective agreements. The Government should intervene as a matter of urgency to prevent the imprisonment of the trade unionists concerned. She hoped that the Government would adopt measures to strengthen labour and social protection, without falling back on false arguments about the flexibility of work, as in other Latin American countries. She trusted that the conclusions in this case would specify clear elements and precise deadlines to allow for the urgent adoption of a plan to address the problems identified and guarantee full compliance with the Convention.

The Government member of Malta, speaking on behalf of the European Union (EU) and its Member States, as well as Albania, Bosnia and Herzegovina, Montenegro, Norway and Serbia, stated that the Convention was intrinsically linked with two fundamental Conventions, 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 this regard, he wished to recall the commitment undertaken by the Government of El Salvador under the trade pillar of the EU–Central America Association Agreement, to effectively implement the fundamental ILO Conventions. The case of El Salvador had already been before the Committee in 2016 in relation to the application of Convention No. 87, and a discussion had taken place on the need to foster tripartite dialogue and freedom of association in the country, urging the Government to reactivate, without delay, the Higher Labour Council and ensure full autonomy for employers' and workers' organizations. He expressed concerns that, according to the Committee of Experts, there had not been any progress on these two matters. Considering that effective, inclusive and transparent tripartite consultations were essential to ensure social dialogue in a country, he urged the Government to take measures to include all social partners in consultations related to employment and labour policies, in a transparent manner and before a decision was taken, so as to build trust. Expressing concerns that the High Labour Council had not been able to operate for over three years and recalling the importance of ensuring the full autonomy of employers' and workers' organizations to determine their representatives to joint and tripartite bodies, he requested the Government and the social partners to reconstitute the Council as a matter of urgency based on the criteria of the representativeness of organizations. All possible ways to promote social dialogue should be explored. To this end, he reiterated the call for an ILO direct contacts mission in the near future, which could provide significant support in ensuring the conformity of national law with ILO Conventions. A similar call had been issued by the Committee in 2016, but to no avail. At the same time, he reaffirmed the ongoing commitment to constructive engagement with El Salvador, including through EU and Member States cooperation projects aiming to strengthen the Government's capacity to address all issues raised by the Committee of Experts.

The Government member of Brazil, speaking on behalf of the group of Latin American and Caribbean countries (GRULAC), expressed appreciation for the information supplied by the Government regarding compliance with the Convention. He referred to the report of the Committee of Experts, which noted the dialogue process initiated by the Government following a mediation process carried out in February 2016 with ILO technical assistance. He also noted, the decision of the Constitutional Chamber of the Supreme Court of Justice in *amparo* appeal No. 951-2013 had been noted. He observed the comments made by the Government representative in relation to the election by trade union federations and confederations of Worker representatives to the Higher Labour Council, thereby overcoming the main obstacle to its operation. He further noted the appointment of Employer representatives to the Council by the President of the Republic, and that the Council was therefore ready to begin functioning. He reiterated their commitment to the application of the Convention and expressed confidence that the Government would maintain its efforts to comply with that Convention.

The Employer member of Colombia indicated that he was speaking not only as the member representing the Employers of Colombia, but also as the Vice-Chairperson of Latin American Employers. He indicated that, over the past three years, the Committee had examined the situation in El Salvador in relation to various Conventions. There was a lack of tripartite consultation in many aspects of decision-making and he emphasized that consultation needed to take place in advance and to include the reports that were to be submitted. He noted that the direct contacts mission had not taken place and called for it to be carried out. He also requested the Government to provide detailed reports for analysis by the Committee of Experts at its next meeting. He emphasized that Worker and Employer representatives must be freely elected and be represented on an equal footing, as established by Conventions Nos 87 and 144.

The Worker member of Brazil acknowledged the importance of setting up the Higher Labour Council and making it operational. She welcomed the Government's willingness to implement the recommendations of ILO technical assistance. She also welcomed the initiative to adjust the minimum wage that had been adopted and the round table set up between the Ministry of Labour and Social Welfare and workers' organizations. The Government had demonstrated openness to dialogue, which should now be intensified.

The Government member of Cuba endorsed the statement made by GRULAC. She noted that the report of the Committee of Experts confirmed that, following the conclusions adopted by the Conference Committee in June 2015, El Salvador had accepted ILO technical assistance in the form of a mediation process carried out in February 2016. In accordance with the recommendations of the independent mediator, the Government had continued the process of dialogue. Representatives had been nominated by trade union confederations and federations to make the Higher Labour Council operational.

The Worker member of Colombia said that no action had been taken to comply with the conclusions adopted by the Committee in 2016. He considered that the criteria imposed by the Government for nominations to the Higher Labour Council were groundless, as they were not laid down in the Council's rules of procedure. The sole objective was to hinder the submission of nominations. The workers' organizations had approved neither the procedure nor the criteria for this process, which had been led and carried out exclusively by the Ministry of Labour. The cri-

teria used in the election process ran counter to the recommendations of the Committee of Experts. The determination of the most representative organizations must be based on criteria pre-established by the workers, and not by the Government. The process amounted to serious interference by the Government in the election of Worker representatives. She also alleged that various trade unions and federations controlled by the Government had been created in recent months with the aim of gaining a majority in the Higher Labour Council and other tripartite bodies. She hoped that the Government would initiate a frank and sincere dialogue to resolve these problems.

An observer representing the International Organisation of Employers (IOE) reiterated his great concern at the situation of harassment experienced by employers, which was affecting their freedom of association. The situation had been under examination for three years and, far from improving, had worsened. He emphasized that in 2016 the Committee had called for a direct contacts mission and the Committee of Experts had attached a double footnote to the case. He noted that the Government had nominated the representatives of employers to tripartite bodies responsible for labour matters, including minimum wage fixing. Major increases in minimum wages had been imposed unilaterally, above the level agreed with the workers. He denounced the fact that the Government had ignored the decision of the Supreme Court of Justice in relation to the functions of the ANEP and observed with great concern the results of the violence incited against the ANEP and the demonstrations against the decisions of the Supreme Court of Justice which were not considered favourable to the Government's positions. He called for a change in attitude to guarantee the sound operation of social dialogue and for measures to be adopted to guarantee compliance with the Conventions ratified by El Salvador.

The Worker member of Nicaragua expressed disagreement with the inclusion of the present case on the list. The Government of El Salvador was in compliance with the Convention, and it was not therefore clear why this matter had been included in the list of cases to be discussed by the Committee. He added that last January, the CNSM had decided on an adjustment to the minimum wage, which had resulted in dissatisfaction amongst employers. He added that the call by employers' organizations to review the trade union representation on tripartite bodies was a clear case of interference in the internal affairs of workers' organizations. While welcoming the activation of the Higher Labour Council, it was still necessary for employers to nominate their representatives so that the Council could become operational.

The Government member of Panama endorsed the statement by GRULAC and considered that the information provided by the Government contained important elements for the consolidation of the principles underlying the tripartite consultations envisaged by the Convention. He supported the information provided by the Government representative, which showed the clear intention of giving effect to all of the Committee's recommendations.

The Worker member of the Dominican Republic said that the workers, although they had noted the difficulties in the operation of the Higher Labour Council, had finally reached agreement on the nomination of their representatives to the Council. It was difficult to understand the concerns expressed by employers in relation to the election of the Worker members of the Council, and he called for employers not to interfere in those elections. Workers' organizations were suffering from greater persecution, in the form of dismissals and murders, and it could not therefore be claimed that only employers suffered from violence. He called for technical support for the operation of the Council so that it could fulfil its functions as a tripartite consultation body.

The Government member of the Plurinational State of Bolivia expressed support for the statement by GRULAC and noted that the Government had taken positive, clear and concrete measures to give effect to the provisions of the Convention. This had been clearly demonstrated by the acceptance of technical assistance from the ILO to carry out a mediation process, which had been launched in February 2016. The Constitutional Chamber of the Supreme Court of Justice had also found that the right to freedom of association had not been violated by the Ministry of Labour by requiring trade union federations and confederations to put forward a single list of representatives. In this regard, she noted with appreciation that the Worker representatives had already been designated by trade union federations and confederations, that employers' organizations had stated that they would designate representatives, and that Government representatives had already been appointed. She therefore considered that, as the Higher Labour Council would soon be made operational, there were no reasons to support the complaint of failure to comply with the Convention.

The Employer member of Guatemala explained that he had taken the floor concerning the statements made by the Government, whose claims raised many doubts concerning the intentions behind the constitution of the Higher Labour Council, and the treatment of the ANEP. According to the Government, the call to convene the body had been made as late as 1 May 2017. It seemed that such action had been taken in order to present results to the Committee. He denounced the interference in the appointment of Employer representatives to social dialogue forums, and the acts of violence against the ANEP by groups aligned with the Government. He hoped that the Committee would make every effort to use the tools at its disposal in order to ensure that the Government fully respected social dialogue mechanisms and the full autonomy of the ANEP.

The Government member of Honduras observed that the national Constitution and law identified the Higher Labour Council as the body responsible for carrying out tripartite consultations in relation to international labour standards. He emphasized that the Council was ready to begin operation, as the Worker representatives had been appointed, thereby resolving the main obstacle to its activation. The Employer representatives had been convened, but had indicated that an additional month would be required, and the Government representatives had been appointed. He urged the Government to strengthen its national tripartite dialogue body in order to continue to be in compliance with the Convention.

The Employer member of Turkey expressed the belief that the proper functioning of social dialogue was key for sound and effective industrial relations. Political willingness and commitment to engage in social dialogue must be shown by all parties in an enabling legal and institutional framework. As indicated by the Committee of Experts, interference by the Government in the election of members for joint and tripartite executive boards was a clear violation of Article 3 of the Convention. Notwithstanding some improvements reiterated by the Government, there were obvious shortcomings with regard to the operation of the Higher Labour Council. First of all, it had not been functioning for years which meant that the social partners lacked their most important platform to contribute to the decision-making process. Moreover, the social partners were not afforded the necessary timeframe or opportunities to express themselves before the adoption of social and economic regulations. The social partners needed to have the forthcoming rules of procedure before them sufficiently in advance to form their respective opinions. Noting that no concrete steps had been taken to establish an enabling

environment for social dialogue, he called on the Government to give priority to measures to promote and reinforce effective social dialogue.

The Employer member of Mexico referred to the information provided by the Government representative, who considered that the country was productive and safe. The latter concept included legal certainty, of which tripartite consultation was one component. Compliance would not be achieved through the provision of explanations, particularly since, in the best of cases, explanations were mere wishes or justifications for what was not happening. The Committee needed to assume its responsibilities and take firm and expeditious measures to ensure that the Government gave effect in practice to tripartite consultation.

The Government representative recalled that the case concerned the application of Convention No. 144, not other Conventions. She emphasized the goodwill and openness of all workers in the process under discussion. The call for the nomination of Worker representatives had been in accordance with the spirit of the decision by the Supreme Court of Justice and the recommendations of the ILO supervisory bodies. She explained that, in view of the absence of national and international legal texts respecting the determination of the level of representativeness of organizations, account was taken of the number of affiliated unions, workers represented and collective agreements concluded. Her Government agreed with the views expressed by the workers concerning the objective of ensuring that tripartite consultation was a permanent exercise for the promotion of labour rights, as well as with regard to the technical assistance required by the Higher Labour Council, for example for the drafting of new rules concerning the arrangements, competence and procedures to guarantee the representative nature of Employer and Worker representatives on an equal footing. She emphasized the economic growth, the reduction in the cost of a basic basket of goods, the reactivation of the agricultural sector and the creation of 6,000 new jobs. That progress would not have been possible without social dialogue, or without the active participation of employers in economic policy and decision-making bodies. In view of the complaints made by the ANEP and the IOE to the Committee, she observed that no denunciations had been made to the national police or prosecution services. She considered that the ANEP should have gone to the competent national bodies earlier. She recalled that cooperatives were also enterprises, for which reason they enjoyed the same rights to participate in any election process. In conclusion, she noted that the progress made would be significant for full compliance with ratified Conventions.

The Worker members recalled that Convention No. 144 extended the tripartism that characterized the ILO at the national level. The Government must urgently implement, in accordance with the Convention, procedures for tripartite consultations that would enable representative organizations to have their views heard regarding the follow-up to be given to ILO standards-related action. These consultation procedures would only be effective if the Higher Labour Council responsible for following such matters operated smoothly. An impasse had recently been overcome following an agreement between trade union organizations. The Worker members hoped that representatives of employers' organizations would soon be designated so that the Council could resume its work. In order to guarantee the lasting operation of the Council and avoid another impasse in the future, it was essential for the Government to refrain from imposing consensus on the representative organizations regarding the appointment of their respective representatives. Each representative organization must be given the freedom to designate its own representatives without the need for consent from other representative organizations in order to guarantee its freedom to choose its own representatives. The Worker members invited the Government to define objective and precise criteria and a clear and permanent procedure for elections in order to guarantee that organizations were as representative as possible. An independent appeals body should also be established. Once the Government had put all these elements in place, it would need to ensure the launching of effective tripartite consultations. In order to do so, it must ensure that the social partners had the opportunity to make their opinions heard before the Government took a final decision, and that representative organizations had before them, sufficiently in advance, all the elements necessary to form an opinion. Resolving these different issues should ensure that the Higher Labour Council ran smoothly in the long term. In order to implement these recommendations, the Government was requested to avail itself of ILO technical assistance.

The Employer members reiterated that the present case was a cause of concern and emphasized that, while thanking the Government representative for the explanations provided, the information was not entirely satisfactory. There was failure to comply with Article 1 of the Convention in view of the doubts concerning the "most representative" nature of the organizations, both for employers and workers. Similarly, there were problems in the application of Article 2 in view of the absence of effective consultations on matters relating to the ILO and of an objective and pre-determined procedure known to all the partners; as well as Article 3 in relation to the freedom to elect representatives. The Employer members emphasized once again their great concern at the acts of violence against the headquarters of the ANEP, and the many cases of harassment of their leaders. They therefore urged the Government to: ensure that firm progress was achieved in the freedom and independence of workers' and employers' organizations to nominate their representatives to decision-making bodies, and joint and tripartite bodies, in accordance with Article 3 of the Convention; reactivate without delay the Higher Labour Council, which was the principal body for social dialogue and tripartite consultation; receive without delay and during the course of the year the mission requested by the Committee; and guarantee the protection of the headquarters of the ANEP. They also called for the case to be included in a special paragraph of the Committee's report.

Conclusions

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

The Committee noted with concern the lack of genuine tripartite consultations to date with independent and representative employers' organizations and urged the Government to take all necessary measures without delay to implement Convention No. 144 in law and in practice. At the same time the Committee noted the Government's invitation three weeks before the opening of the 106th Session of the International Labour Conference to nominate employers' and workers' representatives to the Higher Labour Council.

Taking into account the discussion, the Committee urged the Government of El Salvador to:

- **reactivate, without delay, the Higher Labour Council (CST);**
- **ensure concrete positive developments with regard to the freedom and autonomy of employers' and workers' organizations to appoint their representatives in compliance with Convention No. 144, without intimidation;**
- **ensure adequate protection for the premises of the representative workers' and employers' organizations from violence and destruction;**
- **report in detail on the application of the Convention in law and practice to the next session of the Committee of Experts.**

Confronted with the Government's failure to take action to apply the provisions of Convention No. 144 in law and practice, the Committee requested once again that a direct contacts mission be sent to El Salvador before the end of 2017.

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

AFGHANISTAN (ratification: 2010)

A Government representative indicated that, as recognized by the National Labour Policy, "with a crippling poverty rate of 39 per cent, many households responded to economic shocks by taking their children out of school and requiring them to generate income, thus forcing them into labour". Therefore, the issue of child labour was not only a law enforcement matter, but also a fundamental problem which required a comprehensive understanding and a robust response mechanism. From an institutional perspective, a number of legislative, regulatory and policy frameworks had been developed to provide a basis for interventions to address child labour, including in the Constitution, the Labour Law, the Law on Child Correction and Rehabilitation Centres, the Law on the Prohibition of Children's Recruitment in the Armed Forces, the Child Guardianship Law, the Law on Redressing Child Rights Violations, and the Law on Anti-Child Trafficking and Human Kidnapping. Relevant practical tools included the Social Protection Strategy, the Street Child Labour Protection Strategy, and the National Strategy for the Protection of Vulnerable Children. National surveys had also been conducted to identify, analyse, and understand the nature and types of child labour, as well as the factors that forced children into labour. Additionally, a recruitment and work conditions procedure had been developed with a view to preventing the recruitment of children into the worst forms of child labour. Similarly, pursuant to section 120 of the Labour Law, a list of harmful occupations prohibited to children under 18 years of age had been developed in consultation with the social partners. A draft action plan on the prevention of the worst forms of child labour was being developed to give effect to the provisions of the Convention, in consultation with the social partners, as well as representatives from the Ministry of Public Health and other relevant agencies. The Child Protection Action Networks (CPAN) had been established in over 100 districts in 33 provinces of Afghanistan, and had over the past two years, addressed over 5,417 cases of vulnerable children, including 492 cases which prevented some of the worst forms of child labour. To address the vulnerable segments of society, particularly children, the Department of Social Workers at the Ministry of Labour had been established, with a special emphasis on the prevention of the worst forms of child labour. Moreover, a new system aimed at reintegrating vulnerable children into their families had been established at the Ministry of Labour, through which, over 264 vulnerable children had been reunited with their families during 2014–15. The Ministry of Labour had concluded memoranda of understanding with 22 international organizations and also with the Ministry of Education to provide rapid literacy support to street children through its daily child support centres. During 2014–15, over 19,000 street children had been admitted to schools following the completion of rapid literacy training programmes.

