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Fourteenth sitting, 18 June 2019, 12.30 p.m.
Quatorzième séance, 18 juin 2019, 12 h 30
Decimocuarta sesión, 18 de junio de 2019, 12.30 horas

Chairperson: Mr Rochford
Président: M. Rochford
Presidente: Sr. Rochford

Discussion of individual cases (cont.)
Discussion sur les cas individuels (suite)
Discusión sobre los casos individuales (cont.)

India (ratification: 1949)

Labour Inspection Convention, 1947 (No. 81)
Convention (n° 81) sur l'inspection du travail, 1947
Convenio sobre la inspección del trabajo, 1947 (núm. 81)

Government representative (Mr SAMARIYA) – I would like to thank the Committee for this opportunity to present the Indian Government's response regarding observations of the Committee of Experts on the implementation of the Convention in India.

At the outset, I would like to assure the Committee of India's commitment to fulfil all the obligations it has undertaken under the various Conventions of the ILO, to which India

is a party. Being a founding member of the ILO, even before we became independent, India has a deep respect for international labour standards by the ILO, and is guided by the principles of decent work, social justice and labour welfare in all its endeavours.

The importance we attach to this issue can be gauged by the fact that the Government has directed me to be present here in person and brief this Committee on the various efforts being undertaken by the Government of India for the welfare of the workers. As the Committee may be aware, the general elections in India, which is the largest such exercise in the world, has just been concluded, and the Government, under Honourable Prime Minister Modi, has been re-elected with an overwhelming support from the people. Yesterday was the first day of the new Parliament, and labour welfare is one of the main issues which would be under its consideration. Before my delegation responds to the specific observations of the Committee, I would like to briefly highlight the transformative initiatives taken by the Government of India over the last five years to further its goal of achieving an inclusive, just, equitable, fair and economically sustainable society in India.

The motto of our Government, under Honourable Prime Minister Modi, has been “Sabka Saath, Sabka Vikas” that is “inclusive growth through collective efforts”. Under his guidance, the Government has undertaken a path-breaking initiative towards simplification, amalgamation and rationalization of the existing 45 central labour legislations, into four Labour Codes, which intends to provide wage security, social security and decent working conditions to our workers. We are in the process of providing every worker the right of sustenance, by universalization of the right to get wages not less than the minimum wages to our entire 500 million workforce. This would increase the coverage by 60 per cent and would benefit more than 300 million additional workers. I would like to highlight that this would amount to 100 per cent coverage of the workers for the minimum wages. This reform process also intends to provide a dynamic legislation in sync with the changing business structure, demographic change and technological advancement.

The Government of India is committed to provide a comprehensive social security cover to all its workers, particularly those in the informal sector. Social security coverage in the organized sector is being extended through an IT-enabled platform to have a portable mechanism, which supports the transfer of a provident fund on change of job. We have recently introduced the biggest pension scheme for unorganized workers to ensure old-age protection for about 400 million unorganized workers. It is a voluntary and contributory pension scheme with defined benefits, where the Government contributes the equal matching amount to the subscriber's pension fund. Under this new scheme, the subscriber would receive an assured pension after attaining the age of 60 years. Further, a new scheme has been launched that offers pension coverage to the trading community. Under this new scheme, all the shopkeepers, retail traders and self-employed persons are also assured a minimum monthly pension after attaining the age of 60 years. The scheme is likely to benefit more than 30 million small shopkeepers and traders. To facilitate work and family life balance, India is among the few countries that have increased the paid maternity benefit from 12 to 26 weeks. The other major policy decisions taken for the benefit of workers include enhancing the gratuity amount from INR1 million to INR2 million, increasing the minimum wages by 42 per cent in all sectors, and also changing the eligibility criteria for grant of bonus.

In order to promote the transition from the informal to formal sector and also to generate new employment, the Government has launched a scheme where the Government of India pays the full employer's contribution towards the Employees' Provident Fund and Employees' Pension Scheme. We are also implementing the National Rural Employment Guarantee Act, which provides at least 100 days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work.

As the Committee may be aware, India has a federal polity, where the central Government and the state governments have been conferred power under the Constitution,

to enact the laws and to enforce them in their respective spheres. India has an elaborate system of labour legislations with 45 central labour acts and the various state labour laws. These labour legislations operate to safeguard the rights of workers, ensuring minimum wage, gratuity and social security. Further, specific central laws have been enacted aimed at securing the welfare of workers engaged in factories, mines, plantation, construction work and contractual employment. The enforcement of the relevant provisions of the various labour acts is secured through a system of labour inspectorates, both at the central and the state level. Further, the cases of labour law violations are taken to their logical conclusion by a system of penalties and criminal prosecutions in the court of law.

The case related to the violation of the Convention was also discussed in the Committee in 2017, and the Committee of Experts, in its 2019 report, had sought information about the inspection system in special economic zones (SEZs) and about the availability of human resources and other material means for conducting the inspections in the central and state spheres.

I would like to inform the Committee that more than 574 inspectors have been recruited by various state governments in the last two years, taking the total to 3,721. The total number of inspectors, as of date, has increased by 18.2 per cent when compared to the figures in 2017. In the central sphere, as on date, the number of inspectors are 4,702. I would also like to submit that in the central sphere, 100 per cent of inspections are unannounced. The inspections in the central sphere are being done by allotting the establishments on a random basis through the centralized computer system, for which we have an e-portal that is known by the name of “Shram Suvidha Portal”. Further, to promote transparency, the inspection reports have to be uploaded by the inspectors, on the websites, within 48 hours of conducting inspections.

Once again, it is reiterated that in the central sphere 100 per cent of inspections are unannounced. The number of unannounced inspections in the various states has been steadily increasing. During the year 2016–17, these unannounced inspections were over

189,000, and in the year 2017–18, these inspections grew to 203,000 and further to 239,000 in 2018–19. Year on year, the increase in the unannounced inspections is roughly about 18 per cent. It will not be out of place to mention that the proportion of unannounced to announced inspections has increased considerably over the year. Announced inspections constitute only about 8.3 per cent of the total inspections. The remaining 91.7 per cent are unannounced.