With regard to child soldiers, the implementation of the Law on the Prohibition of Children's Recruitment in the Armed Forces (2014), along with other associated instruments, had helped to prevent the recruitment of 496 children into the ranks of national and local police in 2017. Also, the Ministry of Interior, in cooperation with relevant government agencies, was effectively implementing the Presidential Decree No. 129 which prohibited torture, mistreatment and the use or recruitment of children in police ranks. Inter-ministerial commissions tasked with the prevention of child recruitment in the national and local police had been established in Kabul and the provinces. Moreover, child support centres had been set up in 20 provinces, and efforts were under way to establish similar centres in the remaining provinces. In 2017, over 47 security officials had been prosecuted for violating human rights in security agencies. Programmes undertaken by the Afghanistan Independent Human Rights Commission had put a particular emphasis on the rights of children, including awareness raising of the harm suffered by children recruited by armed groups. The National Directorate of Security had recently issued Order No. 0555, prohibiting the recruitment of underage persons; the Order was being implemented in all security institutions and monitored by national and international human rights organizations. Curricula for the training of security personnel were also being reviewed and updated with additional hours on child rights.

The Government was also taking measures to address the practice of *bacha bazi* ("dancing boys") through law enforcement, awareness raising, and other dissuasive measures. Security agencies had put an emphasis on tracking, punishing and stopping any act that constituted a violation of human rights, including the exploitation of boys by men in positions of influence. In the Child Protection Law, which was to be submitted to Parliament for adoption, *bacha bazi* was considered a punishable crime. Strong action was being taken against the exploiters as well as the families who knowingly forced their children into prostitution, including *bacha bazi*. A sharp decline in the practice was expected in the coming years with the continuation of law enforcement and awareness-raising efforts. The Government was committed to implementing the Convention to ensure effective protection for all children against the worst forms of child labour, and looked forward to working with national and international partners in that regard.

The Employer members noted that Afghanistan had been in a situation of armed conflict for decades. Despite some moderate advancement, many issues remained. In its observation, the Committee of Experts had raised the issue of recruitment of children for use in armed conflict. A law had been passed in 2014 criminalizing the recruitment of children into the Government's security forces. Since 2014, recruitment issues had mostly involved the Taliban. While the Government had limited ability to address this matter, it remained responsible for everything within the country's borders. Concerning issues of sexual exploitation and the cultural practice of "dancing boys", various institutions and bodies had commented on this situation, demonstrating that it was a real problem. Reference had been made to a draft law, but more information was needed from the Government on the action taken to address that problem. With regard to the question of access to education, especially for girls, problems were mainly caused by the decades of conflict and the fact that the Taliban and other anti-government actors were restricting access for girls in territories under their control. However, it was still the Government that was responsible for everything within the country's borders. In its direct request, the Committee of Experts had noted issues of conformity of the national legislation with the provisions of the Convention. While Afghanistan had a law on combating human trafficking, that law did not define the word "child". Since the majority of victims of human trafficking in the country were children, there was a need to define the word "child" to specify that it applied to all persons under the age of 18, in conformity with the Convention. In relation to the prohibition of child prostitution and pornography, there was no general legal prohibition in the national legislation. That was linked to the issue of the "dancing boys". The law only prohibited forcing underage women into prostitution. Reference had been made to a committee which had been formed to address this issue, as

well as to a draft law, but more information was needed from the Government in that regard. Finally, in relation to hazardous work, an issue was that labour inspectors were not authorized to impose penalties for child labour violations. That was not in conformity with the Convention. In particular, one of the key types of hazardous work involved brick factories, where there were cases of bonded child labour. The Employer members appreciated that Afghanistan was in a difficult situation and that some of the issues discussed were outside of what the Government could do under the current circumstances. However, other issues, such as the "dancing boys" and sexual exploitation of children, were within the control of the Government. Therefore, the Employer members expected that the Government would take strong and immediate measures to stop such exploitation and to ensure that the national legislation and practice fully complied with the Convention.

The Worker members expressed deep concern at the situation and the number of children involved in armed conflict. Given the high likelihood of under-reporting, the data available might not accurately reflect the actual scale of child recruitment and use by parties to the conflict. Forcible recruitment of children by non-State armed groups and by the Afghan national forces was deplorable. The Convention prohibited the use, procuring or offering of children for prostitution and required ratifying Members to provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. The Worker members were appalled by the widespread practice of "dancing boys", which involved the sexual exploitation of boys who were often under the age of 16 by men in power, including government officials. While the Penal Code criminalized the use, procuring or offering of a child for prostitution and the production of pornography, there appeared to be no provision that criminalized the use of a child by a client for sexual exploitation or that prohibited the use, procuring or offering of boys for prostitution. Moreover, despite the adoption in 2014 of a list of types of hazardous work prohibited to children, some entire Afghan families were trapped in debt bondage in the brickmaking industry. There were reports of wide use of bonded labour involving children in the agricultural sector and other informal economic activities. There were no penalties provided for in cases of violation of the provisions related to the prohibition of hazardous work by children under 18. Furthermore, the number of labour inspectors, which was currently 18, was insufficient. In any case, labour inspectors did not have legal authority to enforce child labour laws. The Convention required ratifying Members to take effective and time-bound measures to ensure access to free basic education, and, wherever possible and appropriate, vocational training, for all children removed from the worst forms of child labour. Available data indicated that about 6 million children were out of school in the country and that male secondary school participation was at 42.8 per cent while that of girls was only at 21.1 per cent. Schools also continued to be a target for violent attacks, resulting in many civilian casualties and negatively impacting children's access to education. There were also records of the use of educational facilities for military purposes by parties to the armed conflict. The Worker members were extremely concerned at the persistence of the worst forms of child labour in Afghanistan. They were aware of the situation of armed conflict in the country and the serious challenges related to the enforcement of national laws to non-State armed groups. At the same time, it was clear that the Afghan forces themselves did not shy away from abusing and exploiting children, which was horrendous and unacceptable. Despite some initiatives undertaken by the Government and the international community, the widespread use of the worst forms of child labour continued to be a pressing issue, which needed to be addressed as a matter of urgency. They called on the Government to strengthen its efforts to protect children from the worst forms of child labour and ensure that investigations and robust prosecutions of offenders were carried out and that sufficiently effective and dissuasive penalties were applied in practice in order to combat impunity.

The Worker member of Afghanistan underlined that some of the worst forms of child labour were being practised daily in Afghanistan. The term "child slavery" was to be used instead of "child labour", reflecting the gravity of the situation in the country. Children were used by mafia groups to beg on the streets for money. They also worked in hazardous sectors such as mining and agriculture, as well as in industries such as carpet weaving and car repair workshops. The most serious issue was the use of children in war. Terrorist and other extremist groups recruited and forced children to fight as gunners or suicide attackers. As highlighted by the Committee of Experts, children had also been recruited by Afghan government security forces and killed during military operations. Therefore, the Government had a duty to eliminate any recruitment of children by its agents as a matter of urgency, and could not simply point to the actions of non-State actors. With regard to the sexual abuse of children, although the law strictly prohibited it, problems remained in practice. The cultural practice of *bacha bazi* was a gateway to the sexual abuse of boys and prostitution, which was even reported to occur in some elements of the security forces. Therefore, urgent measures needed to be taken by the Government to eliminate this practice among its security forces and more widely in society.

While the Constitution recognized education as a right for every citizen, access to free basic education was not ensured in practice. The situation in urban areas was marginally better than in the rural areas where poverty prevailed. Parents might sell their children into forced prostitution due to poverty. In rural areas, there were not enough schools. Clean water, toilets or books were not always available. Girls usually suffered more because of the threats to those attending school. Pressure was also placed on families by extremist groups. Due to the security situation, many schools were closed and more than 400,000 students were deprived of education in the country as a whole. The quality of education was another aspect of the problem, including the large number of unqualified teachers and poorly developed curriculum and materials for students, which left children in religious schools vulnerable to radicalization. The speaker called on the Government to pay particular attention to the problems raised and to fulfil its commitments under the Convention. Without the implementation of the measures recommended by the Committee of Experts, it would be difficult to change the critical situation for children in Afghanistan. Therefore, strong commitment was needed from the Government.

The Government member of Malta, speaking on behalf of the European Union (EU) as well as Albania, Bosnia and Herzegovina, Montenegro, Norway and Serbia, called for the protection and promotion of all human rights and freedoms and reiterated the EU's strong commitment to the eradication of child labour, particularly in its worst forms. The EU–Afghanistan Human Rights Dialogue included deliverables and indicators on children's rights and the implementation of the law prohibiting the recruitment of child soldiers. The recent signing of the Cooperation Agreement on Partnership and Development confirmed the EU's commitment to Afghanistan's development and its support to comprehensive reform in the country. The commitment and progress made by the Government to prevent and end the recruitment of children into the national forces were to be welcomed. The law criminalizing the recruitment of children into the security forces had entered into force in

2014. The Government had also adopted a roadmap to accelerate the elimination and prevention of the recruitment and use of children by national forces, as well as guidelines to prevent the recruitment. Three additional units had also been established in different regions and were embedded in the police recruitment centre to prevent the recruitment of children. Available information showed that the majority of cases of recruitment were by opposition groups and not the national forces; however, due to under-reporting, the overall number of cases was assumed to be much higher. While the challenges faced by Afghanistan were to be noted, the Government was called upon to pursue efforts to end the recruitment of children into the armed forces and police. Additional measures should be taken so as to prevent enrolment in armed groups. Child soldiers should be demobilized, thorough investigations and prosecutions should be carried out, and dissuasive penalties should be applied. The situation of the "dancing boys" called for effective and time-bound measures, including a legal prohibition and criminalization of the practice. The Government was called upon to provide assistance for the rehabilitation and social reintegration of the victims. Finally, the Government was called upon to ensure free access to basic education for all, with particular attention to girls, who were often deprived of that right.

The Worker member of Pakistan underlined that, of the many issues discussed relating to the worst forms of child labour in Afghanistan, the most serious was the use of children as suicide attackers. Basic educational infrastructure was non-existent in many rural areas. The worst forms of child labour existed in armed conflict, but also in agriculture and in the supply chains. The Government was not demonstrating the political commitment required to address the issue properly. Obligations under ratified Conventions on child labour and discrimination had not been implemented through specific labour legislation. They were only very narrowly covered in general laws. Stressing the importance of labour inspection to enforce legal provisions, the speaker questioned how the very few labour inspectors in Afghanistan could effectively cover all provinces and vast rural areas. Also, although Afghanistan had ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), no functional tripartite committee existed at either the central or provincial level. Lack of respect for tripartism and the role of the social partners was also evidenced by the country's incomplete delegations to the Conference and complaints made under other ILO procedures. Finally, the speaker considered that the absence of progress made on the draft labour policy demonstrated a lack of political will.

The Government member of Switzerland expressed support for the statement made on behalf of the European Union and emphasized that children were particularly badly affected by the armed conflict in Afghanistan. They were deprived of their rights by the persistent practices of the Afghan national security forces and armed groups in recruiting and using children. It was worrying that the number of child victims was increasing and that attacks on hospitals and schools, as well as child sexual exploitation, were still continuing. Switzerland supported the conclusions and recommendations of the Committee of Experts and encouraged the Government to take all steps to guarantee that children were protected and demobilized, that prosecutions were brought against those involved in recruiting them, and that children were integrated into society. The importance of basic education for all girls and boys should also be underscored. Switzerland encouraged the Government to continue its efforts in that regard.

The Worker member of Norway, on behalf of the trade unions of the Nordic countries, noted that children in Afghanistan had continued to be victims of grave child rights violations. This had been confirmed by the Committee of Experts and reports of other UN bodies. Children were involved in all forms of work, including military operations, street begging, domestic work, agriculture, business and other sectors. A large number of children were sexually exploited and used in prostitution. Children had been observed in the ranks of the national forces. Allegations of recruitment of children by armed groups, including those associated with the Taliban, had been received. Cases of children carrying out suicide attacks on behalf of the Taliban had also been documented. Children who were internally displaced or in isolated conflict-affected areas were particularly at risk. In Kunduz, the Taliban had used schools to provide military training to children between the ages of 13 and 17. Children had been kidnapped, forced, threatened or sold by their parents to serve in armed groups. The Government had signed an action plan with the UN in 2011 to end and prevent the use of children by national armed forces and had adopted a roadmap and guidelines for its follow-up. Proper steps needed to be taken to implement the action plan. The Nordic trade unions were deeply concerned about the situation and urged the Government to take immediate and effective measures to end the forced and compulsory recruitment of children for use in armed conflict and to ensure their demobilization. The Government needed to further address the issue of children working in hazardous occupations, through the investigation and strengthening of labour inspection. In that regard, the introduction and enforcement of penalties for the use of children in armed conflict and in hazardous work, as well as prostitution, were needed. The ILO and the international community were called upon to continue providing humanitarian assistance, and to assist the country in improving the security situation and in taking measures to reduce poverty and pursue compliance with the Convention.

The Worker member of Australia underlined the abhorrent commodification of children who were forced into prostitution. He referred to numerous cases that evidenced the widespread sex trafficking of children in Afghanistan. With reference to the prostitution of young boys, particularly the "dancing boys", he denounced the involvement of public figures and men in power, as well as war criminals. That culture had spread to all sections of society. Sexual assault resulted not only in serious trauma, but also in many cases in the death of the victim. There was no specific law prohibiting the sex trafficking of minors. The speaker called on the social partners to engage with law enforcement entities, non-governmental organizations and other non-state actors to develop a comprehensive plan to eradicate the horrific practices and ensure the safety of Afghan boys and girls.

The Worker member of Canada, also speaking on behalf of the Worker member of the United States, indicated that, according to available data, 3.7 million boys and girls, representing one third of school-age Afghan children, were not enrolled in schools in 2017, due to insecurity and conflict-related violence, as well as the high levels of chronic poverty. That number was expected to grow as violence between Afghan forces and the Taliban intensified. Also, with an increasing number of Afghan refugees returning to the country, there was a risk of overwhelming already swamped education services. Children who were not going to school were at increased risk of early marriage, entering the workforce where they could be exploited, recruited into armed groups or trafficked. Documented restrictions by non-State actors that limited girls' access to education included complete bans on education for girls, restrictions on girls' attendance beyond a certain grade or explicit prohibitions of girls attending school without a female teacher. Other documented forms of violence included threats and intimidation against teachers and students, school burnings, attacks and abductions. The Convention recognized

the contribution of education to preventing the engagement of children in the worst forms of child labour. The Government must therefore take measures to uphold the right to education recognized in the national Constitution. It must further ensure accountability for perpetrators of attacks on institutions, personnel and students that were in clear violation of international humanitarian and human rights law.

The Government representative appreciated the comments, recommendations and support offered during the discussion. He reiterated Afghanistan`s commitment to eliminating child labour, particularly the worst forms of child labour. He emphasized that significant progress had been made, and comprehensive plans had been developed. The Government intended to form a special police unit, which would be responsible for child protection at the central and provincial levels, and would oversee cases of violations of the rights of children. The Government would also undertake a review of the existing measures to ensure that the legal and policy framework adequately responded to the national situation and complied with ratified international Conventions. Stressing the progress made by the Government, with support from international partners, towards improving conditions for all Afghans, he made particular reference to the increase in the national literacy rate and in the number of children attending school in the last decade, including girls. He recalled that school burnings and the imposition of bans in Taliban-controlled areas prevented girls and children from attending school. The Government would boldly pursue its efforts towards guaranteeing human rights and would continue to work with partners to address the root causes of child labour. That was a progressive journey. While terrorism was being fought against, recent attacks demonstrated the magnitude of the conflict and its regional linkages.

The Worker members considered that Afghanistan had failed to take effective measures to secure the prohibition and elimination of the worst forms of child labour. Recruitment of children into armed conflict, child prostitution and lack of access to free basic education were rampant. The Government had sought to reassure the Conference Committee that it had taken steps to address these issues. However, more could and had to be done to comply with the Convention. With respect to the "dancing boys", the Government had indicated that explicit legal prohibition was expected to be implemented in the near future; nonetheless, this matter remained unaddressed. The Government was expected to demonstrate its commitment to fulfilling its obligation to achieve the implementation of the Convention in practice. Firstly, that involved taking immediate and effective measures to put a stop, in practice, to the recruitment of children under the age of 18 by armed groups and the armed forces as well as measures to ensure the demobilization of children involved in armed conflict. Secondly, the Government should take immediate and effective measures to ensure that thorough investigations and robust prosecutions of persons who forcibly recruited children under the age of 18 for use in armed conflict were carried out and that sufficiently effective and dissuasive penalties were imposed in practice. Thirdly, the Government should take effective and time-bound measures to remove children from armed groups and forces and ensure their rehabilitation and social integration. Fourthly, it should take effective and time-bound measures to eliminate the practice of *bacha bazi* in order to remove children from one of the worst forms of child labour and to provide assistance for their rehabilitation and social integration. Finally, it should take the necessary measures to improve the functioning of the education system and to ensure access to free basic education, including by taking measures to increase the school enrolment and completion rates, both at the primary and secondary levels, particularly among girls. While acknowledging the difficulties that the Government had faced with armed groups operating in the country, the speaker stressed the obligations that had freely been entered into with the ratification of the Convention in 2010, which required action on the worst forms of child labour to be prioritized as a matter of urgency.

The Employer members appreciated the Government's statement that it had embarked on a progressive journey towards achieving compliance with the Convention and recognized that there was political will. However, there was still a long way to go to eliminate child labour and more clearly needed to be done in that regard. The speaker agreed with the conclusions proposed in the concluding remarks of the Worker members.

Conclusions

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

While acknowledging the complexity of the situation prevailing on the ground and the presence of armed conflict, the Committee deeply deplored the current situation where children are forcibly required by armed groups, in particular those which pledge allegiance to the Taliban, to undergo military and religious training. Furthermore, the Committee deeply deplored the situation of children, especially girls, who are deprived of education due to the situation in the country where many schools were closed, damaged and used as military or detention facilities, which prohibits children from attending them.

Taking into account the discussion, the Committee urged the Government of Afghanistan to:

- **take measures as a matter of urgency to ensure the full and immediate demobilization of all children and to put a stop, in practice, to the forced recruitment of children into armed forces and armed groups;**
- **take immediate and effective measures to ensure that thorough investigations and prosecutions of all persons who forcibly recruit children for use in armed conflict are carried out and sufficiently effective and dissuasive penalties are imposed in law and in practice;**
- **take immediate and effective measures to eliminate the practice of bacha-bazi (dancing boys);**
- **take effective and time-bound measures to provide for the rehabilitation and social integration of children who are forced to join armed groups and/or are sexually exploited and provide information on the measures taken in this regard, and on the results achieved.**

In this regard, the Committee calls on the Government to request ILO technical assistance to address the recommendations.

The Committee called on the ILO, the international community, and employers' and workers' organizations to collaborate with the goal of eliminating all forms of child labour, including the worst forms of child labour, without delay.

DEMOCRATIC REPUBLIC OF THE CONGO (ratification: 2001)

A Government representative said that the Government recognized the presence of children in certain artisanal mines, particularly in the provinces of Katanga, North Kivu and South Kivu. However, he recalled that the Democratic Republic of the Congo (DRC) was a post-conflict country which had experienced wars and armed conflict for over two decades, which had destroyed its economic fabric, with the loss of many jobs, an increase in the number of poor workers, the displacement of populations and a high rate of school drop-outs. Nevertheless, since 2001, efforts had been made by the Government to eliminate the worst forms of child labour. These efforts had included the adoption of the following legislative measures and regulations: (i) an increase from 16 to 18 years of the age at which young persons could enter into contracts (section 6 of the Labour

Code, as amended in 2016); (ii) the abolition of the automatic emancipation of minors as a result of marriage (section 352 of the Family Code, as amended in 2016); (iii) an awareness-raising campaign in schools against early marriage; (iv) the adoption in 2014 of a Framework Act on the national education system providing for free and compulsory basic education; (v) the adoption in 2016 of an Act setting out the rules for the general social security scheme; and (vi) the appointment of a Special Advisor to the Head of State on action to combat sexual violence and the recruitment of children into the armed forces. Following the dialogue with the United Nations, the Government had signed on 4 October 2012 the Plan of Action to combat the recruitment and use of children in armed conflict and other serious violations of the rights of the child by the armed forces and security services. An Inter-ministerial Committee had also been established on the issue of work by children in mines and mining sites. The inter-ministerial Committee was responsible for advising the competent ministries and services, ensuring the coordination of the various initiatives adopted on this issue and raising the matter with organizations such as the Organisation for Economic Co-operation and Development (OECD), the United Nations Children's Fund (UNICEF) and the ILO. It had developed a triennial plan of action for the period 2017–20, with the general objective of coordinating action on the ground with a view to bringing an end to the presence of children in mining. The plan of action also established the following five specific objectives: (i) following up and evaluating the implementation of action to combat child labour in mines and mining sites; (ii) monitoring the presence of children in mines and mining sites; (iii) strengthening the application of measures for the removal of children from mining supply chains; (iv) implementing the remedial measures proposed on the ground by the competent ministries and services; and (v) developing a communication strategy. He called for the mobilization of the international community around the issue of the recruitment and use of children by armed groups, as well as in mines and mining sites, with a view to identifying those responsible and envisaging the adoption of sanctions against those perpetrating such exploitation, the causes of which were essentially exogenous.

The Employer members felt appalled and saddened by the suffering of vulnerable persons, in particular children, in the country. Children were working in mines in conditions similar to slavery for identified persons or companies in the provinces of Katanga, East Kasai and North Kivu. They highlighted one case in particular where, according to the report of the United Nations Stabilization Mission in the Democratic Republic of the Congo (MONUSCO) of January 2011, a battalion commander of the Armed Forces of the Democratic Republic of the Congo (FARDC) had made use for gain of the forced labour of children in mines in North Kivu. Despite the adoption of Act No. 09/001 of 10 January 2009, section 187 of which established a penalty of penal servitude of ten to 20 years for the enrolment or use of children under 18 years of age in the armed forces and groups and the police, it remained unclear whether this army commander had been punished, arrested or dealt with in any way by the authorities. This person was possibly still in the army benefiting from the related privileges, whereas the Government should have set an example a long time ago in this specific case. The Employer members underlined that the adoption of the above Act was insufficient, and that it was necessary to give effect to the adopted Act in order to achieve genuine progress. The Committee on the Rights of the Child (CRC), in its concluding observations of 10 February 2009, had expressed concern that the enacted laws were not always followed by the issuance of appropriate implementing decrees, that law enforcement mechanisms were weak and that no activities had been carried out to raise awareness of these laws which were, consequently, not applied or implemented. The Employer members urged the Government to effectively enforce the existing laws in relation to child labour. While recognizing the complex situation of armed conflict prevailing in the country for over a decade, they did not consider that the international community was making excessive requests to the Government. According to a 2011 report on trafficking in persons of the United Nations High Commissioner for Refugees (UNHCR), Congolese girls were the victims of forced prostitution in improvised brothels and in camps, and also in the vicinity of mines and markets. Moreover, 50,000 children were working in mines, and armed groups frequently abducted and trafficked vulnerable persons, especially children. They indicated that according to the 2010 report of the United Nations Secretary-General on children and armed conflict in the Democratic Republic of the Congo, 1,593 cases of the recruitment of children had been reported between October 2008 and December 2009, including 1,235 in 2009. The Employer members emphasized that, according to the same source, 42 per cent of the total number of cases of recruitment reported had been attributed to the FARDC. Evidence showed that the FARDC and the Congolese National Police were at the epicentre of the problem, and the Government should act urgently and decisively in this respect. They called on the Government to follow up on the enactment of laws with effective measures against child labour. The Government should rehabilitate and treat the children in the country as if they were their own children.

The Worker members emphasized that this case had been discussed by the Committee on several occasions and that each year the DRC was the scene of terrible violations against innocent children. The Government once again needed to be urged, as in 2009, to take, on the most urgent basis, immediate and effective measures to eliminate forced and hazardous work by children under 18 years of age. The legislative provisions that it had adopted, and particularly Act No. 09/001 of 2009 and Legislative Decree No. 066 of 2000 on the demobilization and reintegration of vulnerable groups present in the armed forces, had not been sufficient to ensure that no children were recruited as child soldiers. According to a UNICEF report in 2015, around 80 children had lost their lives in violence related to armed conflict, 60 had been mutilated, 195 abducted and 487 enrolled in armed groups. Between January 2012 and August 2013, MONUSCO had documented the recruitment of 996 children by armed groups in the country. In its concluding observations of 2009, the CRC had found that the State, through its armed forces, bore direct responsibility for violations of the rights of the child and that it had failed to protect children and prevent such violations. In addition to armed groups, the FARDC was also responsible for the systematic recruitment into its ranks of children (42 per cent of the children recruited, according to a 2009 report by the Secretary-General of the United Nations). The Government's action was contradictory as, on the one hand, it was carrying out reforms intended to prevent further recruitment and to punish violations, while on the other hand, it allowed the police and the armed forces, not only to recruit child soldiers, but also to use physical and sexual violence against them, with the perpetrators enjoying impunity. The FARDC has been responsible for half of the murders of children committed in 2010, many mutilations of children and 67 cases of sexual violence over the same period. Despite the legislation that existed, no prosecutions had been initiated, thereby guaranteeing the total impunity of those responsible for these atrocities and sending the message that they could continue to commit such acts. The names of those responsible, such as that of a former colonel of the FARDC, were of public notoriety. The United Nations had collected many witness statements concerning

the murder of children who had been recruited, acts similar to torture and inhumane and degrading treatment. The Government had sufficient information to open investigations and to prosecute those presumed to be responsible for these atrocities. Children were also exposed to the worst forms of child labour in the mines of Katanga and East Kasai, where around 40,000 children were working under the oversight of military units on mineral extraction. They worked in mines for up to 12 hours a day, for US$1 or $2, in extremely hot temperatures, without the slightest protection and in contact with high concentrations of cobalt. The national legislation prohibited forced labour, but it was the absence of enforcement of the respective provisions that gave rise to problems, particularly in view of the ineffectiveness and incompetence of the labour inspection services. The national plan of action to combat the worst forms of child labour in mines by 2020, which had been adopted by the Government in 2015, had not resulted in progress in terms of the improvement of labour inspection and the number of children subject to forced labour practices. The penalties applicable for the use of forced or compulsory labour were weak and did not have a dissuasive effect. There were also many other structural problems, including decentralization, the lack of resources and poor coordination. The 2009 Act on the protection of children established the right to free and compulsory education for all children, but in the absence of public financing, most schools that had not been closed or destroyed continued to charge school fees. Certain children were forcibly enrolled in their schools, while others were the victims of sexual violence on the way to school. There were also nearly 30,000 street children in the country without shelter or protection, most of whom were in Kinshasa. According to UNICEF, many young girls, sometimes under 10 years of age, were engaged in prostitution. Thousands of future adults would therefore be marked for life and denied any prospect of physical or psychological development, as the Government was showing itself to be incapable of "preventing the engagement of children in the worst forms of child labour", or of "removing children from the worst forms of child labour" and providing for "their rehabilitation and social integration" (Article 7(2) of the Convention). Despite certain improvements, many children continued to be recruited and the FARDC systematically prohibited access to their camps by investigators from the various international organizations and missions. As a result of such refusals, out of 50 attempts at screening by MONUSCO with a view to the demobilization of children under 18 years of age, it had only been possible to demobilize five children. It was also commonplace to "re-mobilize" children who had been demobilized. No firm and lasting results would be achieved for as long as the members of the FARDC enjoyed such autonomy and impunity. It was therefore essential for the Government to make every effort not only to implement programmes for the eradication of child labour and the demobilization of children, but also to ensure that its own army was not committing the atrocities that it was officially supposed to combat. The Government therefore needed to take measures, as a matter of the greatest urgency, to demobilize immediately and fully all children in the ranks of the FARDC and to bring an end to the forced recruitment of children under 18 years of age by armed groups. Recalling Security Council Resolution No. 1998 of 12 July 2011, the Worker members called on the Government to take effective measures to ensure that in-depth investigations were conducted and that prosecutions were brought to a conclusion, accompanied with sufficiently dissuasive penalties, including against officers of the regular armed forces.

The Employer member of the Democratic Republic of the Congo recalled that Congolese employers had always respected ILO instruments and ensured that they were enforced. Child labour in mines was chiefly due to traffickers and operators of mines in the informal sector whom the Government was taking steps to combat. The forced recruitment of children by the armed forces was news to no one, and had been well documented by MONUSCO. When examining why massive numbers of children were working in mines, it needed to be taken into account that the main product, coltan, was used in the cutting-edge information technology industry. Children were not being exploited by Congolese enterprises, but rather by armed groups that were taking advantage of the war. Nor was it possible to control multinational enterprises that came from abroad.

The Worker member of the Democratic Republic of the Congo referred to the political crisis gripping the country, which was caused by armed conflicts between loyalist forces and rebels and gave rise to instability and human rights violations. The expansion of small-scale mining in Katanga was now a means of subsistence for very large numbers of people, particularly following the collapse of the largest publicly owned mining concern. Children were gathering the cobalt discarded by many of the industrial mines located in the province, usually without the permission of the enterprises, and then the mineral was washed, sifted and sorted in water courses and lakes. He also referred to an inquiry carried out by Amnesty International and African Resources Watch at five mining sites in Katanga. Among the health risks identified were a potentially fatal lung disease, known as "hard metal lung disease", as well as respiratory sensitization, asthma, shortness of breath and decreased pulmonary function. The majority of miners worked long hours in contact with cobalt and lacked even the most basic protective equipment. Moreover, the current legal framework contained no provisions on health protection for small-scale miners. In 2014, UNICEF had estimated that around 40,000 children were working in the mines in the south of the country. The work they did was particularly arduous. For a daily wage of between $1 and $2, they worked 12 hours a day carrying heavy loads in high temperatures or rain. They were sometimes beaten. Although the right to free and compulsory primary education for all children was established in law, the majority of schools continued to require a contribution, as State funding was insufficient. Furthermore, the labour inspectorate did not have the necessary powers. The Government should ensure the establishment of an effective system to eradicate the worst forms of child labour and make primary schooling a priority. The plan of action had not been officially adopted or endorsed by the Government. With regard to child soldiers, despite the existence of legal provisions governing their demobilization, follow-up mechanisms posed many problems due to the lack of adequate funding.

The Government member of Malta, speaking on behalf of the European Union (EU) and its Member States, as well as Bosnia and Herzegovina, Montenegro and Norway, reaffirmed the commitment to the promotion of the universal ratification and implementation of the eight fundamental Conventions as part of the EU Strategic Framework on Human Rights, and to the eradication of child labour, especially in its worst forms. Recalling the commitment made by the DRC under the Cotonou Agreement, the framework for cooperation with the EU, to respect democracy, the rule of law and human rights, which included the abolition of child labour and compliance with the Convention, he regretted that the Government had not submitted its report in time for examination by the Committee of Experts, which had been bound to repeat its comments since 2011. He welcomed the efforts made by the Government, such as the adoption of the 2012 Plan of Action, thereby indicating its commitment to end the recruitment and use of children in armed conflict. It should be noted that in 2015, no case of child recruitment by the FARDC had been documented by

the United Nations monitoring and reporting mechanism and that, in order to prevent new cases of enrolment, the Government had adopted a new procedure in 2016 that required age verification of FARDC members. It was critical for the national forces to be exemplary in this respect. However, child recruitment by armed groups continued and jeopardized the future of children, especially young girls. He also noted with deep concern the persistent phenomenon of child labour in mines and the use of children by armed groups, sometimes under reported FARDC supervision, for the extraction of minerals. In light of the above, he called on the Government to take the following measures: (i) prevent the enrolment of children in the regular forces or armed groups, as well as forced or hazardous child labour in mines, including through measures such as awareness raising and basic education for all; (ii) ensure the demobilization of children enrolled in armed groups; (iii) ensure the investigation and prosecution of persons recruiting children either in armed groups or to work in mines; and (iv) ensure the social reintegration and rehabilitation of these children and in particular child soldiers, while giving special attention to girls. Lastly, he reaffirmed the ongoing commitment to cooperation and partnership with the DRC.

The Worker member of Canada described child labour in the mines of the DRC as a terrible reality. According to a 2014 estimate by UNICEF, 40,000 young boys and girls were used for dangerous mining activities, and military units recruited children for forced labour, in particular the extraction of natural resources, primarily cobalt. The country produced at least 50 per cent of the world's cobalt used in lithium-ion batteries. Moreover, the working conditions at mining sites were atrocious. The children worked under dangerous and unsanitary conditions exposing them to fatal injuries and diseases, without breaks, and for a remuneration of US$1–$2 per day. Against this background, she found it scandalous that the Committee of Experts was forced to repeat its requests for information every year, including regarding inspection statistics. A key measure for the enforcement of labour legislation was the existence of a strong and independent labour inspectorate to ensure workplace compliance with laws and regulations, such as those defining minimum age and hazardous work. Labour inspectors needed to be trained and well paid so as to avoid corruption sustaining illegal practices. These were essential efforts that governments could make in their commitment to combating the worst forms of child labour. While the national law might be in line with the Convention, she emphasized the need for political will, good governance and commitment to enforce the law. There was no evidence of the Government's political will without labour inspection reports, data and statistics, transparency and responses to the Committee of Experts' comments. She urged the Government to find the political will to enforce its legislation to bring to an end the worst forms of child labour.

The Government member of Switzerland supported the statement by the European Union. Child labour and, more specifically, the use of children in armed conflict were disturbing phenomena. She hoped that the Government would report on the activities undertaken to ensure the protection of children and compliance with the Convention as soon as possible. She encouraged the Government to continue the efforts made to prosecute those who had taken part in serious violations of the rights of children and to redouble its efforts to remove children from work in mines. The Government also needed to take the necessary measures to guarantee the demobilization of children enlisted in the FARDC, the ending of all recruitment of children and their rehabilitation and social reintegration.