The Committee has specifically raised the issue of inspection in SEZs in India. I would like to inform that with a view to attracting larger foreign investments and boosting employment opportunities for the youth, SEZs have been set up across the country. Presently, there are seven SEZs operational in India. It is emphasized that all labour legislations are equally applicable to the SEZs as elsewhere in the country. There has been no dilution as far as the implementation of labour laws is concerned in the SEZs, in particular the system of labour inspections.

The statistical data on inspections in SEZs clearly indicate that the number of inspections conducted in SEZs have increased from 667 in 2016–17 to 1,648 in 2017–18, and further to 3,278 in 2018–19. The number of inspections conducted in SEZs in 2018–19 have increased five times since 2016–17. In this regard, a directive has also been issued by the Union Government to the state governments and SEZs to carry out unannounced inspections only. During the last three years, prosecutions have been launched and penalties have been imposed in all seven SEZs, the details of which have already been shared with the Office.

I would like to inform the Committee that India is a very vast and diverse country with approximately a 500 million workforce, and the workers engaged in SEZs is merely 0.2 per cent of the total workforce. The inspection rate in SEZs amounts to 6 per cent of the total inspections conducted nationwide.

I would like to put on record that the establishments in SEZs follow the state of art technology and the employees are given the facilities of international standards and there is no compromise on the minimum wages, working conditions, health, safety, welfare and social security of the employees. Therefore, the possibility of violations of the various labour laws in the SEZs at the inception itself is negligible. Further, the workers are more informed about their rights in these establishments and these areas are also under continuous vigil of the appropriate authorities.

The SEZs also have a robust grievance redressal mechanism where the issues of workers are resolved. The systems are user-friendly and time-efficient. In addition, the mechanism of conciliation between employer and employee in case of a dispute in all the SEZs acts as a preventive mechanism or as an early warning system which responds in time. I am sure the Committee would agree that the best way of ensuring quick relief to the issues of workers would be when the worker himself or herself brings the problem to the attention of the inspection authority. These mechanisms ensure that all the labour laws are better enforced in SEZs, which simultaneously promotes export and overall growth besides the reasonable employment generation.

I would like to inform that the powers of inspectors have not been compromised in the proposed Labour Codes. On the contrary, it is proposed in the new legislations to introduce jurisdiction-free inspection which is a step in furtherance of unannounced inspections. At present, an inspector is assigned a territory or a jurisdiction which may lead to connivance between the inspector and the employer of the establishment under his jurisdiction. However, with the concept of jurisdiction-free inspection, the establishments will have no prior information either about the timing of the inspection or about the identity of the inspector.

With regards to the IT–ITES sector, we wish to inform that the working conditions in the IT and ITES sector are regulated by the provisions of the Shop and Commercial Establishment Act of state governments and the central labour acts like the Employees

Provident Fund Act, Employees State Insurance Act, Industrial Dispute Act, Payment of Gratuity Act, Payment of Compensation Act are applicable to all the IT-ITES sector. These establishments are inspected by the regular state government labour enforcement machinery and central Government machinery like any other establishments. The overall inspection data provided to the Office includes the data of inspection in these establishments also.

I would like to draw the attention of the Committee to the point that the present age is the age of technological revolution where technology can be harnessed to provide new job opportunities, enhance efficiency, save time and resources and also develop mechanisms which are transparent, time bound and unbiased. This technology can be used with changing times to make our inspection system more responsive, transparent and effective. With this intent, the Government is trying to evolve the existing inspection system in India without compromising on its strengths and restricting the probability of formation of any corrupt nexus between its constituents, ultimately leading to labour law compliance.

In India, the robust grievance redressal system for everyone, including workers, is in place. For example, if a worker is aggrieved by a non-enforcement of any of the provisions of any labour act, then he or she can take judicial recourse also. The independence of judiciary in India is a basic and foundational value of the Constitution. India is known for fiercely independent judiciary. Further, the administrative grievance redressal is in place where an individual in case of any grievance can approach the Offices of the Honourable President, Honourable Prime Minister and Minister concerned besides the various other authorities. The central Government also has a centralized e-portal for lodging, tracking and resolving the grievance redressal. These grievances have to be disposed in a time-bound manner. Earlier the timeline to dispose of the grievance was 30 days; however on an average, grievances are being disposed of within 13 days. I am personally monitoring the disposal of the grievances on the portal. In fact, at present, to resolve the grievances a feedback is also taken telephonically from the complainant as to how effectively his grievance has been addressed. A survey conducted has indicated that 70 per cent of the workers are satisfied

with the quality of disposal of their grievances through the e-portal. Similar systems exist at the state level and the district level also. Such a time-bound responsive grievance mechanism pre-empts the violation or rising of dispute and promotes industrial harmony. All these systems are web based, user-friendly and time-efficient. Further, the Minister of Labour and Employment also interacts with representatives of trade unions on a regular basis to understand the problems of workers. The Government of India is committed for the welfare of its workers and is complying with the provisions of the Convention through a more efficient, effective and transparent inspection system.

Employer members – We thank the Government for the rather full remarks that we have just received. Just by way of background, Convention No. 81 on labour inspection is a governance or a priority Convention ratified by India in 1949. This particular case has been discussed already twice in the Committee in 2015 and 2017 and has been the subject of eleven separate observations by the Committee of Experts since 2000, so it is not new.

Technically it is a case about the adequacy of labour inspection in SEZs rather than more generally. The main issues relate to things like:

- the adequacy of resources available to labour inspectors for SEZs inspections;
- the ability of labour inspectors to enter SEZ premises on their own initiative and freely; and also
- the numbers of inspections carried out particularly those without prior warning.

However, this could also be called a case of inadequate consideration of the facts. The complaint on which this case is based was not made by the peak union body of India or even the national employers, it was in fact made by a relatively minor union with, as I understand it, a very low presence in SEZs themselves. So having received the complaint it would be expected that the Committee of Experts would have conducted some sort of corroborative investigation to ascertain the status of the complainants and the extent of the issue, and to

garner the views of the social partners before proceeding the case to this Committee but this did not happen. If it had, we might not have been considering this case, as the state of play in SEZs has undergone significant change since this matter was first raised in 2015. This seems to have escaped the attention of the union that brought the case and it certainly has escaped the net as it has got to here. However, it is a case, we have it here today so let us look at some of the facts.