The Worker member of Nigeria, also speaking on behalf of the Southern African Trade Union Coordinating Council (SATUCC), stated that the Committee of Experts' observation that access to education in the eastern DRC was hindered by armed conflict had been confirmed by children reporting kidnappings, forced enrolments, beatings and rapes in school. The Government had failed to protect these children and was still failing to do so. Furthermore, he denounced the fact that only 29 per cent of children in rural areas and 24 per cent in urban areas were registered at birth. Inability to prove citizenship exposed non-registered children to difficulties in accessing services such as education, and thus rendered them more vulnerable to recruitment into armed conflict. Moreover, the Government needed to take urgent and robust measures to address the plight of internally displaced persons, especially in the east, where almost half of the population was under 18 years of age. Internally displaced children had difficulty in accessing education, which put them at increased risk of engaging in child labour. Recalling that access to education was not only a right, but also an effective tool to defeat child labour and its worst forms, he called on the Government to improve access to education by registering all children at birth, developing programmes that assisted internally displaced children, and ensuring that schools were safe and child-friendly.

The Government member of Canada expressed deep concern at the situation in the DRC and called on the Government to take the appropriate steps to demobilize all children from the ranks of the FARDC, and bring an effective end to the recruitment of children by armed groups. The Government must also take the necessary measures to eliminate forced and hazardous labour by children in mines, and to ensure their rehabilitation and social reintegration, with particular emphasis on girls. In accordance with national legislation, perpetrators of violations must be brought to justice and serve their sentences, even if they worked for the security forces. The Government should provide the information requested by the Committee of Experts on the following points: the investigations conducted, prosecutions brought and convictions handed down; statistics on the application of the legislation; the number of child soldiers removed and reintegrated; and the action taken to reinforce the capacities of the labour inspectorate, as envisaged in the plan of action. The Government should also increase cooperation with MONUSCO in order to bring an end to the recruitment of children in the army, and to enable their demobilization and social integration.

The Worker member of the Republic of Korea aligned herself with the statements made by the Worker members of Canada and Nigeria. With reference to the Committee of Experts' comments on the issue of persisting child labour, especially in mines, she underlined that there were around one quarter of a million street children in the country, 70,000 of whom lived in Kinshasa. The situation of young girls was even more alarming. She indicated that many of them started a life of prostitution as early as 12. Despite having been signed in 2015, the Plan of Action had not generated quantifiable improvements in terms of strengthening labour inspection and reducing the number of children subject to forced labour. She urged the Government to promptly ensure the implementation of the Plan of Action and, in particular, to guarantee free access to basic education for all children and to pursue targeted measures for the protection of young girls. Finally, she fully supported the recommendations urging the Government to take measures to eliminate forced labour and hazardous forms of child labour.

The Government member of Chad noted with satisfaction the adoption of Act No. 09/001 of 10 January 2009, penalizing the enlistment or use of children under 18 years of age in the armed forces and groups and the police. The adoption of this Act and other legislative and regulatory measures confirmed the Government's will to effectively

combat the recruitment of child soldiers in the country and to ensure the necessary protection. Furthermore, the Government was committed to building the capacities of the labour inspection services within the framework of the implementation of the plan of action. These commitments and efforts should continue to be encouraged and supported.

The Government member of Algeria highlighted the Government's strong political will to combat the scourge of the worst forms of child labour, and the implementation by the Government of an inter-sectoral approach with a view to combining efforts and resources, as well as the adoption of legislative and regulatory measures, especially since 2001. The Committee should encourage the country by continuing to provide assistance and support for the eradication of the worst forms of child labour in the very near future.

Another Government representative said that the Government had listened to the strong calls by the members of the Committee, as well as the encouragement for it to intensify its efforts to combat the worst forms of child labour. The Government, in its awareness of its responsibilities, had replied to all the comments of the Committee of Experts in a report that would be handed to the Director-General of the ILO on Monday, 12 June. Some of the information provided during the discussion had been taken from the previous report. The new report contained new information. With regard to mines, it was since the DRC had been confronted by war and the proliferation of armed groups and had been subject to influence from abroad that children had become the victims of forced labour. Recurrent wars in North Kivu and South Kivu had hampered economic development and resulted in unemployment, poverty, massive school drop-outs and forced recruitment. These problems existed in the structures linked to smuggling, not in enterprises which operated mines legally, as the Minister of Labour of the time had been able to see during a visit in 2013 following the publication of a UNICEF report. The Government was sparing no effort but, following two decades of war, it was difficult to provide adequate protection for children in such a complex situation. She called on the international community to engage in broad reflection on the issue of the traceability of minerals. Moreover, aware of the weaknesses of the labour inspection system and its lack of personnel, she requested ILO technical assistance to reinforce the labour inspection services as a means of improving law enforcement. A project to recruit 1,000 labour inspectors, including a training component in cooperation with the ILO and the African Regional Labour Administration Centre, was currently being developed and should receive financing during the course of the year.

The Worker members once again expressed deep concern at the worst forms of child labour, which had affected children in the DRC for generations. The legislative measures adopted were not adequate to eradicate this scourge and the Government needed to provide a clear and coherent response in practice. Urgent measures needed to be taken to prosecute those recruiting child soldiers and the perpetrators of other abuses and violence, and for the demobilization, rehabilitation and social reintegration of the children who had been recruited. It was also necessary to take action to prevent abuse in all fields in which the worst forms of child labour were rife, including mining, where over 50,000 children were subject to forced labour, as well as street children. A country that failed to protect its children was a country without a future. The Worker members regretted that the Government had not provided a report on these matters and urged it to provide information on the specific measures taken for the effective eradication of the worst forms of child labour as soon as possible. It was important to bear in mind that the terrible abuse committed against children in the DRC concerned everyone, as the minerals extracted from the mines in the country were used in all types of extremely common electronic equipment. The Worker members called on the Government to: (i) remove children from the worst forms of child labour and ensure their rehabilitation and social integration; (ii) bring an end to the "re-mobilization" of children who had previously been demobilized; (iii) implement the programme for the disarmament, demobilization and reintegration of children; (iv) bring an end to the impunity of the FARDC and impose dissuasive penalties; (v) conduct in-depth investigations and prosecute the persons responsible for recruiting children into armed conflict, including officers of the regular armed forces; and (vi) reply without delay to the comments of the Committee of Experts.

The Employer members pointed out that the submission by the Government, of the report under article 22 of the ILO Constitution, during the Conference in June 2017, whereas it had been due in September 2016, was considered insufficient by the Committee. Governments should submit reports on time so as to enable the Committee of Experts to examine compliance with the relevant Convention. They expected that henceforth the Government would comply with its reporting obligation. The Employer members reiterated their call on the Government to enforce the enacted laws. With reference to the Government's statement that there were only two inspectors in provinces as large as a medium-sized country, they believed that, if human resources for law enforcement were scarce, the revenues from those provinces and the mining should be invested in the necessary recruitment for the sake of the country and the children. While recognizing the consequences of prolonged armed conflict, they considered that efforts needed to be made to put in place a process similar to the Kimberley Process, with a view to ensuring that minerals were registered and, subsequently, marked if they reached trade, so as to detect any provenance from child labour. Finally, the Employer members appealed to the Government to become aware of the suffering of the children and help them through their trauma, in order to eventually break the cycle and secure the future of the DRC via its children.

Conclusions

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

The Committee noted the grave issues concerning this fundamental Convention, referring in particular to the forceful recruitment of children under the age of 18 into the armed forces and the lack of adequate access to education. The Committee also expressed disappointment over the Government's failure to comply with its reporting obligations for several years.

Taking into account the discussion, the Committee called upon the Government of the Democratic Republic of the Congo to:

- **ensure the full and immediate demobilization of all children in the ranks of the FARDC and to put a stop to the forced recruitment of children into armed groups, giving special attention to the demobilization of girls;**
- **intensify its efforts to prevent children from working in mines and other hazardous sectors and to provide the necessary and appropriate direct assistance for their removal from these worst forms of child labour;**
- **ensure that thorough investigations and prosecutions of offenders are carried out and that sufficiently effective and dissuasive penalties are imposed on them;**
- **intensify its efforts to take effective, time-bound measures to remove children from armed groups and other worst forms of child labour and to ensure their rehabilitation and social reintegration;**
- **provide information on the number of child soldiers removed from the armed groups and reintegrated into society.**

The Committee recommended the Government of the Democratic Republic of the Congo to avail itself of technical assistance in order to eradicate the worst forms of child labour and to report progress in relation to the abovementioned recommendations to the Committee of Experts before its November 2017 session.

The Committee called on the ILO, the international community and employers' and workers' organizations to collaborate with the goal of eliminating all forms of child labour, including the worst forms of child labour in the country without delay.

LIBYA (ratification: 2000)

A Government representative noted that Libya, since its independence in December 1951, had adopted many laws and regulations prohibiting and criminalizing child labour. Libya was applying the provisions of the Convention including through the application of the following laws: the Vagrant Young Persons Act (Law No. 5 of 1955); the Penal Code (Law No. 48 of 1956); the Law on the situation of minors (No. 17 of 1992); the Child Protection Law (No. 5 of 1997); Decision No. 100 of 1998 of the Council of Ministers, which relates to the establishment of the Higher Committee for Childhood Protection; and the Labour Relations Law No. 12 of 2010. Under section 27 of the Labour Relations Law No. 12 of 2010, it was not permitted for any person under 18 years of age to perform any type of work, unless work was performed for educational purposes or as part of apprenticeship or vocational training, from a minimum age of 16 years and on the condition that the health, safety and morals of the young person were safeguarded. Article 5 of that Law defined a young person as any natural person who had reached the age of 16 years but had not yet reached the age of 18 years. Section 10 of the Child Protection Law (No. 5 of 1997), also prohibited the employment of children in any work unless it was for the purpose of an apprenticeship, and based on the wish of the child. With respect to the worst forms of child labour, as set out in Article 3 of the Convention which included all forms of slavery or practices similar to slavery such as the sale and trafficking of children, debt bondage and serfdom, and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflicts or other worst forms, as set out in clauses of Article 3. He mentioned that they were all prohibited in Libya and punishable by virtue of sections 406–416 of the Penal Code.

With regard to the reports of the United Nations High Commissioner for Human Rights on the situation of human rights in Libya, dated 12 January 2015 and 15 February 2016, which contained information on the forcible recruitment of children and their use in armed conflict by armed groups that had pledged loyalty to the Islamic State in Iraq and the Levant (ISIL), the speaker drew attention to the fact that Libya had been facing its worst political crisis and escalation of violence since 2011. The legitimate Government of Libya, represented by the Presidency Council of the Government of National Accord had captured the last ISIL position in Sirte on 6 December 2016 and had officially announced on 17 December 2016 the liberation of the city of Sirte, which had been under ISIL control for more than a year and a half. The latest report by the United Nations Support Mission in Libya (UNSMIL), issued on 4 April 2017, stated that "local authorities had begun some rehabilitation work in Sirte as internally displaced people started to return to parts of the city" and that "a post-conflict stabilization plan for Sirte was developed under the supervision of the Presidency Council" (S/2017/283, paragraph 25). Furthermore, it should be noted that the head of UNSMIL and the Special Representative of the United Nations Secretary-General in Libya, Mr Martin Kobler, had stated in his most recent address to the Security Council on 7 June 2017 that "Daésh, while still a threat, was a shadow of what it had been just one year ago". ISIL's practices against children during its rule over Sirte, including the forcible recruitment of children into their military operations, the prohibition of children from enrolment in school, and the forcing of girls to wear the veil, was brought to an end after the victory over ISIL in Sirte, and children had returned to their studies. In view of the horrendous acts perpetrated by the groups operating outside the law, and in particular the terrorist organization ISIL, the Libyan State had expected to be supported in its efforts against terrorism instead of being called before the Conference Committee. In spite of its modest military capabilities and the arms embargo imposed on it by the Security Council, Libya had managed to defeat ISIL and to dislodge it from the towns of Darna, Sabratha and finally Sirte.

Noting that education was a fundamental human right, he stressed that every citizen had a right to education in Libya, and that education was divided into three levels, with a mandatory elementary schooling of nine years, secondary school and vocational training, in addition to university education; all of which were free of charge in all parts of Libya. With regard to the Committee's comments concerning the decrease in the number of pupils in elementary education from 1,056,565 in 2009–10 to 952,636 in 2010–11, it should be noted that such a decrease was not due to insufficient school enrolment, but due to the ratio of students entering the elementary level to the number of students completing the secondary level of education. For example, the number of elementary school students had increased once again in the school year 2011–12 to a total of 1,003,865. According to a press release by the Ministry of Education issued in August 2015, the average annual number of pupils in Libya in the period 2011–15 had reached 1,024,945. In spite of the exceptionally difficult situation of the educational sector in Libya during that period, most elementary and secondary schools had been opened. Where schools had been destroyed or located in conflict areas or occupied by internally displaced persons, other facilities had been found in some of those regions to enable students to continue their studies. In the current school year 2016–17, all schools had opened their doors at the scheduled date, with the exception of a few damaged schools in Sirte and Benghazi, which had opened upon confirmation that they had been cleared from any remaining damage caused by military operations. Thus, it had become possible for all elementary and secondary school students to take their final examinations for the school year 2016–17 at the end of May 2017, with the examinations for the completion of the elementary level scheduled to commence on 2 July 2017, and for the secondary level on 16 July 2017. Overall, 137,947 students (boys and girls) would take their exams for the completion of both the elementary or secondary levels in 2017. The Presidency Council of the Government of National Accord had given special importance to human rights issues, including the rights of children, women and persons with special needs, as well as the rights to education, health and development, among other rights that respected the religious and cultural identity of the Libyan people. Importance was also given to ensuring the rights of women, as equal partners to men, since they represented the other half of society. To that end, the Presidency Council had taken an important step in issuing a decree on the establishment of a unit for the empowerment of women, with a view to strengthening their role and their participation in the efforts aimed at building the State. Finally, he noted that Libya was not among the States which were listed in the annexes to the reports of the UN Secretary-General on children and armed conflict. He emphasized the importance of continued support from the international community to the efforts of the Presidency Council of the Government of National Accord to build the institutions of the State, and strengthen its authority throughout the entire

territory, as well as support for its policies and measures to enable the armed forces and police to play their role in an exemplary manner, and to conduct an effective programme for demobilization, disarmament and reintegration, while ensuring respect for human rights and human dignity, and moving the country forward on the path to development.

The Worker members stated that the 2017 report of the Committee of Experts drew attention to two main issues: the compulsory recruitment of children for armed conflict and access to free basic education. They recalled that Libya continued to suffer from armed conflict and that, according to the UN Deputy High Commissioner for Human Rights, proliferation of armed groups had led to serious violations and abuses of human rights, including, abduction, torture and killings of civilians and children, as well as forced recruitment and use of children by groups pledging allegiance to the Islamic State in Iraq and Levant (ISIL). Some examples of such practices were provided. The 2017 Human Rights Watch (HRW) country report on Libya highlighted that ongoing insecurity had led to the collapse of the criminal justice system that would otherwise punish perpetrators of child labour – courts either remained shut or operated at a reduced level and areas under ISIL control were subjected to their own interpretation of Sharia law. Refugee and internally displaced children were particularly vulnerable to the worst forms of child labour. The 2017 UNICEF study entitled "A Deadly Journey for Children" found that women and children had paid smugglers under "pay-as-you-go" schemes, leaving many of them in debt and vulnerable to abuse, abduction and trafficking, and children whose parents had not paid enough were held for ransom. ISIL was also paying the smugglers' fees in an attempt to attract and recruit unaccompanied child refugees, thus highlighting their potential vulnerability to radicalization. To underline the issues at stake, they recalled in detail the conclusions of the Committee of Experts made under Articles 1 and 3 of the Convention. With regard to access to free basic education, the conclusions of the Committee of Experts made under Article 7(2) of the Convention were recalled and the situation in Libya was outlined, as documented by the UN in January 2015, by HRW in November 2016 and by the UN Secretary-General in his 2016 Annual Report on children and armed conflict. According to those sources, explosive remnants of war had remained a major hazard for children; schools in Tripoli, Benghazi, Gandoufa and other places had been extensively damaged or destroyed by indiscriminate shelling; others had been closed and converted into makeshift shelters for internally displaced persons; and some had been used by armed groups for launching attacks, particularly in the Warshafana areas and Nafusa mountains, or as a detention facility by the Darna Mujahideen Shura Council; girls had been attacked and harassed by armed groups on their way to school in Tripoli; in certain areas controlled by Ansar al-Sharia, parents were afraid to send girls to school out of fear of abductions; and in Sirte and other areas controlled by groups pledging allegiance to ISIL, girls were not allowed to attend schools or permitted to do so only if wearing a full face veil; and even where schools remained standing and operating, parents refrained from sending children to school out of fear of injury during attacks. As a result, children's access to education had been severely limited and compromised by the conflict in Libya. In conclusion, the Worker members urged the Government to prioritize the rights of children and take practical measures to ensure that the prohibitions in law had real effect. What was needed was an effective programme to eliminate the worst forms of child labour, as well as immediate and comprehensive action, taking into account the importance of free basic education, the need to remove children from the worst forms of child labour, and to provide for their rehabilitation and social integration.