By way of background, SEZs are geographical regions created to incentivize business investment, export promotion and the like. Within the generic description of SEZs are a broad range of more specific zones like export processing, free trade, free ports and so on. The SEZs have economic laws that are more liberal than the country's domestic economic laws but vitally important, however, the labour laws are the same as those that apply to the rest of the country, and that is an important fact.

One of the concerns expressed by the minor union making the complaint related to the adequacy of resources available to labour inspectors. In its latest report the Committee of Experts recalled the 2017 conclusions of the Committee concerning the need to increase the resources at the disposal of the central and state Government inspectorates. Since then and as we have heard over 570 more inspectors have been appointed across the various states. Inspectors are routinely provided with vehicles, phones, laptops and so on, although in some cases it is reported that, in lieu of a vehicle, inspectors are reimbursed for the costs of travel to and from inspection sites. In this last respect, the employers would note that this is not ideal, even if not widespread, as the requirement for an inspector to meet the immediate costs of travel may prove an inhibiting factor in enabling them to undertake inspections in a free and timely manner. So the employers would echo the call from the Committee of Experts that the Government ensure that the material resources at the disposal of the central and state Government inspectorates are and remain adequate and do not inhibit the freedom and timeliness of their actions; and, that the Government continue to provide information on the number of labour inspectors at the central level and in all states

Another facet of this case is a claimed lack of ability of labour inspectors to undertake labour inspections freely and on their own initiative. As is apparent from the last two reports submitted to the Committee of Experts in 2015 and 2016 and the report submitted to this Committee by the Government, we have heard that there are no constraints placed on inspectors in relation to exercising their duties. They are free to enter any premises. They are empowered to examine any and all aspects of a business and its operations, as well as to seize any documents or other evidence they see fit.

Furthermore, 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. This web-enabled setup has improved the prioritization of inspections in workplaces based on risk assessments. This new setup has not curtailed the powers of labour inspectors to undertake workplace inspections rather it has now a new and powerful tool to help them in managing their work.

Except for some routine inspections, and we have heard from the Government that this is less than 10 per cent, all 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. Where there is a complaint or information with regard to any labour law violation, the system allows for an inspector full discretion to undertake an inspection at the time as well as to initiate any actions prescribed in the corresponding laws.

We heard in 2017 that, due to the federal structure of the country and the sovereignty of the states, there is no statutory mechanism for the states to furnish data to the central Government, and that relevant information is provided by the states on a mainly voluntary basis. This year the Government has provided a wide range of data covering inspections. This is a significant improvement over the lack of information on previous occasions. That said, we would observe that the voluntary nature of some of the data collection creates risks to the ultimate comprehensiveness and credibility of the collated data. This is an area that needs more work. However, the fact that this data is being provided does in fact challenge

the union claim that no inspections have occurred because the data cannot have come from nowhere. It is clear that there are inspections occurring.

In its response to the Committee of Experts' observations, the Government has taken a number of steps over time to improve data on enforcement of labour legislation and labour inspection services. 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. 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. 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 introduction of the technology I referred to before, which is in development but already in use. Upon implementation, the system for collection and compilation of statistics will be made available online to the extent feasible and this will further enable the Bureau to collect and compile timely statistics at all levels of government.

With these points in mind, and I have to say, as has been requested before, we urge the Government to:

- take national level measures to ensure that all levels of India's labour jurisdiction publish and submit annual reports on labour inspection activities in full compliance with the information required by Article 21 of the Convention;
- to pursue its efforts towards the establishment of registers of workplaces at the central and state levels and the computerization and modernization of the data collection system, and to provide detailed information on any progress made in this respect; and
- to provide detailed information on the progress made with respect to measures taken to improve the data collection system enabling the registration of data in all sectors, all states and at the national level.

Concerns have also been expressed about self-certification and inspections undertaken by certified private agencies. The Government has provided assurances that the self-certification scheme has been launched only in some states, and that in no case does it substitute the labour inspection system rather it is a scheme to encourage voluntary and simpler compliance, without compromising the rights of workers. It permits business to effectively monitor themselves on an ongoing basis to ensure they are compliant with all legal requirements. This protects them against adverse finding if and when an inspection does take place. In the Employers' view this development is separate from and in addition to the role played by inspectors. Self-certification does not protect a business against inspection but it may assist a business in avoiding adverse consequences from an inspection. Thus, in the Employers' view, it is to be encouraged.

In relation to delegation of powers to inspectors in SEZs and statistical information on labour inspections, as we have heard from the Government, there are seven SEZs zones in the country. In four, as I understand it, no powers have been delegated to the Development Commissioners who head up these SEZs, whereas in another case, which covers ten states, powers have been delegated by one of the states and that is a SEZ. So there is a very limited application or a very limited delegation of powers away from labour inspectors and only in the one small area of one SEZ.

The Government has provided detailed statistics to the last 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, the workers employed. This information remains valid today.

With respect to the number of inspections carried out there seems to be some confusion. In its previous comments, the Committee noted the Government's indication that very few inspections were carried out. The union that is the source of this case, in 2017 and again now, claimed that there is virtually no inspection system in SEZs. They claimed or added that, despite the absence of violations reported, there are violations, in fact, of all basic labour

laws in SEZs and that there has been no improvement in the situation since the discussion of this case in June 2017. This is not the experience of the Employers and, as we have heard, not the experience of the Government. Rather than no inspections being carried out, the situations seems to be more that no violations or few violations have been reported as a result of inspections. This is a very different thing. No violations reported does not mean that no inspections were carried out. The claims therefore need to be examined critically as it appears the union making the claim does not have a major presence and therefore may not be in possession of all of the facts.

With respect to the delegation of powers to Development Commissioners, this is limited to situations where the footprint of the SEZ crosses the boundary of more than one state. The Commissioner has the responsibility of ensuring that inspections are carried consistent across the full reach of the SEZ and this occurs, as we understand, it in two of the seven states.

The Committee previously noted that the Code on Wages, 2017 Bill, does not explicitly refer to the principles contained in Article 12(1)(a) and (b), but provides that the governments at the state level may lay down separate inspection schemes, including the generation of a website-based scheme as we now understand that this is occurring.