The Employer members emphasized that, in approximately 17 countries around the world, tens of millions of boys and girls were involved in fighting the wars of adults. Some were used as soldiers and took part directly in hostilities, while others were assigned to more logistical functions, or were subjected to sexual abuse. Those children were abducted, recruited against their will or enlisted of their own will for various reasons, without knowing the consequences. They reiterated that Convention No. 182 defined the forced or compulsory recruitment of children for use in armed conflict as one of the worst forms of child labour. It was also a violation of human rights and a war crime. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict prohibited any recruitment, whether compulsory or voluntary, of persons under 18 years of age by armed forces or armed groups. The Rome Statute of the International Criminal Court also defined a war crime as giving rise to individual liability, the conscription or enlistment of children under the age of 15 years into the armed forces or using them to participate actively in hostilities. The situation in Libya was serious and complex. The position of children affected by armed conflict in the country was deplorable. Libya was subject to a state of war, faced with the worst of political crises and an escalation of violence, which even included the bombing of hospitals and schools. Such devastating events happened in the absence of the rule of law, when there were no valid counterparts and it could be said that various governments and a state of war or guerrilla war coexisted within the same territory. The rule of law, a fundamental aspect which should never be lost, and a single and effective government, would be the beginning of any solution that could be found to the chaos prevailing in Libya. It was clear from the report of the Committee of Experts that the recruitment of children for the purpose of war, which was a calamity for the child's present and future, including compulsory religious and military training, which involved watching videos of decapitations, as well as being abused sexually, was undertaken by the ISIL, or warlike armed groups. In a state of war it was also difficult, for the State as such, to change such disastrous conduct without the situation of war first coming to an end and control being re-established over its territory. If it could not control the warlike groups, it would not be able to control effectively their flagrant violations of the Convention, and would not be in a position to offer security to children through education. The situation would be different if it was the Government of Libya that was engaged in such types of conduct that were in violation of the rights of children, but that did not come out of the report of the Committee of Experts. The international community as a whole needed to be aware of the extreme gravity of the situation in Libya and the harm that was being caused to all of its citizens, but particularly, and more seriously, to children. Although they recognized the complexity of the situation on the ground and the presence of armed groups and armed conflict in the country, the Employer members backed the call made by the Committee of Experts, and strongly urged the Government, despite the difficulties outlined above, to adopt on the most urgent possible basis: (1) measures to guarantee the full and immediate demobilization of all children and to halt in practice the forced recruitment of children under 18 years old by armed groups; and (2) immediate and effective measures to ensure that the thorough investigation and robust prosecution of all persons who recruited children under 18 years of age for use in armed conflict, and to impose in practice sufficiently effective and dissuasive penalties. The Employer members called on the Government to adopt effective measures as soon as possible to provide for the social and educational rehabilitation and integration of children, and to provide information on the measures taken for that purpose and the

results achieved. In view of the complexity of the situation in Libya, and taking the opportunity of the tripartite discussion in the present Committee, the Employer members issued an urgent call to the international community for collaboration to bring an end to the armed conflict, and therefore to eliminate all types of child labour, including its worst forms, in practice as soon as possible. In its report, the Committee of Experts also asked whether legislation existed establishing criminal penalties for drug trafficking, the production or use of indecent materials, and whether the list of hazardous types of work had been reviewed. It would be important to improve the legislation so that it specifically covered these matters, rather than the generic regulation that currently existed. The Employer members indicated that it was important for the rule of law to be re-established soon and for the international community and the ILO to make greater efforts to assist in this institutional recovery, which would undoubtedly help to mitigate the scourge faced by the country, and the daily suffering of its children.

The Worker member of Libya noted that in the period since 2011 terrorism and extremism had spread, and many military officers, journalists and civil society activists had been attacked or assassinated. ISIL and Al-Qaida had entered Libya, and different armed groups and militias had pledged allegiance to them. They had not been defeated yet and remained in a position to recruit children among their ranks. Those children were then moved to camps in Turkey, near the Syrian border, where the worst forms of child labour were occurring, as indicated in the comments of the Committee of Experts, and as defined in Article 3(d) of the Convention. In Syria, they were trained for combat with the financial support of those States that supported and exported terrorism. At the same time, the Libyan armed forces became organized and trained their soldiers. With due regard to the laws in compliance with the Convention, they began to fight terrorism in Benghazi and Darna and liberated many towns and villages from the hands of the terrorists, giving people back their lives and returning children to their schools. However, there were major problems of displacement with many vagrant children dreaming of returning to their homes. This was the reason for decreasing numbers of enrolment in primary schools and the deterioration of education since 2011. Numerous children were living in camps, with thousands displaced in Benghazi and Tripoli, and many of them dispersed in other cities. As had been mentioned in the report of the Committee of Experts, the Government must take efforts to adopt preventive measures to ensure access to basic education and prohibit the recruitment of children by armed militias. The lack of education was one of the major problems faced by children, such as in the town of Tawarga. Children were deprived of education in their early years. After a long period of time, they had been given the means to study in the towns and camps in which they had sought refuge. However, their situation and inappropriate environment had a profound effect on their psyche. Some of them were unable to attend school. They desperately needed to be psychologically rehabilitated. Their conditions pushed them to migrate to Europe on death boats. Moreover, there was another problem which had resulted in the decrease of the number of students, in particular the forcible displacement of about 20,000 families outside of Libya since 2011, with some of them living in poor and difficult conditions. Expressing her full support for the recommendations of the Committee of Experts, she urged the Libyan Government to take measures against child labour, including measures for the safe return of the displaced to their homes in a defined period, including to the town of Tawarga, without retaliation and guaranteeing protection. The same had to be ensured for refugees who had been displaced from Libya since 2011. The aim of such measures was to ensure that all children who had been deprived of education and their most basic rights could enjoy education and a life in dignity. The Government should also prosecute all terrorists and armed groups and militias that forcibly recruited children under the age of 18 and impose severe and dissuasive penal sanctions.

The Employer member of South Africa recalled the need to continue helping Libya to resolve the current problem through international organizations, and stated that the Government of Libya must ensure that full free basic education, rehabilitation and reintegration of all children within the territories that it currently controlled took place. It was urgent to bear in mind that the very future of Libya depended on such rehabilitation.

The Worker member of Italy supported the position expressed by the Worker member of Libya and added some comments. The line between slavery, human trafficking and smuggling was very slender and child refugees were particularly vulnerable to child labour in this process of exploitation. Many of the refugee children arriving in Italy had been formerly recruited into armed groups or subjected to forced labour in Libya, which had had a profound impact on their lives and future. Moreover, internally displaced and refugee children in Libya were particularly vulnerable to radicalization by groups such as ISIL who targeted them in schools and elsewhere. The problem of child labour, especially recruitment into armed militias, needed to be addressed at source. There was a need for the Libyan Government to take urgent and time-bound measures to commit sufficient resources to protect children and provide parents with the confidence that their children would be safe and secure in attending public, universal and free schools, which was an extremely urgent priority. Violence and human rights abuses were at the origin of the problems of child labour, and the Government of Libya had its own responsibility to address its role in ending it, as well as in the management of state detention centres for refugees and the internally displaced. She stated that the Italian trade unions had first supported the draft and then welcomed the law adopted last April, which properly addressed the legislative gaps found in the field of protection and integration of unaccompanied minors who come to Italy, such as the equal treatment with minors having Italian citizenship in section 1 and the non-refoulement of minors in any case in section 3. However, the point was to ensure the protection of children when they were in Libya, where there was a role for the international community as well. The Government of Libya needed to do more in practice to take immediate and effective measures to prevent the recruitment process as a matter of urgency and to restore its criminal justice system in order to prosecute the perpetrators of child labour. It must also ensure that child refugees or internally displaced children had access to an education, and received rehabilitation and social integration so that they had some prospects of a brighter future in Italy or in Libya.

The Government member of Egypt took note of the Government representative's statement concerning the relevant laws and regulations on the worst forms of child labour and related sanctions. The Government of Libya was facing a war against terrorism, which had begun to bear fruit by eliminating terrorist organizations, as mentioned in the UN report referred to by the Government's representative. The Government had made its efforts to counter terrorism and eliminate exactions against children. The Government was thus encouraged to pursue its efforts in that area and to avail itself of the technical assistance of the ILO in that regard, in order to ensure full compliance with Convention No. 182 and other ILO Conventions in general.

The Worker member of Spain underscored the importance of access to basic education as a key preventive

measure against child labour and the recruitment of children into armed forces by non-state military actors in Libya. As established in the Preamble to Convention No. 182, child labour was largely caused by poverty and the long-term solution lay in sustained economic growth leading to social progress, in particular poverty alleviation and universal education. Child labour could be avoided in Libya and in any other country. It was possible to prevent child labour and education was a key aspect in what should be a multisectoral approach to eliminate this practice. The situation was complicated and political divisions were rife in the country. Non-state actors prevailed and the United Nations recognized one of the three Ministries of Education. The Government of Libya should nevertheless step up efforts to adopt time-bound measures to prevent children's participation in hazardous labour and to eliminate child labour in general. The 2017 report of the Committee of Experts and the aforementioned UNICEF study condemned the living conditions of children and the vulnerable situation of young people forced to live in militia-run detention centres, which were no more than forced labour camps. Hundreds of thousands of young people were deprived of their basic human rights, forced into prostitution, and subject to extreme physical and psychological violence. In Sirte, for example, an estimated 10,420 returnee children (8,300 of primary school age; 2,120 of secondary school age) urgently needed education and psycho-social support. Furthermore, data obtained by UNICEF through the head of the Sirte regional education office in December 2016 showed that of the 101 schools in the city, which held 35,400 pupils (18,995 girls and 16,405 boys), 39 had been partially destroyed and two completely destroyed. According to the second principle of the Declaration of the Rights of the Child, "the child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him/her to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity". In order to give effect to and strengthen the application of the fundamental principles of the Convention, the Government of Libya must guarantee basic education in the areas of the country most in need, especially those affected by the conflict and those hardest to access, as well as to populations that had been entirely displaced or had received a considerable number of internally displaced persons and refugees. The Government of Libya was therefore called upon to fulfil its obligations under Article 7(2)(a) and (c) of the Convention by taking effective time-bound measures to ensure access to free basic education and, wherever possible, appropriate vocational training, for all children removed from the worst forms of child labour.

The Government member of Zimbabwe noted the submissions of the Government of Libya and urged the Committee to note and appreciate the efforts made by the Government of Libya under the current circumstances. Collective action was necessary in the fight against child labour, and the tripartite constituents in Libya should prioritize social dialogue and collaborate towards the elimination of child labour. Zimbabwe appreciated the show of commitment demonstrated by the Government of Libya, and called on the ILO to offer technical assistance to Libya in that regard.

The Government member of Algeria pointed out that the spirit of the ILO fundamental and governance Conventions was embodied in the legislative and regulatory system in Libya, under which the public authorities applied laws and regulations in organizing and managing their essential services. The Government had made efforts to protect children and prevent child labour by combating all forms of child labour in the country's particular economic and security conditions. In doing so, the Government protected children from intolerance and terrorism. The international community should help, encourage and support Libya in overcoming its crisis.

The Government representative indicated that the Government of Libya sought to stabilize the country. It was well known that the Libyan dictatorship had caused problems in the country for a long time, which, with ILO and international support, would be overcome. The report of the Committee of Experts was about terrorist groups and not the State of Libya. ISIL was using children for acts of terrorism and warfare. Migration flows through the country had also generated difficulties. Most migrants came from sub-Saharan Africa. While the Government had negotiated with the European Union with a view to resolving the crisis, hundreds of thousands of migrants remained homeless as they waited to migrate to Europe. As for education, it was not exactly as stated in the report, which referred to situations before 2011. Since then, primary schools had been progressing in stages and the current basic education system had been progressively restored. He stated that the economy of Libya had declined owing to the fluctuation of oil prices and problems in the oil regions, and caused financial problems in the country. The Government would address the subsequent problems in the education sector, in particular since it affected all families. He hoped that the Committee's conclusions would serve to support Libya and that the country would receive ILO technical assistance.

The Employer members took note of the statements made by the speakers and emphasized that everyone agreed that Libya was in a state of conflict and that the situation was complex. The Government had reported on actions taken in order to, among other things, improve education and increase the number of children in school. There were no magic solutions and waving a magic wand would not help. The adoption of legislation was not sufficient to resolve the situation either. The Employers' group called on the international community, the workers, the employers and the ILO to work together towards a solution to guarantee the demobilization of children in guerrilla groups, and their social and educational rehabilitation and integration.

The Worker members acknowledged the difficulties faced by Libya in complying with its international obligations in the context of an ongoing armed conflict but highlighted the need to take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency. While it was the primary responsibility of the Government, the international community should provide the necessary assistance, resulting in a form of joint responsibility. Although the Government claimed to have the legal provisions in place to address the problems identified by the Committee of Experts, it should also show the political will to commit adequate material resources to eliminate child labour in practice. To that effect, the Government was expected to recommit to its obligations to achieve the implementation of the Convention in practice and, in particular, to:

- take measures as a matter of urgency to ensure the full and immediate demobilization of all children and to put a stop, in practice, to the forced recruitment of children under 18 years of age;
- take immediate and effective measures to ensure that thorough investigations and robust prosecutions of all persons forcibly recruiting children under 18 years of age for use in armed conflict were carried out, and that sufficiently effective and dissuasive penalties were imposed in practice;
- take effective and time-bound measures to provide for the rehabilitation and social integration of children, and to provide information on the measures taken in that regard and on the results achieved; and

– take effective and time-bound measures to improve the functioning of the education system in the country, and to facilitate access to free basic education for all children, particularly girls, children in areas affected by armed conflict, and internally displaced children.

In conclusion, the worker members reiterated that action by the Government was needed as a matter of urgency, and the international community was called on to provide the necessary assistance in that regard.

Conclusions

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

While acknowledging the complexity of the situation prevailing on the ground and the presence of armed conflict, the Committee deeply deplored the current situation where children are forcibly required by armed groups pledging allegiance to the Islamic State in Iraq and Levant (ISIL) to undergo military and religious training. Furthermore, the Committee deeply deplored the situation of children, especially girls, who are deprived of education due to the situation in the country where although mandatory and free education exists in the country, many schools were closed, damaged and used as military or detention facilities which prohibits children from attending them.

Taking into account the discussion of the case, the Committee urged the Government of Libya, with the technical assistance of the ILO, to:

- **take measures as a matter of urgency to ensure the full and immediate demobilization of all children and to put a stop, in practice, to the forced recruitment of children under 18 years of age into armed groups;**
- **take immediate and effective measures to ensure that thorough investigations and prosecutions of all persons who forcibly recruit children for use in armed conflict are carried out and that sufficiently effective and dissuasive penalties are imposed in law and in practice;**
- **take effective and time-bound measures to provide for their rehabilitation and social integration and to provide information on the measures taken in this regard and on the results achieved.**

The Committee called on the ILO, the international community and employers' and workers' organizations to collaborate with the goal of eliminating all forms of child labour, including the worst forms of child labour without delay.

Appendix I. Table of Reports on ratified Conventions due for 2016 and received since the last session of the CEACR (as of 16 June 2017)

(articles 22 and 35 of the Constitution)

The table published in the Report of the Committee of Experts, page 615, should be brought up to date in the following manner:

Note: First reports are indicated in parentheses.
Paragraph numbers indicate a modification in the lists of countries mentioned in Part One (General Report) of the Report of the Committee of Experts.