Since then, the Government has indicated that several tripartite meetings have been held in the drafting process of the Code. This work continues. The Government indicates that the Code on Wages Bill is currently before the Parliamentary Standing Committee. It is emphasized that the Code is yet to pass but it does not in any way inhibit inspectors in carrying out their duties, as their powers already exist and will not be extinguished in the future.

Finally, we note that facilitators have the power to prosecute, conduct or defend before a court, any complaint or other proceeding arising under the OSH and Working Conditions Rule, or the rules and regulations made thereunder, and to exercise such powers as may be

prescribed. However, the Bill is silent as we understand it with regard to the powers of labour inspectors to initiate legal proceedings against persons who violate or neglect to observe the legal provisions enforceable by labour inspectors with respect to health and safety. This does need to be dealt with.

With all these points in mind, the Employers call upon the Government to take measures:

- to ensure that any legislation developed is in full conformity with the Convention;
- to ensure that the Code on Wages and the OSH and Working Conditions Act explicitly allow labour inspectors on their own initiative to enter workplaces without prior notice, not limited to situations where complaints have been made or indicators exist for labour law violations; and
- to ensure that the Code on Wages and the OSH and Working Conditions Act guarantees the discretion of labour inspectors to initiate prompt legal or administrative proceedings without previous warning, and to be able to order remedial measures and give warnings in line with the Convention.

The sitting closed at 1.03 p.m.

La séance est levée à 13h 03.

Se levantó la sesión a las 13.03 horas.

Fifteenth sitting, 18 June 2019, 3.05 p.m.
Quinzième séance, 18 juin 2019, 15 h 05
Decimoquinta sesión, 18 de junio de 2019, 15.05 horas

Chairperson: Mr Rochford
Président: M. Rochford
Presidente: Sr. Rochford

Discussion of individual cases (*cont.*)
Discussion sur les cas individuels (*suite*)
Discusión sobre los casos individuales (*cont.*)

Worker members – We have discussed the application of Convention No. 81 in India in the years 2015 and 2017 and on each occasion, we raised concern over the large-scale exclusion of workplaces and workers from the coverage of labour inspections, the needs for an effective functioning labour inspectorate and the absence of an adequately resourced, coherent and centralized labour inspection system. Regrettably, these concerns continue to remain valid today. We continue to be deeply concerned about the poor enforcement of labour laws in SEZs, due to the deficiency of inspections in such areas.

The Government seems to justify its off-handed approach by arguing that because the zones spread across several states, they should be governed by policies at the state level. However, this has resulted in the fact that, in some states, inspection powers are now in the hands of Development Commissioners. These Commissioners also have the responsibility to promote investment. The problem with that is that the zones compete with each other for economic investment and the lax enforcement of labour laws through weak inspection is seen as a means to promote investment. This has led to a situation where inspections in these zones have been becoming completely inadequate. We note the Committee of Experts' indication that while the Government has now provided some scanty statistics, it was still not possible to make an informed assessment of the protection of workers in these zones due to the absence of information.

The Government has also submitted statistical information to the Committee. However, the information submitted is unclear and incomplete and is therefore inadequate in

demonstrating that the Government has, as it claims, put the necessary measures in place. It does not provide the minimum basic information required for an evaluation of the operation of the labour inspectorate and for an assessment at the international level by the ILO supervisory bodies. While the number of workplaces liable to inspection are indicated, the number of workers employed is missing. This is critical for the evaluation of the adequacy of the number of labour inspectors. The results of proceedings and penalties are also not indicated. It is unclear why the Government has pursued penalties in some instances of violations detected but not in others. It is also unclear what the penalties that have been imposed were constituted of.

In this regard, we also highlight our great concern about the Government's continued failure to provide its annual report on the work of the labour inspection services to the ILO as required under Article 21 of the Convention. But let us look at the information that we do have. The Government indicates for example that in the Vishakapatnam SEZ, which includes 652 enterprises, only 74 inspections have been undertaken over the past three years with not a single offence recorded or pursued. According to the Government report, the same is true for Mumbai after 105 inspections. Our concerns about the absence of information submitted by the Government on labour inspections in SEZs and the quality and number of inspections remain.

In this regard, we also emphasize that Article 4 of the Convention affirms the principle of having a coherent and coordinated inspectorate system under a single central authority and this to facilitate policy coherence and eliminate duplication of effort. Decentralizing labour inspection into SEZs is not in line with the Convention.

Regrettably, the Government has failed to ensure that there are adequate resources, both material and human, for labour inspections as provided under Articles 10 and 11 of Convention No. 81. Instead of employing more staff relative to the scale of the challenge of labour inspections, some states use civil servants and government officials on a temporary

basis while others use Development Commissioners as labour inspectors. This violates the letter and spirit of the Convention.

We note, in line with Articles 6 and 10 of the Convention, that labour inspection depends on the attraction and retention of qualified and motivated staff collaborating with workers' and employers' organizations. Temporarily recruited officers or Development Commissioners are conflicted by the very nature of their functions and mode of employment. We stress that the Convention is concerned with measures that ensure that the number of labour inspectors is sufficient to secure the functioning of inspectorates, taking into account a number of factors:

- workplaces liable to inspection;
- the number and the range of categories of workers employed in such workplaces; and also
- the number and nature of the conditions to be enforced.

We call on the Government to prioritize labour inspections, especially in the SEZs. The Government must increase the number of professional inspectors and the commensurate material resources to match the rate of inspections in compliance with the Convention. The Government must ensure that workers in the SEZs do not suffer less favourable treatment from that required under the labour inspection standards.

Another area that deserves the close attention of the Committee concerns the impact of legislative changes on labour inspection. Many of the proposed reforms have the effect of rolling back protections for workers, including scaling down the work of labour inspectors. The Committee of Experts highlights the Wages Bill and the Occupational Safety and Health and Working Conditions Bill. Tripartite consultations on the bills have been inconsistent, with no genuine consultations. The Government argues that the rollback of regulations for labour inspection is to provide technology-driven reforms to reduce the complexity of

compliance. A web-based self-inspectorate system for businesses has been introduced based on self-assessment and reporting.

This means that labour inspectors will only be invited to the enterprise where the self-assessment report of the company reveals a violation or where a complaint has arisen. We note that the Committee of Experts have previously inquired from the Government how it expects to verify the self-assessed reports from businesses without answer.

Moreover, after the self-assessment has been conducted by workplaces, it is proposed that a so-called necessity test is applied in order to trigger inspections. This would clearly further limit the powers and independence of inspectors, preventing them from initiating inspections without notice, among other challenges. These changes constitute a violation of the provisions of Article 6 of the Convention, which requires that inspectors perform their duties with full independence.

Furthermore, section 32 of the Occupational Safety and Health and Working Conditions Bill empowers states to prescribe their own conditions for conducting inspections including web-based inspections. Section 34(1) renames inspectors as “inspectors cum facilitators” this is raising doubts about the role of labour inspectors. This is a departure from the terms, function and powers as envisaged by Convention No. 81. Section 2G of the Code on OSH and Working Conditions excludes buildings, construction sites, mines and factories with less than nine workers of its scope.

Under section 44 of the special provisions for Contract Labour and Inter-State Migrant Workers, establishments with 19 or less workers are excluded from the scope of the legislation. The Factories Bill also raises the threshold of coverage from ten workers to 20 workers for establishments where power is used, and for those not using power, the threshold was raised from 20 to 40 workers.

We are concerned that the workplaces not meeting the thresholds will no longer be liable to inspections. With an immense informal economy, in fact only 6.5 per cent of

workers are formally employed and there are millions of microenterprises. These changes are bound to have a devastating impact on the enforcement of labour protection.

In this regard, we recall that the Committee of Experts have clearly indicated that the Government must ensure that all workers benefit from labour inspections in respect of all legally protected conditions of service. We therefore reiterate that the so-called reforms have serious negative consequences for the protection of workers under the Convention and will ultimately erode the labour inspection system.

The working people of India need a strong labour inspectorate. There is a growing threat to occupational health and safety in the country, especially in the vast informal economy. The strengthening of the labour inspectorate is critical for the effective enforcement of the labour laws and the protection of workers.

India has just undergone an election period and we regret that various election campaigns used the derogatory term “inspector rush”, in order to justify policy promises that will eventually undermine the labour inspection system regrettably. We call on the Government to refrain from stigmatizing its inspectors in the future. It is our hope the Government will in the future refrain from such language and work towards a strong labour inspection system that is badly needed.

Employer member, India (Ms SINGH) – I am presenting the views of the Council of Indian Employers on the complaint filed against India for violation of the Convention. We have taken note of the intervention made by the Government of India to the observations by the Committee of Experts. We also recall the interventions made on the case in the 106th International Labour Conference.

India is one of the fastest growing economy in the world. We are one of the youngest nations in the world as well. It is extremely important to create a conducive ecosystem which allows us to take advantage of this unique opportunity for creating a sustainably developed society. We Employers stand committed to the cause of fundamental principles and rights at

work. A committed work force is our asset and we recognize that the same is possible only when the interests of the workers are appropriately taken care of.

India is a country with plethora of labour legislations protecting every worker's right and each legislation has a very stringent inspection system to carry out the mandate of the legislation. The punishment provided is very severe, even imprisonment for some violations.

SEZs are set up to promote exports but without diluting any labour rights. The Development Commissioner has been given authority and responsibility of labour inspectors to enforce due compliance of labour laws. They have power to visit industrial units, inspect all the relevant records and take all necessary actions in case of violation. It is also seen that under Development Commissioner inspectors from State Labour Departments inspect the units in the SEZ. It is incorrect to presume that SEZs are exempted from inspection and there is violation of the Convention.

I appreciate the efforts of the Government of India for providing such wide range of statistics indicating the presence of effective inspection system in India. I accept the fact that a biased and corrupt inspection system does more harm to the welfare of workers than the employers. SEZs are important export-oriented zones which promote employment and provide impetus to the growth of the country. They usually comprise of big and reputed export units of national and even international origin which follow advanced technology and provide decent working conditions to the workers. It is sometimes also observed that the working conditions and facilities provided in the establishment of SEZ are far better than other enterprises. I also appreciate use of ICT in inspection which will ensure transparency and reduce biases and vested interest. An exhaustive information has already been provided by the Government of India on the inspection system in the SEZ and in the other parts of the country. We submit that Committee may like to consider favourably and there may not be any further reporting to the Committee of Experts.

Another employer member, India (Mr BHARADWAJ) – Thank you for giving me an opportunity to speak on behalf of Laghu Udyog Bharati, India, which is the largest pan India Organization of Employers exclusively serving micro and medium enterprises in India, constitute more than 98 per cent of total enterprises and employ more than 40 per cent of the total workforce, next only to agriculture.

Laghu Udyog Bharati would like to submit that inclusion of India in the final list of countries for violation of the Convention is not fair and has been done in a non-transparent manner. As the Committee is aware, tripartite consultations with all stakeholders is the norm before any decision is taken. However, in this case I would like to inform the Committee that the Employer representatives from India were not consulted before placing the case against India in the final list. While detailed information on the specific points has been provided by the delegation of the Government of India, I would like to cover in brief some of the issues raised by the Committee from the Employers' perspective.

As has been mentioned earlier, there are seven SEZs out of which in six the power of inspection is with the concerned state government labour inspectors as per the law and practice prevalent earlier. Only in one SEZ, due to its peculiar geographical situation of being surrounded by multiple states, the powers have been delegated to Development Commissioners. However, in this case also the actual inspection is done by the inspectors of the Labour Department and they draw their salary independent of Development Commissioners. The Development Commissioners are highly trained and professional persons. Therefore, the apprehension of Development Commissioners being biased as they are responsible for attracting foreign investment is not well founded. The Development Commissioners take action as per the law. Therefore, the points raised in the complaint are misleading and do not reflect the understanding as per law.

As far as delegation of powers to Development Commissioners in SEZ is concerned, I would like to draw your attention to the fact that the Convention calls for periodic inspections by the inspectors. However, the sovereign Government should have the right to give any

officer the duty and powers of inspectors to such designated and trained authority which would be the inspectors for that particular region.