Angola — 25 reports requested

- 24 reports received: Conventions Nos. 1, 6, 14, 29, 45, 68, 69, 73, 74, 81, 87, 88, 89, 91, 92, 98, 100, 105, 106, 107, 108, 111, 138, 182
- 1 report not received: Convention No. 26

Bangladesh — 9 reports requested

- 8 reports received: Conventions Nos. 11, 59, 81, 87, 90, 98, 144, (185)
- 1 report not received: Convention No. MLC

Burundi — 27 reports requested

- All reports received: Conventions Nos. 1, 11, 12, 14, 17, 19, 26, 27, 29, 42, 52, 62, 64, 81, 87, 89, 90, 94, 98, 100, 101, 105, 111, 135, 138, 144, 182

Canada — 6 reports requested

- All reports received: Conventions Nos. 26, 87, 108, 144, 160, (MLC)

China - Macau Special Administrative Region — 5 reports requested

(Paragraph 32)

- All reports received: Conventions Nos. 6, 26, 87, 98, 144

Congo — 19 reports requested

(Paragraph 26)

- 12 reports received: Conventions Nos. 6, 11, 13, 26, 95, 98, 100, 111, 119, 138, 144, 150
- 7 reports not received: Conventions Nos. 29, 81, 87, 105, 182, (185), MLC

Croatia — 31 reports requested

- 16 reports received: Conventions Nos. 11, 13, 14, 81, 87, 105, 122, 129, 132, 136, 138, 139, 159, 162, (185), (MLC)
- 15 reports not received: Conventions Nos. 29, 45, 90, 98, 100, 103, 106, 111, 113, 119, 148, 155, 156, 161, 182

Cyprus — 17 reports requested

- All reports received: Conventions Nos. 11, 19, 87, 90, 94, 95, 98, 102, 114, 121, 123, 124, 128, 141, 144, 158, 160

Democratic Republic of the Congo — 21 reports requested

(Paragraphs 26 and 32)

- 9 reports received: Conventions Nos. 29, 62, 81, 88, 100, 105, 111, 138, 182
- 12 reports not received: Conventions Nos. 11, 26, 87, 94, 95, 98, 119, 120, 135, 144, 150, 158

Djibouti — 25 reports requested

- All reports received: Conventions Nos. 11, 13, 26, 29, 63, 77, 78, 81, 87, 88, 94, 95, 96, 98, 99, 100, 111, 115, 120, 124, 125, 126, 138, 144, 182

El Salvador — 10 reports requested

- All reports received: Conventions Nos. 77, 78, 81, 87, 98, 99, 131, 141, 144, 156

France — 29 reports requested

- All reports received: Conventions Nos. 11, 12, 17, 19, 24, 35, 36, 42, 77, 78, 87, 90, 94, 95, 98, 102, 113, 114, 118, 124, 125, 126, 131, 141, 144, 156, 158, 159, 187

Ghana — 8 reports requested

(Paragraph 27)

- All reports received: Conventions Nos. 11, 26, 90, 94, 100, 111, 182, (MLC)

Greece — 17 reports requested

- 10 reports received: Conventions Nos. 11, 19, 77, 78, 90, 95, 124, 126, 141, 160
- 7 reports not received: Conventions Nos. 17, 42, 100, 102, 111, 122, 156

Ireland — 32 reports requested

- 31 reports received: Conventions Nos. 6, 11, 12, 19, 26, 29, 62, 81, 87, 88, 96, 98, 99, 100, 102, 105, 108, 111, 118, 121, 122, 124, 138, 139, 144, 155, 159, 160, 176, 182, 189
- 1 report not received: Convention No. MLC

Kiribati — 8 reports requested

(Paragraph 27)

- 5 reports received: Conventions Nos. 29, 105, 138, 182, (MLC)
- 3 reports not received: Conventions Nos. 100, 111, (185)

Lao People's Democratic Republic — 7 reports requested

(Paragraphs 26 and 32)

- 5 reports received: Conventions Nos. 29, 100, 138, 144, 171
- 2 reports not received: Conventions Nos. 111, 182

Lebanon — 33 reports requested

- 29 reports received: Conventions Nos. 8, 9, 17, 19, 29, 45, 58, 71, 73, 74, 81, 88, 100, 105, 115, 120, 127, 133, 136, 138, 139, 142, 147, 148, 159, 170, 174, 176, 182
- 4 reports not received: Conventions Nos. 98, 111, 122, 150

Malawi — 13 reports requested

- 12 reports received: Conventions Nos. 11, 12, 19, 29, 100, 111, 138, 144, 150, 158, 159, 182
- 1 report not received: Convention No. 45

Maldives, Republic of — 10 reports requested

- 8 reports received: Conventions Nos. (29), (87), (98), (100), (105), (111), (138), (182)
- 2 reports not received: Conventions Nos. 185, MLC

Malta — 28 reports requested

(Paragraph 32)

- 11 reports received: Conventions Nos. 81, 87, 96, 98, 108, 117, 119, 127, 129, 136, 148
- 17 reports not received: Conventions Nos. 2, 11, 12, 13, 19, 29, 42, 62, 88, 100, 105, 111, 135, 138, 141, 159, 182

Mexico — 19 reports requested

- All reports received: Conventions Nos. 11, 12, 17, 19, 22, 42, 55, 87, 100, 102, 111, 112, 118, 134, 141, 159, 163, 164, 166

Nepal — 7 reports requested

- All reports received: Conventions Nos. 29, 100, 105, 111, 138, 144, 182

Netherlands - Aruba — 9 reports requested

- 6 reports received: Conventions Nos. 17, 25, 113, 114, 118, 121
- 3 reports not received: Conventions Nos. 122, 140, 142

Panama — 15 reports requested

- All reports received: Conventions Nos. 11, 12, 17, 19, 29, 42, 81, 105, 113, 114, 125, 126, 138, 182, MLC

Papua New Guinea — 15 reports requested

(Paragraph 32)

- 11 reports received: Conventions Nos. 8, 11, 12, 19, 22, 29, 42, 85, 87, 98, 158
- 4 reports not received: Conventions Nos. 105, 122, 138, 182

Portugal — 16 reports requested

- All reports received: Conventions Nos. 11, 12, 17, 18, 19, 29, 81, 102, 105, 129, 137, 138, 142, 156, 158, 182

Rwanda — 15 reports requested

(Paragraph 32)

- 13 reports received: Conventions Nos. 11, 12, 19, 29, 81, 87, 89, 98, 105, 118, 122, 138, 182
- 2 reports not received: Conventions Nos. 17, 42

Samoa — 5 reports requested

(Paragraphs 27 and 32)

- All reports received: Conventions Nos. 29, 105, 138, 182, (MLC)

San Marino — 22 reports requested

- 4 reports received: Conventions Nos. 87, 98, 111, 154
- 18 reports not received: Conventions Nos. 29, 100, 103, 105, 119, 138, 140, 142, 143, 144, 148, 150, 151, 156, 159, 160, 161, 182

Sao Tome and Principe — 11 reports requested

(Paragraph 32)

- 10 reports received: Conventions Nos. 17, 18, 19, 29, 105, 138, 151, 155, 159, 182
- 1 report not received: Convention No. 81

Singapore — 8 reports requested

- 1 report received: Convention No. MLC
- 7 reports not received: Conventions Nos. 11, 12, 19, 29, 81, 138, 182

Slovenia — 20 reports requested

- All reports received: Conventions Nos. 11, 12, 19, 24, 25, 29, 81, 102, 105, 113, 114, 121, 126, 129, 138, 156, 158, 171, 182, 187

Sri Lanka — 8 reports requested

- 3 reports received: Conventions Nos. 81, 98, 138
- 5 reports not received: Conventions Nos. 11, 18, 29, 105, 182

Tunisia — 17 reports requested

(Paragraph 32)

- All reports received: Conventions Nos. 11, 12, 17, 18, 19, 29, 81, 105, 107, 113, 114, 118, 138, 144, 151, 154, 182

Tuvalu — 1 report requested

(Paragraphs 26 and 27)

- All reports received: Convention No. (MLC)

Uganda — 16 reports requested

(Paragraph 32)

- 13 reports received: Conventions Nos. 12, 26, 29, 45, 81, 105, 111, 122, 138, 144, 158, 159, 182
- 3 reports not received: Conventions Nos. 11, 17, 19

United Kingdom - Bermuda

8 reports requested

(Paragraph 32)

· All reports received: Conventions Nos. 11, 12, 17, 19, 29, 42, 105, (MLC)

United Kingdom - British Virgin Islands

7 reports requested

· All reports received: Conventions Nos. 11, 12, 17, 19, 29, 87, 105

Grand Total

A total of 2,303 reports (article 22) were requested,
of which 1,781 reports (77.33 per cent) were received.

A total of 235 reports (article 35) were requested,
of which 226 reports (96.17 per cent) were received.

Appendix II. Statistical table of reports received on ratified Conventions
(article 22 of the Constitution)

Reports received as of 16 June 2017

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%
As a result of a decision by the Governing Body, detailed reports were requested as from 1959 until 1976 only on certain Conventions.							
1959	995	200	20.4%	864	86.8%	902	90.6%
1960	1100	256	23.2%	838	76.1%	963	87.4%
1961	1362	243	18.1%	1090	80.0%	1142	83.8%
1962	1309	200	15.5%	1059	80.9%	1121	85.6%
1963	1624	280	17.2%	1314	80.9%	1430	88.0%
1964	1495	213	14.2%	1268	84.8%	1356	90.7%
1965	1700	282	16.6%	1444	84.9%	1527	89.8%
1966	1562	245	16.3%	1330	85.1%	1395	89.3%
1967	1883	323	17.4%	1551	84.5%	1643	89.6%
1968	1647	281	17.1%	1409	85.5%	1470	89.1%
1969	1821	249	13.4%	1501	82.4%	1601	87.9%
1970	1894	360	18.9%	1463	77.0%	1549	81.6%
1971	1992	237	11.8%	1504	75.5%	1707	85.6%
1972	2025	297	14.6%	1572	77.6%	1753	86.5%
1973	2048	300	14.6%	1521	74.3%	1691	82.5%
1974	2189	370	16.5%	1854	84.6%	1958	89.4%
1975	2034	301	14.8%	1663	81.7%	1764	86.7%
1976	2200	292	13.2%	1831	83.0%	1914	87.0%

Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested		Reports 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%
2011	2735	960	35.1%	1855	67.8%	2117	77.4%

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 (March 2011), reports are requested, according to certain criteria, at yearly, three-yearly or five-yearly intervals.							
2012	2207	809	36.7%	1497	67.8%	1742	78.9%
2013	2176	740	34.1%	1578	72.5%	1755	80.6%
2014	2251	875	38.9%	1597	70.9%	1739	77.2%
2015	2139	829	38.8%	1482	69.3%	1617	75.6%
2016	2303	902	39.2%	1600	69.5%	1781	77.3%

REPORT OF THE COMMITTEE ON THE APPLICATION OF STANDARDS

SUBMISSION, DISCUSSION AND APPROVAL

International Labour Conference

Record of Proceedings 18

106th Session, Geneva, June 2017

Date: Tuesday, 11 July 2017

Thirteenth sitting

Friday, 16 June 2017, 3.25 p.m.

President: Mr Carles Rudy

Report of the Committee on the Application of Standards: Submission, discussion and approval

The President
(Original Spanish)

The next item that we have before us is the submission, discussion and approval of the report of the Committee on the Application of Standards, contained in *Provisional Records* Nos 15-1 and 15-2.

I invite the Officers of the Committee – Mr González Nina, Chairperson; Ms Regenbogen, Employer Vice-Chairperson; Mr Leemans, Worker Vice-Chairperson; and Mr Khan, Reporter – to take their places on the podium.

I now give the floor to the Reporter, Mr Khan, who is going to present this report.

Mr Khan
Reporter for the Committee on the Application of Standards

It is a pleasure and honour to present to the plenary the report of the Committee on the Application of Standards. The Committee is a standing body of the International Labour Conference, empowered under article 7 of its Standing Orders to examine the measures taken by States to implement the Conventions that they have voluntarily ratified. It also examines the manner in which States fulfil their reporting and other standards-related obligations as provided for under the ILO Constitution. The Committee is a unique tripartite forum at the international level because it brings together actors from the real economy, drawn from all regions of the world. Everyone worked very hard in order to ensure that the Committee could carry out its work successfully.

Before presenting the report of the Committee, I would like to acknowledge that the informal tripartite consultations on the working methods of the Committee that have been held periodically since March 2016 are making a substantial contribution to the smooth operation of the Committee during the two weeks of the Conference. The measures agreed upon during these consultations, for instance to improve time management and the use of information technology, or to simplify the working methods of the secretariat, helped the Committee to carry out its work in a very effective and harmonious manner. I am therefore

happy to be in a position to report that the Committee was able at this session to conclude its work successfully.

The report before the plenary is divided into two parts. The first part contains the General Report of the Committee, which includes a record of its general discussion and discussion of the General Survey of the Committee of Experts. The second part consists of a detailed record of the discussion of individual cases examined by the Committee on compliance with ratified Conventions and the related conclusions adopted for each of these cases.

I will recall the salient features of the Committee's discussions in respect of those questions.

The general discussion of this year emphasized again the fruitful dialogue between the Committee on the Application of Standards and the Committee of Experts on the Application of Conventions and Recommendations. It is now an established practice for both Committees to have direct exchanges on matters of common interest. Accordingly, the Vice-Chairpersons of the Committee held an exchange of views on standards-related matters and the operation of the ILO supervisory system with the members of the Committee of Experts at its last session in November–December 2016.

The Conference Committee also had the pleasure of welcoming the Chairperson of the Committee of Experts, Mr Koroma, who attended the first day of its session as an observer, with an opportunity to address the Committee. I retain from his statement the commitment of the Committee of Experts to maintain interaction between the two Committees, as well as its openness to take into account any proposal made in the framework of the informal tripartite consultations to improve the efficiency and effectiveness of the supervisory system that might be brought to its attention.

This year, as a result of discussions on working methods, the Committee benefited from the reports of the secretariat on the technical assistance provided by the Office, as well as the follow-up to the Committee's conclusions of last year, and on initiatives proposed by the Office to member States to ensure better respect of their constitutional obligations in relation to standards-related matters. The new practice was well received.

The Committee welcomed the opportunity to discuss vital issues of occupational safety and health (OSH). In its examination of the General Survey on the OSH instruments concerning the promotional framework, construction, mining and agriculture, it reaffirmed its commitment to protecting workers from occupational accidents and diseases and called for a reinvigoration of efforts in that respect. The Committee recalled that the promotion of a safe and healthy working environment for all was a core element of the ILO's founding mission, reflected in the ILO Constitution and reaffirmed in the ILO Declaration of Philadelphia (1944), and constituted a key component of the Decent Work Agenda. Moreover, it recalled the opportunity provided by the 2030 Agenda for Sustainable Development and, in particular, Sustainable Development Goal 8 and target 8.8.

The Committee recognized the importance of the promotional framework for OSH and encouraged the Office to undertake a campaign for ratification and implementation of the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). The Committee expected the Office to provide the technical support requested by member States and reinforce its technical assistance on OSH, including for the implementation of the instruments concerned.

The General Survey, together with the ensuing discussion and outcome adopted, will offer a fundamental contribution to relevant ILO work, particularly in the context of outcome 7 of the Programme and Budget 2018–19 on promoting safe work and workplace

compliance including in global supply chains. The Committee also noted that the General Survey and its discussion could contribute to the work of the Standards Review Mechanism and its Tripartite Working Group, particularly its consideration of the standards policy with a view to ensuring institutional coherence on OSH.

Lastly, the Committee was able to adopt a list of 24 individual cases for discussion this year. In doing so, it pursued its efforts towards achieving the balance sought between the fundamental, governance, and technical Conventions, as well as geographical balance and balance between developed and developing countries. Although challenged by time constraints, the Committee was able to examine those 24 cases and adopt conclusions with respect to all of them. The governments concerned were given the opportunity to express their views thereon, and their statements have been duly noted in the Committee's report. I have greatly appreciated the opportunity to observe the full engagement of all parties in the process.

In closing, I would like to thank the Chairperson of the Committee, Mr González Nina, for his able skill in running the meetings and his effective time management, which helped the Committee complete its important work. I would also like to thank the Employer Vice-Chairperson, Ms Regenbogen, and the Worker Vice-Chairperson, Mr Leemans, for their expertise and the collaborative spirit in which they approached the work of the Committee. I recommend that the Conference approve the report of the Committee on the Application of Standards.

Mr Leemans
Worker Vice-Chairperson of the Committee
on the Application of Standards
(Original French)

In this room, the task of the Conference Committee on the Application of Standards is a fundamental one. In monitoring application of the international labour standards, our Committee is part of the founding mission of promoting social justice, which is the goal that the ILO set for itself at its inception. The quest for social justice is never-ending. Social justice is a fundamental value that workers, employers and governments must strive together to craft with their own hands, with willpower and a deep conviction that universal and lasting peace can only exist if founded on social justice. To speak of a never-ending quest for social justice implies that we must remain constantly aware of the social injustices that already exist or seem likely to emerge, identify the root causes and work together to resolve and prevent them.

We must be aware of the challenges raised by the current state of the world, including climate change, armed conflict, globalization and the rise of populism. In order to address them, we must focus on the need to promote and implement a universal system of international labour standards that will strengthen universal human rights and regulate the social, economic, environmental and democratic aspects of globalization.

The role of our Committee is to ensure that international labour standards are respected by the member States that have ratified them. Ensuring strict adherence to these standards must be part of the broader and more ambitious goal of establishing a global legal and social order so that everyone can enjoy truly humane working conditions.

Promoting and defending the universality of labour standards is one of the main ways in which our Organization can respond to the dismantling of social protection. Respect for international labour standards is the first line of defence against discontent arising from injustice, poverty and deprivation caused by violation of the rights enshrined in these instruments. The Committee plays a pivotal role in maintaining social peace by calling to order member States that are said to have violated international labour standards that they

have ratified. These standards are – and continue to be – based on the hope of a significant percentage of the world's people for better living conditions. By promoting and developing these standards, we will be able to achieve the goal of establishing truly humane working conditions.

Throughout its work, the Workers' group of the Committee has been mindful of the goal of universal international labour standards and the common aspirations enshrined therein. This task is difficult in an increasingly divided world. The worldwide rise of populism is proof of these divisions. Globalized competition and the economic crisis have led to a resurgence of populist discourse and cultural isolationism. This rise in identity politics and populist discourse overshadows the very socio-economic causes of social injustice. It is these causes that we must address. These observations prompt us to renew the call for cooperation between States in order to promote social progress, raise standards of living and improve the health, education and well-being of all peoples. The ILO's constituents made that wish clear by appending the Declaration of Philadelphia to the Organization's Constitution in 1944.

Turning to the work of our Committee, needless to say we considered a list of individual cases, which are selected on the basis of the report submitted by the Committee of Experts. The procedure for drawing up this list does not seem to be fully understood, or even recognized, by some member States even though it is explained in document D.1 of our Committee and an informal meeting for the governments is organized immediately following the adoption of the list of individual cases. This meeting is, moreover, attended by the Committee's Worker and Employer spokespersons, who can thus provide useful information.

In order to monitor strict adherence to international labour standards, we need an overview of their implementation by member States. That is the sole purpose of the report of the Committee of Experts to which I have just referred. This report is mainly based on the observations that member States are required to submit pursuant to the Constitution of our Organization, supplemented by observations from employers' and workers' organizations. Last year, workers' organizations made a crucial contribution by submitting no less than 846 observations. We would like to thank them and encourage them to continue with this colossal task.

Each year, our Committee holds a special sitting on what is known as "cases of serious failure to fulfil reporting obligations". At this year's meeting, we noted that, once again, too many member States are disregarding these constitutional reporting obligations; this is a major impediment to the supervisory role of the Committee of Experts, and therefore to that of the Committee on the Application of Standards.

This year, the list contained no cases of progress. While the Workers' group has always been in favour of discussing a case of progress, we believe that this case of progress should not be included in the list of 24 cases, which is already quite short in view of the numerous cases of serious violations of the Conventions. Moreover, following the adoption of the list of cases, we said that the Workers' group would have liked to examine a number of additional cases of particular concern, but unfortunately the list is restricted to 24 cases.

Among the cases that we would have liked to examine are those of the Philippines, Indonesia, Colombia and Honduras, where violations of workers' fundamental rights are of particular concern. The increasing use of violence and intimidation has also been identified as a cause of deep concern within the Workers' group. The 2017 International Trade Union Confederation (ITUC) Global Rights Index, published three days ago, shows evidence of this disturbing trend. Such recourse to violence and intimidation against peaceful fundamental civil and trade union rights movements must be strongly condemned by the international community.

The Workers' group of the Committee wished to emphasize that one case, in particular, was missing from the list: that of Brazil. The Brazilian Senate is currently considering a bill designed to undermine the right to collective bargaining. This attack on fundamental labour rights comes at a time when the country is facing a severe political crisis that raises many serious issues. The changes introduced through this bill will expose millions of workers to exploitation and abuse. Unfortunately, the voices of those who will suffer its catastrophic consequences were not heard; there were no consultations with trade union organizations and the armed forces were deployed to break up demonstrations. This kind of behaviour is not worthy of the modern democracy for which the people of Brazil have fought so hard. The Workers' group of the Committee has said that it was extremely disappointed to have been unable to discuss the case this year. Clearly, this does not mean that the Workers will stand idly by while fundamental rights and democratic institutions in Brazil are destroyed; they will use all available means, including those of the ILO, to halt the decline in social progress that we have seen over the past 20 years.

Having adopted the list, the Workers' group has always been mindful of the very serious situations that were not included. We hope that these cases can be dealt with and resolved as soon as possible within the framework of other ILO supervisory mechanisms. Nevertheless, the consensus approach that has been in place since 2015 has enabled us to adopt conclusions in all of the cases that the Committee had before it. We succeeded in overcoming our differences of opinion and in adopting strong, operational consensus conclusions that will enable the member States that undertake to implement them to bring their legislation and practice into line with the Conventions.

I would like to reiterate, and to stress, that these conclusions are consensus-based. But I would also like to make specific mention of an individual case dealt with in our Committee, that of Bangladesh concerning the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Workers' group expressed the desire to include a special paragraph on the Bangladeshi case, but the consensus conclusion adopted does not contain such a paragraph. I want to stress that this does not mean that the Bangladeshi workers who have been deprived of their fundamental rights have lost our support; on the contrary, the Government of Bangladesh must report on the substance of the conclusion adopted before the next session of the Committee of Experts, to be held in November 2017. The Workers' group will carefully read the experts' remarks in order to take stock of developments, and let us hope that these will be positive.

The consensus-based approach should not be allowed to conceal our persistent and sometimes-significant differences of opinion. The right to strike is a case in point. While reiterating that the Workers' group will not fail in its commitment to respect the common position agreed in 2015 and reaffirmed in 2017, we recall that this position does not, of course, mean that we are abandoning our firm position on the right to strike. We have affirmed, we reaffirm and we will always strongly reaffirm that the right to strike is, of necessity, included in Convention No. 87. In today's world, a world characterized by repeated and sometimes violent attacks against social protection for all citizens, fundamental workers' rights, freedom of association and the right to organize, the right to strike is the fundamental right that allows workers to ensure that their voices, too often ignored by governments and employers, are heard.

In addition to examining individual cases, we also looked at the General Survey, which this year focused on the promotion of a safe and healthy working environment with a focus on three industries: construction, mines and agriculture. The General Surveys carried out by the Committee of Experts have always been particularly important for us because they also shed light on the laws and practices of member States that have not ratified the Conventions and Recommendations reviewed, and thus on prospects for the ratification and development of international labour standards.

The subject of this year's General Survey, health and safety, is an issue that has been raised consistently by trade union movements. It is no exaggeration to say that this concern for safeguarding workers' health and, more importantly, their lives has been the source of many social movements throughout history. Occupational safety and health is a key issue that has been discussed through the ages and remains relevant today. We need only look at the statistics provided in the introduction to the General Survey: every day, some 6,300 workers die from occupational accidents or work-related diseases, amounting to more than 2.3 million deaths a year, i.e. one death every 15 seconds. There is clearly a need to act. We welcome the outcome of the Committee's discussion of the General Survey, which the Committee approved and which calls on the Office to undertake a campaign for the ratification of the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). The Workers' group of the Committee also encourages member States to ratify the sectoral Conventions given the very high accident rates in these sectors.

The Workers' group was also informed about the outcome of the work in the Committee for fundamental principles and rights at work. We therefore welcomed and, moreover, commended in our closing statement to the Committee on the Application of Standards the suggestion by the European Union that we "explore the suitability and feasibility of integrating occupational safety and health (OSH) into [fundamental principles and rights at work] as they related to the life, health and dignity of workers". We attach great importance to this suggestion and hope that the Organization will follow up on it.

In order to undertake this substantive work, our Committee needs to develop effective, efficient working methods given that the Conference has been reduced to two weeks. Our Committee routinely considers its working methods at the outset of its work and a number of technical improvements have been made in order to manage time more efficiently. Nevertheless, reducing the Conference from three to two weeks means an extremely heavy schedule and tight discipline in terms of time management. The main concern of the Workers' group is to maintain the quality of its substantive work. The importance and seriousness of the matters dealt with by the Committee and, more broadly, by the Conference requires fruitful, substantive discussion that allows all Members to share their views and experience in order to enrich the work of the Conference, thereby giving our own work a broader impact.

Tripartism, the hallmark of the ILO, is clearly an ongoing challenge from this point of view. Discussions on the Committee's working methods also dealt with issues relating to cooperation between our Committee and the Committee of Experts, which are in fact two distinct but intrinsically linked pillars of the ILO standards-monitoring system. This issue of cooperation is of paramount importance. In recent years, we have seen increasing cooperation between these two pillars of the monitoring mechanism. The two bodies are independent of one another and must remain so, but without necessarily having to work in isolation. Their independence is essential to the quality of the analyses produced; independent interpretation of the legal scope, content and meaning of the provisions of the Conventions by the experts is vital so that they can analyse the specific situations brought to their attention. This independence must be respected, which of course does not prevent our Committee from providing its own analysis of these situations.

Many initiatives aimed at improving the effectiveness of our Organization's supervisory mechanisms are under way. The Workers' group of the Committee considers it essential to bear in mind the need to maintain the independence of the various supervisory bodies as a prerequisite for achievement of the ILO's constitutional objectives. The Committee's work can only be a resounding success and make a real contribution to the promotion of social justice if all of the tripartite constituents are fully engaged in this discussion.

The Workers' group also wished to share its concern about the general attitude of the Government group to the work of the Committee. At the opening sitting, we appealed to that group to make a real contribution to the Committee's work, but we were sorry to see that there was a disturbing lack of commitment. Of course, we are not talking about Governments taking the floor in support of countries that are brought before the Committee – clearly, they are fully entitled to support any governments that they choose – but we have seen that in many cases, the governments are not themselves known for respecting the fundamental international labour standards.

These are what we are tempted to call "failures of diplomacy". We hope that these failures, of which we have recently seen frequent examples in the Government group of the Committee, will in future be replaced by a diplomacy that respects and promotes international labour standards and strengthens the tripartism that is the hallmark of the Organization.

The Government group must be convinced of the decisive role that it can play in our Committee's work by endeavouring to promote and respect international labour standards. We have seen moves in this direction by some governments and groups of governments and encourage them to make further efforts in the future.

We nevertheless welcome the constructive work that the Committee has managed to carry out since 2015. The common position adopted in 2015 and reaffirmed in 2017 has made it possible to put the ILO standards supervisory mechanisms back on track, and we hope to be able to further strengthen them in the future.

We would like to conclude by recalling the fundamental mission of our Committee: to protect and promote the application of international labour standards by member States. All of the tripartite constituents in our Committee must be mindful of this fundamental need in order to achieve our Organization's constitutional objectives. In any event, the Workers' group will remain firmly committed to this goal.

One last word: our Committee's success would have been impossible without everyone's participation. I would like to thank, in particular, its Chairperson and Reporter, as well as Ms Regenbogen, the Employer Vice-Chairperson. I think we can safely say that we have achieved outstanding work and a satisfactory outcome.

Ms Regenbogen
Employer Vice-Chairperson of the Committee
on the Application of Standards

On behalf of the Employers' group, I commend the report of the Committee on the Application of Standards and recommend its approval. The work of the Committee took place this year once again in a constructive and open atmosphere. The Committee demonstrated its ability to lead a meaningful and results-oriented tripartite dialogue. It continues to reaffirm its central role in the ILO regular standards supervisory system. In particular, it provides the only opportunity for tripartite constituents from ILO member States to discuss with Governments, Workers, and Employers issues concerning the application of ratified Conventions, as well as concrete steps for achieving improved and sustainable compliance on the basis of the Committee of Experts' technical preparatory work.

As those engaged in labour relations or international relations on an ongoing basis will know, it is possible to have a divergence of views among the social partners. While divergences continue to exist within our Committee on issues concerning the interpretation of Conventions, they were voiced in a spirit of mutual respect and understanding. The Committee worked effectively and efficiently, concluding a very heavy workload on time

thanks to excellent time management by the Chairperson and the full cooperation of the delegates. Assistance also came from certain technical innovations, and this progress, in our opinion, is evidence of the value and contributions of the working party on working methods. We would welcome additional opportunities for this group to meet and continue its efforts to improve the efficiency of the work of the Committee.

At this session of the Conference the Committee began by discussing the general section of the Committee of Experts' report, with the Employers' group taking the opportunity to highlight a number of positive elements and to propose improvements to the work of the Committee of Experts, the Office, and the overall supervisory system.

Among the recommendations we put forward were some aimed at making the Committee of Experts' report more reader-friendly, easily understandable, transparent and relevant. We also made recommendations regarding the text of submissions concerning individual cases made by workers' and employers' organizations to be made available by hyperlink in the electronic version of the Committee of Experts' report and on the NORMLEX website, for those organizations that wish to have their comments made public. The Employers also recommended the publication in NORMLEX of either the mission reports issued as follow-up to the conclusions of the Committee, or summaries of mission results containing only non-confidential information.

The Employers also took the opportunity in the general discussion to express three main concerns. First, the increase in serious cases involving member States' failure to meet their reporting obligations. Second, the increased workload of the Committee of Experts and its consequences for their ability to examine all governments' reports in a timely manner, a situation which undermines the effectiveness of the supervisory system. Third, the continued divergence of views on the interpretation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the link that the Committee of Experts has drawn between Convention No. 87 and the right to strike, as well as the extensive interpretation developed by the Committee of Experts on that basis.

In the 2017 report of the Committee of Experts, with respect to Convention No. 87, a total of 45 of the 64 observations and 51 of the 62 direct requests deal in one way or another with the right to strike; 22 direct requests deal exclusively with the right to strike. The Employers remain troubled that, despite disagreement between the tripartite constituents as to whether the right to strike is included in Convention No. 87 – in the Employers' view it is not – the right to strike has remained a major issue in the Experts' supervision of Convention No. 87 and its application by member States. We note that, owing to the lack of consensus, the conclusions of the Committee do not include direction to member States on this matter.

The Employers' group is of the view that matters concerning the right to strike or the regulation of industrial action can be legitimately addressed by governments at the national level. We trust and hope that the Experts, in their next report, will provide an effective basis for meaningful discussion of the issues that fall within the scope of the Conventions and, importantly, that they will facilitate further consensus in our group and not encourage additional divergence.

The Employers suggest that further opportunities for dialogue between the members of the Conference Committee and the members of the Committee of Experts would be welcomed and could help to overcome some of our disagreements in this respect.

We then discussed the General Survey in the Committee's work. The General Survey, as you have heard from the previous speaker, offered an opportunity to highlight both the need to continue improving safety and health at work and the positive effect this has on working conditions, productivity, and economic and social development. We were also able

to highlight the fact that OSH is a priority for ILO constituents and should be given clear priority in the ILO's activities, including standards-related activities.

We also discussed whether the ILO could increase its technical assistance to member States on OSH-related issues, in particular for the collection of data, making risk assessments and focusing labour inspection resources on high-risk sectors. A preventive approach to OSH, involving awareness raising, information, advice and incentives, should always be given priority over systems that create penalties or other repressive approaches. The Employers' group took the view that the ILO could help build the capacity of both employers' and workers' organizations on OSH matters, as these organizations play an indispensable role in the promotion of an OSH culture and the implementation of ILO systems and OSH programmes.

To achieve effective OSH management in the workplace, it is important that employers and workers commit to their responsibilities and duties and work together to promote a preventive OSH culture.

While OSH regulation and institutions are very important, the Employers submit that, to be effective, the former must be simple and clear, and the latter not unduly burdened with bureaucracy. The Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), is a modern and flexible ILO instrument. The Employers' group strongly supports the promotion of its ratification and implementation by member States. In order to be effective, national programmes and strategies should be built from a position of tripartite joint ownership. On the other hand, the Safety and Health in Construction Convention, 1988 (No. 167), the Safety and Health in Mines Convention, 1995 (No. 176), and the Safety and Health in Agriculture Convention, 2001 (No. 184), do not seem to have found great acceptance from member States and this is important to take into account. In the medium term, ILO standards on OSH must be consolidated to maintain their relevance as orientation and reference points. Pending their consolidation, reporting and supervision relating to OSH Conventions should focus on the crucial provisions.

I will turn now to the Committee's discussion of individual cases, which, in my view, constitutes the heart and soul of our consideration and discussion of the application of ratified Conventions by member States. The previous speaker spent some time discussing the adoption of both the preliminary and the final list. I wish to lend my support to the adoption of the final list of 24 cases. We believe this is a real achievement constituting a balanced list of cases (16 relating to fundamental Conventions, five to priority Conventions and three to technical Conventions) negotiated in good faith and delivered by the proposed deadline. We made every effort to give due consideration to regional balance, the balance of the Conventions considered, and the level of development of member States whose cases were being considered. We think it is also notable that the Committee on the Application of Standards this year, as last year, adopted short, clear and straightforward conclusions which identify what is expected from the governments in order to apply ratified Conventions in a clear and unambiguous way, and which reflect concrete steps to address compliance issues. Conclusions are not the place to repeat elements of the discussion or information or declarations from a government. This of course will be reproduced in the *Record of Proceedings* so that the reader can gain a full and balanced understanding of the case. Conclusions should be short, clear and straightforward, concern measures within the scope of the Convention being examined, and be based on consensus. Thus, if Employers, Workers or Governments have expressed divergent views, this has been reflected in the Committee's *Record of Proceedings*, not in the conclusions. Divergent views are also presented in Part 1 and Part 2 of the Committee's report (the General Report and the discussion of individual cases, respectively). The Employers believe that the Committee as a whole should be very proud of the active and constructive engagement of the social partners in the preparation of the conclusions.

Concerning follow-up to the Committee's conclusions, we emphasize that this is an important issue and a key facet of tripartite governance within the supervisory system, and without doubt a fundamental element of the ILO's work in relation to the application of member States' obligations under ratified Conventions. We believe that it would be helpful if the Office's technical assistance and follow-up missions focused on the areas where consensus was achieved. The text of the conclusions is a mandate for the Office which should not be unilaterally enlarged without the consensus agreement of the Committee. We encourage the International Labour Standards Department to include a specialist from ACT/EMP and a specialist from ACTRAV in the preparation and implementation of the conclusions. This is consistent with the ILO's tripartite structure and mandate, and ensures that the work of the supervisory system is balanced, transparent, consistent and credible.

In addition, the Employers encourage the International Labour Standards Department to consult the Employers' and Workers' secretariats at the national level to ensure that the most representative employers' and workers' organizations are well prepared to contribute to the success of the respective missions. Lastly, with respect to follow-up work, reports on technical assistance provided and missions undertaken should be made available within a reasonable period, so that the Committee has the latest information available for consideration.

Regarding the cases of greatest concern to the Employers' group this year, the first involves the Bolivarian Republic of Venezuela and its application of the Employment Policy Convention, 1964 (No. 122). This case centres on the absence of an active employment policy designed to promote full, productive and freely chosen employment in consultation with the most representative employers' organization, FEDECAMARAS, and workers' organizations, including the CTV, UNETE, the CGT and CODESA. We will follow this case closely and are very hopeful of progress in the coming months.