The fact that the total inspections carried out in such SEZs and the penalties imposed are higher than what they were done in previous years proves that there is no deficiency anywhere.

India has daunting task to provide employment opportunities to the burgeoning youth population so that it could benefit from the demographic dividend. Therefore, it is imperative that we take steps to promote growth, economic development and promote setting up of new enterprises. However, a comprehensive legislative framework supplemented by equally active enforcement mechanism and ensuring the interest of the workers is not compromised is very important to achieve this. The SEZs must necessarily comply with all labour laws, including providing social security. It is pertinent to mention here that that the Committee of Experts has not tried to verify the allegations made in the complaint by having dialogue with either the largest trade union of India in that area or with the largest association of employers.

I would like to point out three things which the Government of India has done to enhance the benefits of workers:

- (i) the paid maternity leave has been increased from 12 to 26 weeks;
- (ii) it has been planned to provide health insurance under Ayushman Bharat health scheme to 100 million families;
- (iii) it has started Shram Suvidha Portal on which names of units to be inspected will be generated by a computer in total transparent manner. This is to reduce corruption without affecting any rights of workers.

For this, the Government of India should have been complimented but it is irony that its name has been included in the final list of countries whose cases are to be debated for

violations. In this particular matter, there is no fresh set of queries and the present is only a repetition of request to further provide the data. We submit that the Committee may like to consider favourably and hence may not be any further reporting to the Committee of Experts.

Worker member, India (Mr KUMAR) – I stand here for the protection of rights of the workers, which depends not only on a strong legislative structure, but also on its effective enforcement mechanism. The Indian Parliament has long back ratified Convention No. 81. Hence, any government in power has the bounden duty to follow the Convention in letter and in spirit, giving it the status of the law of the land. India had been facing tough times in the labour sector since the liberalization, privatization and globalization reforms were implemented from 1991.

Already the inspection system, which is functioning for long, is inefficient in implementation. We also concur with the view that corrupt and ineffective inspection system is not in the benefit of anyone, and, in fact, it hurts the welfare of the workers the most.

Multiplicity and a plethora of labour laws, both at the central and state level, many of which are more than half a century old, had been a headache for the workers as well as the trade unions. So, change of law according to passage of time is a national necessity. We have welcomed the amalgamation of existing central labour laws into four Codes, since the codification and simplification of labour laws had been a long pending demand raised by the trade unions. A series of tripartite meetings have been held where we have raised our concerns and priorities. Subsequently, many modifications have been done by the Government, and the process is still continuing.

Any labour law will achieve its objectives only when its enforcement is assured, and an effective inspection system is the tool which ensures the implementation of the legislation. In view of this, we in India have been advocating for a strong, transparent, and effective inspection system, and therefore, during the consultation process of the Labour Codes, we insisted that the term “facilitator” used in the Labour Codes in place of

“inspector”, should be reversed. We are not against the use of technology in the inspection system in order to bring transparency and break the corrupt nexus between employer and inspector, but that should be well in tune with the spirit of the Convention. We add that the technology should be used for “ease of living” and for an effective administrative mechanism.

The Government has come forward to change the term to “inspector-cum-facilitator” and is now being assigned added responsibility of prevention of violations. The Government has assured that all the changes, whether governance or legislative, would not in any way dilute labour rights. During consultation with the Government, we stressed the importance of the surprise element of inspection. Now, as informed by the Government, all inspections conducted in the central sphere are unannounced and surprise inspections. Specialized inspections are being done by expert inspectors in the SEZs. The data submitted by the Government is indicative of the fact that labour inspection in India is becoming more transparent, effective and focused. We have deliberated at length with Government and have asked them that the inspection system be strengthened further. We have been getting assurance from the side of the Government regarding its effective implementation and continuation. We appreciate the constructive approach of the Government of India to correct the deviations made in the inspection systems. Here also, we hope the Government will take a positive approach considering the peculiar situation in the country.

It is true that, at the national Government’s sphere, the inspection system is working somewhat well, but, it is tragic to note that at the state government level, the system is functioning poorly for a long period. Being a federal structure in implementation, state governments should also be directed to hold unannounced inspections only. Hence, we have both the problem of continuation of the system, as well as effective implementation of inspection throughout the country.

Hence, we would demand the Government to stop any attempt at diluting the inspection systems, to increase the effectiveness of inspection systems, and to call tripartite meeting on

how inspection system can be effectively carried forward, reflecting the true spirit of the Convention. We strongly urge the Government that all regular inspections should not be conducted by the Development Commissioners in SEZs and should instead be done by a separate labour department itself.

Another Worker member, India (Mr SINGH) – Thank you for providing me with this opportunity to speak on behalf of my union Hind Mazdoor Sabha, as well as on behalf of many other central trade unions in India grouped under the Joint Trade Union Platform. Let me reiterate; we met and discussed these matters in 2015 and then in 2017, and once again, we are discussing the same measures. Labour inspection systems remain weakened and inspectors are not empowered to perform their functions in India.

The changes to the law that relate to labour inspection are part of the overall law reform that the Government has embarked on since 2014. This has included the consolidation of 44 central employment laws into four Codes: the Code on Wages; Code on Industrial Relations; Code on Social Security and Welfare; and the Code on Occupational Safety and Health and Working Conditions. The union movement has grave concerns in this regard because the law reform is aimed at weakening the rights of workers and unions in order to boost investments and economic growth.

For example, the Factories Act will be applicable to factories employing up to 40 and more workers. This will allow such factories to be exempted from 14 major labour laws. Previously the limit was ten; that was increased to 20 where power is used and from 20 to 40 where power is not used. As India is a country made up of many small enterprises, this will include over 70 per cent of the workers. The law reforms also include allowing employers to have a fixed-term contract for workers. This will destroy permanent employment and encourage casualization and insecurity of jobs. There will be no labour inspection in these areas.

Also in this regard, we have serious concerns that, as unions, we have not been involved in any way in the reform process. The central Government and a number of state governments are going ahead with the reforms despite our opposition to various aspects of the proposed amendments. A number of state governments including Maharashtra, Haryana and Gujrat and others have gone ahead with this amendment.

Through the labour law changes, the Government has introduced many changes that directly affect labour inspection:

- it has allowed the self-inspection of the employer;
- a web-based inspections system with no power of inspectors to undertake inspections without notice;
- the labour inspectors will no longer be called inspectors but will be called facilitators, and this has obviously a different meaning from inspection.

In the meantime, we have records showing that approximately 48,000 accidents occur annually; mostly in the agriculture, construction and manufacturing sectors. These are only recorded accidents and does not include those that were not recorded.

Since 2014, we have opposed the labour law amendments. The joint trade union platform have organised many national successful strikes in order to bring the attention of the Government to our opposition to the law reforms. We have registered our displeasure with the fact that they have not engaged us in meaningful consultations and have ignored the joint proposals given by the central trade union platform. In our latest action on this matter, over 200 million workers went on national strike in this regard on 8–9 January 2019.

In 2015, the ILO Country Office in India organized three national conferences involving all stakeholders on the law reforms and produced a technical report to advise the Government on the way forward. The Government ignored the report of the ILO. The Government of India must engage in meaningful consultations with the social partners on

measures to comply with the obligations under the Convention, instead of engaging in formalities.

Government member, Sri Lanka (Mr RAJAPAKSA) – As per the information provided, India has taken several methods to strengthen its labour inspectorate system. Among them, new recruitment of labour inspectors, use of ICT and providing infrastructure facilities are commendable.

The delegation of inspection has been made for carrying out effective labour inspection. India is a very large country hence implementing labour laws across states need some type of special entity to maintain uniformity. We are of the opinion that the power of labour inspection has been delegated to Development Commissioners in SEZs to strengthen labour inspection system. The increased number of inspections in the recent past has proved this. Moreover, Development Commissioners are required to report to the central authority on labour inspections carried out in SEZs.

Further, the Government of India ensures that the labour laws are implemented uniformly around the country. So that there is no exception in SEZs. The process of codification of all central labour acts into four Labour Codes in India has been initiated with the objectives of simplifying and rationalizing complexity. A consultative process has been followed in this regard. Relevant provisions would be included in the new legislations to implement the provisions of the Convention in law and in practice. Therefore, any conclusion derived based on draft provisions would be premature. As the Government of India has taken several initiatives in order to carry out effective labour inspection, including in SEZs, we think it does not amount to the serious violation of the Convention in law and in practice.

Employer member, Sri Lanka (Mr WEERASINGHE) – The Employers from Sri Lanka speak as part of the Employers' group and in solidarity with the representations made by the Employers' spokesperson as well as our colleagues from India. India's

commitment to protect labour rights over the years is commendable. We are mindful that India has an extensive framework of labour laws at the federal level, as well as at the level of states, respectively. In addition, a mature judicial system – operating at the federal and state levels, and renowned for its interest in matters that affect the public – ensures that necessary checks and balances are in place.

India applies labour laws universally, to all regions of the country without exception. Similarly, as assured by the Government of India, inspections are also carried out on the same principle and this includes the SEZs. We understand that many of these inspections are carried out unannounced. India is the largest democracy in the world, and we cannot forget that it took one month for them to complete the general elections successfully. Such is the scale of reaching out to the population in certain parts of the country. In context, the recent efforts to enhance the regime of inspections by introducing technology is extremely progressive, as it will not only make the process related to inspection and follow-up more efficient, but also transparent. There is also no doubt that this development will contribute towards achieving the ultimate objective of impartial and expedient conclusion of issues. The provision of necessary equipment as well as facilities for transport will assist inspectors to better carry out their work on the ground. However, we also share the Employers' spokesperson's view that there remains a few areas such as the voluntary collection of data that will need further working on to ensure that the credibility of the system remains. Overall, we laud the efforts taken by the Government of India to improve inspection and bring it in line with its obligations of the provisions under the Convention. We also urge the Government to consider incorporating suggestions made by the Employers as part of its action plan to improve the efficiency and effectiveness of labour inspections.

Observer, IndustriALL Global Union (Ms MILLER) – I am speaking in name of IndustriALL Global Union, representing over 50 million workers worldwide. The Committee in its report in 2017 called upon the Government of India to, inter alia, 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.

From the data provided by the Government of India in its response, it appears that the number of inspections has increased in the last year. Nevertheless, it is still woefully inadequate. For example, there are 652 units in Vishakapatnam SEZ and only 74 inspections, including 28 with prior intimation, were carried out in the last three years. In the Noida SEZs spread across ten states and with 258 units, there were only 77 inspections and out of that, only 20 were unannounced. As in reality trade unions do not have access to the SEZs, these numbers cannot be independently corroborated, unfortunately.

Looking at the Government's response, it appears that the violations are largely underreported. One of the reasons is the very low number of inspections. From the data, no violations have been reported from the Vishakapatnam SEZ and the Mumbai SEZ. It does not seem to be correct information, as it belies belief that out of 343,572 workers employed in 652 units in Vishakapatnam SEZ, no law was violated. Similarly with the Mumbai SEZ, out of 91,470 workers employed in 323 units, there were no violations at all. The actions taken, or rather the lack of action, following the violations reported are also a matter for concern.

The fact remains that the primary function of Development Commissioners, which is to ensure speedy development of the SEZ and promotion of exports, clashes with the rights of workers, particularly with regard to safety and health. Given that those rights can be in contradiction to production targets, especially in export-oriented industries, the delegation of powers of the labour inspectors to the Development Commissioners creates a conflict of interest. A Development Commissioner may not always be able to be impartial when faced with safety and health issues arising from production pressures. This undermines the very reason for inspections.

In some states such as Jharkhand, Karnataka, West Bengal and Uttar Pradesh, as per the SEZ policies of such states, there is a provision for placement of an officer from the Labour Department under the supervision of the Development Commissioner. Therefore, even if there is no delegation of the power, the labour officer is not independent but works under the office of the Development Commissioner and that again undermines the inspections conducted. There are many studies that show that labour laws are violated with total impunity in SEZs. IndustriALL considers that an impartial, independent inspection system is absolutely necessary to even begin to address such violations.