We are also deeply concerned at the application of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), by El Salvador. This case revolves around a lack of consultation and autonomy, with workers' and employers' organizations unable to select representatives to tripartite bodies, and also interference by the Government, which has prevented the Higher Labour Council from meeting over the past four years.

We also note with concern the case of Kazakhstan and its application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). This involves, among other issues, serious infringements of employers' freedom to associate, following the adoption of a law enabling the Government to establish a national chamber of commerce of entrepreneurs. We will monitor this case very closely and encourage the Government to achieve progress.

We regret that we were not able to consider certain cases on the preliminary list, and in this regard I should mention specifically the case of the Plurinational State of Bolivia's application of the Minimum Wage Fixing Convention, 1970 (No. 131). This is a very serious case involving lack of consultation with the most representative employers' organization between 2006 and 2016 with regard to the fixing of minimum wages. We will keep a close eye on this case and encourage the Government to come into full compliance with its obligations under Convention No. 131 without delay.

Lastly, we would be remiss if we did not mention our concern over the Government of Uruguay. Two agreements were signed in 2015 and 2016, with no result. We are concerned about the Government's failure to implement the conclusions of the Committee, and we hope that, with support from the Office, the Government will move forward to amend the law so that it comes into compliance with the Committee's conclusions.

In closing, the Employers' group commends the Committee on its work this year, including holding rich discussions, reaching consensus when possible, and highlighting a divergence of views when needed. We commend the Committee on its work in the adoption of short, clear and concrete conclusions. The Employers' group takes this opportunity to restate its deep commitment to the ILO supervisory system and to further collaboration aimed at making it more effective, credible, transparent and sustainable.

I must conclude with words of thanks and appreciation. First for Ms Vargha, Director of the International Labour Standards Department, and her team. They worked tirelessly, and without their unfailing dedication to the task we would not have been able to complete our work in such an efficient manner. Also a special thank you to our Chairperson, Mr González Nina for the fair parliamentary running of the Committee's meetings this year, and the most effective time management. We further thank our Reporter, Mr Khan, who this year ensured that the Committee's work was properly kept on record. Please allow me also to thank the entire Employers' group for their support and dedication, with long hours, lots of reading and lots of work this year. We would especially like to thank Mr Kloosterman, Mr Mackay, Ms Hellebuyck, Ms Al Sulaiman, Mr Echavarría, Mr Mailhos, Mr Ricci, Mr Lukhele, Mr Roch, Mr Etala and Mr de Meester for the help they gave in preparing and presenting individual cases.

Finally, I would also like to conclude by thanking Ms Anzorreguy, Ms Assenza and Ms Pirler of the IOE secretariat, as well as Mr Hess of ACT/EMP. Their deep knowledge of standards is, as always, extremely helpful to the entire group. Without them, we would certainly be lost.

Finally, I would like to thank Mr Leemans and his team for working together in a spirit of collaboration and mutual understanding and respect. This is not as easy as we make it look, and without Mr Leemans and his constructive approach it would be even more difficult.

Mr González Nina
Chairperson of the Committee
on the Application of Standards
(Original Spanish)

It is an honour for me to make a few comments on the work of the Committee on the Application of Standards which it has been my privilege to chair.

First, I should like to thank the Governments for the trust that they placed in me in nominating me to be Chairperson of the Committee. I have been pleased to see the enormous amount of interest that the constituents of this Organization have shown in the work of the Committee, which is a cornerstone of the ILO supervisory system.

This Committee is a tripartite body in which the Organization is able to discuss the application of international labour standards and the operation of the supervisory system. The conclusions adopted by the Committee and the technical work done by the Committee of Experts, together with the recommendations of the Committee on the Freedom of Association and technical assistance from the Office are essential tools for the application of international labour standards by member States.

The Committee has repeatedly shown its usefulness in terms of social dialogue and supporting the tripartite constituents in complying with international labour standards. An outstanding example is the consideration of the General Survey prepared by the Committee of Experts concerning certain instruments relating to OSH.

The Committee requested the Office to take into account the General Survey on Occupational Safety and Health, and the conclusions of its discussion of the General Survey, in the relevant ILO activities, especially with regard to outcome 7 of the Programme and Budget for 2018–19, on promoting safe work and workplace compliance including in global supply chains.

With regard to the individual cases considered, the positive point has been made that a list of 24 cases was adopted at the beginning of the Committee's work within the established deadlines and this enabled all the cases to be discussed thoroughly. The selected cases dealt with the application of fundamental Conventions and Conventions of a technical and promotional nature, and also reflected a regional balance.

The active participation of the Governments and social partners in the Committee's discussions clearly demonstrates their solid commitment to the ILO and its supervisory system. I trust that those countries whose cases were considered were able to find in the discussions the necessary guidance to resolve all the issues raised, and that those countries which find it necessary will avail themselves of ILO technical assistance under this exercise.

I should like to thank Judge Koroma, the Chairperson of the Committee of Experts, who once again attended the sessions of the Conference Committee. The presence of the Chairperson of the Committee of Experts during the Committee's work is an indication of the strong relationship between the two Committees based on a spirit of mutual respect, cooperation, and responsibility.

I would like to convey special thanks to the President and Vice-Presidents of the Conference for visiting the Committee. It was a pleasure to be able to welcome them. I would also like to thank the Reporter for our Committee, Mr Khan, who did not participate in drafting the conclusions, for his extremely effective work. Thanks also to the Employer Vice-Chairperson, Ms Regenbogen, and the Worker Vice-Chairperson, Mr Leemans, and to their teams for the cooperation and courtesy which they showed me as Chairperson.

I would like to pay a very special tribute to the representative of the Secretary-General, Ms Vargha, whose professionalism, dedication and cooperation were essential to the effective work of the Committee. I would also like to thank the other members of the secretariat for their commitment and for the complex tasks that they accomplished. I would like to compliment the interpreters on their excellent work. It only remains for me to invite you to approve the Committee's report.

The President
(Original Spanish)

I declare open the discussion of the report of the Committee on the Application of Standards.

Mr Gómez Ruiloba
Government, Panama, speaking on behalf of GRULAC
(Original Spanish)

Congratulations to the Officers of this Committee, which is so important for our region, and particularly to the Deputy Minister of Labour of the Dominican Republic, Mr González Nina, who was an excellent representative for our region. The group of Latin American and Caribbean countries (GRULAC) appreciates the leadership that he showed during the Committee's work and would also like to thank the Office and its entire team for their work throughout the Committee, as well as the representatives of the social partners and the participating Governments.

GRULAC reiterates its commitment to the ILO supervisory system, of which the Committee on the Application of Standards is a key component. We have been closely following the various individual cases, participating and expressing views constructively.

However, GRULAC would like to raise a few concerns relating to procedures which have an impact on the governance of the ILO itself, in the spirit of constant improvement which characterizes this honourable Organization.

Firstly, it is important to reinforce both the tripartite and technical nature of the discussions, so that the debate is more closely aligned to the comments of the Committee of Experts and to the Convention under examination. Furthermore, it is important to consider under equal conditions the reports submitted by governments.

We need to review current practices so that the final list of countries whose cases are to be examined is decided further in advance and is based on the seriousness of the cases.

We think that the Committee must have transparent and predictable procedures which avoid the duplication of work by the supervisory mechanisms on the same cases. This is an issue which our region has been highlighting in all forums where it has had the opportunity to do so. The Committee is by definition a tripartite body and that is why we hope to be able to promote greater and more appropriate participation by the governments. As things stand at the moment, the governments do not have a chance to see even slightly in advance the conclusions relating to the individual cases. The governments should have the opportunity to state their views, their support and their objections before the adoption of the conclusions, and those comments should be reflected in the record of the meeting.

GRULAC is fully committed, as always, to working on improving the working methods of the Committee in the context of strengthening the supervisory system. As always, we will participate in the work of the informal tripartite group on this issue, which should be integrated into the strengthening process referred to in the Standards Initiative.

Our regional group fully recognizes the importance of the spirit of cooperation between the Workers and the Employers for the smooth functioning of this long-standing body. However, for the sake of achieving the correct balance and taking the governments into due consideration in order to increase the effectiveness of the Committee, GRULAC considers it essential to review the current working methods.

We trust that our comments will be taken into account with a view to strengthening tripartism, which lies at the heart of this honourable Organization.

Mr Ramadan
Government, Egypt
(Original Arabic)

The delegation of Egypt has requested the floor to review a number of important matters with regard to the report of the Committee on the Application of Standards that has just been submitted. We would also like to comment on the interventions we have just heard with regard to the discussion of the case of Egypt, as well as the other individual cases we have discussed over the past two weeks.

Despite the overall positive atmosphere in discussing the case of Egypt and the developments that were laid out by the Government in terms of applying the new Trade Unions Law, the Egyptian delegation was surprised to find that the conclusions prepared by the social partners went against the content of the discussions. It seems as if these conclusions were prepared in advance, regardless of the discussions. In this connection, we would like to present the following points to the Conference so that they can be duly acted

upon in the future and so that the clear gap that has appeared in the work of the Committee can be avoided.

First, it is clear from the selection process for the list of individual cases that there were no clear criteria or clearly set procedures for the selection of that list. The list was not equally selected on a geographical basis or with respect to the diversity of countries and this cast a shadow of politicization and lack of transparency on that process.

Second, the social partners, in their teams of Workers and Employers, are alone concerned with the selection of the preliminary list and the final list, without any involvement of the Governments or without the countries concerned being able to hear the deliberations in relation to the Committee of Experts' report. This undermines one of the basic principles of this Organization, which is tripartite dialogue and tripartite participation in decision making. We find that it is highly important to set out clear procedures for tripartite selection of the preliminary list of countries and the final list of cases. We need to guarantee the participation of everyone concerned and this does not go against the independence of the supervisory mechanism.

Third, the standing orders of the Conference do not explain the methods for selecting the cases and document D.2(Rev.) does not set out any specific procedures in this regard. We need to set up rules of procedure without any ambiguity, rather than relying on past practices that do not have any basis in the regulations.

Fourth, the conclusions of the Committee are not distributed and not shared with the States concerned before being presented in the report. We are always surprised at the conclusions in the report, and this goes against the principles of transparency and clarity that we abide by in our operations here. This view was shared by many delegations and Employer and Worker representatives. It highlighted the need to review this practice that does not serve the interests of the Committee's work.

Fifth, with regard to the presentation of the conclusions, the governments are only given the chance to respond after the conclusions have been adopted and we would like to affirm the inherent right of member States to present their points of view concerning their cases before the conclusions are adopted.

We would like also to follow up on what the spokesperson of the Employers said today with regard to improving the working methods of the Committee. In this regard, it is high time for us to start reviewing the practices that were undermined by the many weaknesses. We would like the Conference to take the necessary steps in this regard and give instructions to establish an open-ended tripartite dialogue under the supervision of the ILO so that any interested Members, not only the members of the Governing Body, can participate and can thoroughly review the Committee's working methods and the procedure for selecting the list of cases on a tripartite basis, while respecting geographical balance in the selection of cases.

Lastly, our cooperation with the ILO is ongoing and we would like to preserve it, as was demonstrated last week through the payment of our financial contribution amounting to US$500,000.

Mr Wahballah
Worker, Egypt
(Original Arabic)

I take the floor on behalf of the Workers of Egypt. I have followed up the conclusions of the Committee on the Application of Standards and we felt wronged because the Committee has not noted the significant progress that was achieved by Egypt in its labour legislation, including the Trade Unions Law. We were upset to find that the conclusions of

the Committee expressed regret at the delay in submitting the new labour legislation to the Committee, which was due in November. Indeed, our legislation is taking some time to be adopted but we, on the Workers' side, were able to accommodate that delay. This is understandable because of the circumstances in the country and the fact that the newly elected Parliament was faced with a large amount of legislation that it had to work on. A joint statement was also issued in this regard by the social partners, including many independent trade unions, concerning a roadmap that would be completed at the latest in October.

This statement was shared with the ILO at the outset of the Conference and the conclusions did not point to any progress made in the legislative process, despite the fact that this legislation is now being finalized in the Egyptian Parliament. As a representative of the Workforce Labour Committee in the Egyptian Parliament, I am fully aware that the bill currently being finalized in Parliament is in conformity with international standards and opens horizons for the workers in Egypt to thrive. The Workers in Egypt consider the conclusions adopted by the Committee to be a source of injustice to us because in any case the new legislation is being adopted and is in full conformity with international labour standards.

As you may well know, there is a strong tradition of cooperation with the ILO, and we have submitted our plan of action to finalize the new legislation which is being executed almost in full, although I should say that there was no reason to send a delegation to Egypt because our legislative process is ongoing and is almost over. We are told that the Government was supposed to let the Committee of Experts know about the standards and that is indeed the case. As a member of Parliament, I can confirm that the fact that trade unions should be free to exercise their rights is currently under consideration by that body.

Concerning the last paragraph of the conclusions, with regard to sending a direct contacts mission, if you allow me, I am an Egyptian worker, I work with my own hands, I am a blue-collar worker, not a white-collar worker, I would like to express my reservation with regard to that paragraph. We have always been welcoming as a trade union and as workers, welcoming the development cooperation missions, and therefore it is unclear to us what the task of this mission is and what is behind it, especially as an ILO delegation visiting Egypt last week was able to see the developments and progress that we have achieved in the legislative process.

We do not know what this mission can achieve and what it can add to the legislation, which, as I have just said, is almost adopted and is now being finalized in the Egyptian Parliament. I would therefore like to express my reservation with regard to this decision but we call upon the ILO to carry on providing technical support in this regard, through the already ongoing development cooperation with the Government and the social partners.

Mr Sanges Ghetti
Government, Brazil

Brazil aligns itself with the GRULAC statement read by Panama and commends the work of our able Chairperson, Mr González Nina, the efforts of the Office and the contributions of governments and the social partners to the Committee on the Application of Standards.

My country has a long-term commitment to this Organization and to its supervisory mechanisms. We have also been actively engaged in the review of the supervisory system that is ongoing in the Governing Body. In a spirit of cooperation and open dialogue, and together with GRULAC, we have advocated a significant review of the supervisory system in order to strengthen it, to render it more effective, transparent, legitimate, and universal, in order to avoid undue duplications and political exploitation. It is clear, given events that took

place during the current session of the Committee, that this important standing committee of the Conference should be urgently included in this review process. Discussions relating to the informal tripartite consultations on the Committee's working methods should be expanded to include more governments and be clearly integrated into the general review of the system.

One example of a key and urgent measure to be taken is giving notice to governments of the Committee's conclusions so that they may have time to adequately prepare themselves for the session on the adoption of these conclusions.

I would also like to respond to remarks made by the Worker spokesperson in relation to the list of cases in the Committee on the Application of Standards. We regret that a list decided by consensus among our social partners has been called into question by the Workers' group. This itself raises a question regarding the Committee's working methods.

The modernization of labour laws, most of which date back to 1943 in Brazil, aims to strengthen collective bargaining, making rules clear and objective, and increasing legal certainty and generating employment. Brazil's Federal Constitution, however, enshrines an extensive number of labour rights and sets limits for collective bargaining, particularly with regard to health and safety standards at work and the principle of the non-waiver of rights. The draft legislation does not undermine any constitutional right and includes guarantees against bogus outsourcing practices. It is still going through proceedings in both houses of Parliament. Once approved, it shall go through the process of sanction or veto by the President. Even after promulgation, the legislative changes are still subject to judicial review bodies that could adjust any irregularity and interpret the legislation in light of the Constitution.

Moreover, the Brazilian Federal Constitution has been closely respected during recent political events and all actions of the Government have been under close scrutiny by the courts and the Supreme Federal Court in particular. Brazil remains willing to cooperate with all groups so as to make progress in this specialized and important Organization, bearing in mind the challenges of the future of the world of work and always in pursuit of decent work everywhere.

Mr González Arenas
Government, Uruguay
(Original Spanish)

Concerning a comment made by the Employers' group regarding the complaint submitted in relation to the Act on collective bargaining in Uruguay, I would like to inform those present that there is and will continue to be a firm commitment by my Government to pursue negotiations with the social partners in search of a lasting agreement on this issue, with valuable assistance from the ILO for the next stages of this process. We hope that this commitment to achieving an agreement will also be shown by the social partners in our country, especially the employers.

The President
(Original Spanish)

We shall now proceed to the approval of the report of the Committee on the Application of Standards.

If there are no objections, may I take it that the Conference approves the report of the Committee on the Application of Standards, as contained in *Provisional Record* No. 15, Parts One and Two?

(The report, as a whole, is approved.)

I would like to congratulate the Committee on the Application of Standards; its work is one of the cornerstones of the ILO's mission to promote social justice. The Committee deals with matters that can be both difficult and complex and the fact that it finds solutions through consensus testifies to the approach of all those involved, and particularly the constituents and the secretariat. Many thanks and warm congratulations to all.

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 (CEACR).

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 publication bringing together the parts of the work of the Conference Committee. This year, the publication is structured in the following way:

(i) The General Report of the Conference Committee on the Application of Standards.

(ii) The observations of the CEARC concerning the individual cases.

(iii) The report of the Committee on the Application of Standards on the observations and information concerning particular countries.

(iv) The report of the Committee on the Application of Standards: Submission, discussion and approval

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