Interpretation from Chinese: Government member, China (Ms LYU) – The Chinese delegation has listened attentively to the remarks of the Indian Government. We have noted that the Indian Government has established a labour inspectorate system and has empowered the labour inspectors who is a necessary authority to fulfil its function. The labour inspectors in India are growing in numbers and are equipped with special technologies. India is carrying out the necessary labour legislation reform so as to better implement the functions and the obligations as indicated by Convention No. 81 under its new legal framework. India has already published the progress on this front on the website of the India Ministry of Labour and Employment. The Chinese delegation supports the Indian Government to continue its efforts to promote the reform of the labour legislation, support the efforts of the Indian Government to perfect the labour inspectorate system, and we hope the ILO will provide the necessary support.

Worker member, Malaysia (Ms ANANTHARASA) – The Inspector Raj is now self-regulation. “Inspector Raj” is the demonized name for labour inspection for the private sector in India. “Inspector Raj” is used by employers and governments to vilify, ridicule and stigmatize labour inspection and the inspectorate system. It is also used as a symbol of the overregulated state that hinders the free market, productivity and investments to thrive in India. The Government’s response to the overregulation is deregulation. They have introduced a self-certification labour inspection system. Employers send in reports certifying

their compliance with inspection regulations, which is taken to be true with no built-in verification opportunity. Start-up companies are exempted from labour inspections for three to five years. They can also self-certify through mobile apps. Inspections by inspectors will only occur after a credible complaint, filed in writing and approved by at least one senior labour inspector.

The self-certification system is contrary to the Convention. It prevents inspections without notice. It allows inspections only where there is a valid complaint. It prevents the free access of inspectors without prior authorization and shifts the focus of the Government from resourcing the labour inspectorate. The Government of India has failed to provide credible data on the frequency and thoroughness of inspections, results of labour inspections and verification of information supplied by the employers under the self-certification system.

The Government is proposing to change the name of inspectors to facilitators, which is to shift the attention from prosecution and sanction after inspections to business promotions.

Let me remind the Government of the Bhopal gas tragedy and the steps taken thereafter to strengthen labour inspections to prevent such disasters. The Government must not take India backwards. The Government must reverse course. The Government must stop stigmatizing labour inspections. The Government must stop blaming labour inspections for its inability to address the challenges of the economy. We call on the Government of India to prioritize labour inspections in compliance with its obligations under the Convention.

The Indian Government is desperately attempting to mislead this esteemed house of its compliance of the Convention. The Government is breaking up the inspectorate systems. It is therefore necessary for this house to intervene urgently to protect the lives of millions of workers in India.

Government member, Belarus (Mr NIKALAYENIA) – The delegation of the Republic of Belarus welcomes the detailed information of the Government of India on the

report of the Committee of Experts regarding Convention No. 81, as well as efforts of India to ensure the effective implementation of the Convention.

We take a positive view of the system of web inspections, both at the central and the state level which does not conflict with international labour legislation. In our view, this system ensures application of the relevant labour laws. We welcome efficient dispute resolution mechanisms implemented by the labour inspection personnel in SEZs. Note that such zones have a conciliation officer in charge of amicable resolution of disputes that arise between workers and employers.

We welcome the openness and high level of cooperation of India with the ILO on the application of Convention No. 81. The Government of India continued to demonstrate its openness to dialogue and reconfirmed its strong commitment to the ILO and implementation of its relevant international obligations. The numerous actions taken by the Government of India must be recognized. We extend our strong support to the Government of India on the application of the Convention.

Worker member, Sweden (Mr CARLSTEDT) – I take the floor on this very important issue on behalf of the Nordic workers. As we all know, 2.78 million people die every year as a result of occupational accidents and work-related issues. Labour inspections is an important way to tackle this and to ensure a safe working environment for all workers. For those inspections to be effective, the inspectors need to be provided with sufficient resources and the mandate to freely visit any workplace, both for scheduled and unannounced inspections.

As the Convention, which India ratified already in 1949, clearly states, all workers should be covered by labour inspections. We are therefore troubled by the information provided by the Centre of Indian Trade Unions that workers in the SEZs does not benefit from this right to have their conditions at work inspected, especially because of the reports that violations of all basic labour laws are regularly present in those zones. The pursuit of

growth and to attract foreign capital to the special economic zones cannot be paid by excluding those companies from their obligations to follow labour law and to accept to be inspected by the authorities

As various human rights organizations have raised, there is a huge number of workers in forced and child labour in India. The Global Slavery Index estimates that on any given day in 2016 there were nearly 8 million people living in modern slavery in India. This is one of the things that could be identified and dealt with through systematic and thorough labour inspections.

We therefore urge the Government of India to follow the conclusions from the Committee in 2017 and ensure that all workers, also those working in the SEZs, will be covered by labour inspections, as clearly stated in the Convention.

Government member, Myanmar (Ms MYAT) – We welcome the delegation of India and thank them for their comprehensive information. Myanmar recognizes India's commitment to promote and achieve sustained inclusive and sustainable economic growth and decent working conditions for all. Myanmar welcomes the efforts made by India for improving its current inspection systems. We note with appreciation that India provides data and statistics regarding its implementations of Convention No. 81 to the ILO.

We believe that fresh recruitment of more than 560 inspectors and provisions of relevant facilities in various states in India, contribute further for affirmative and responsible inspections. Moreover, Myanmar recognizes that effective dispute resolution mechanisms are diligently implemented by labour inspectors, and the spirit of tripartism has increased in SEZs, by promotions of collaborations between employers and workers, to ensure better working conditions at workplaces.

As a result of these initiatives and appropriate labour inspection systems, the relatively lower violation numbers represented in the last three years statistical data on labour inspections in SEZs, Myanmar believes that India is on the right track, and with further

cooperation with the ILO and increased tripartism, it will successfully implement the Convention.

Worker member, Zimbabwe (Mr MOYO) – In 2017 I was here and the case of India concerning this Convention was discussed and recommendations were made. Today India is here again with the same issues. It is now two years, there is no compliance. Now India is in its third year of defiance. This is a very unfortunate situation.

The Committee of Experts found that the Government of India continued to submit general information that do not enable the Committee to make an informed assessment of the protection of workers in SEZs. India is in breach of Articles 2 to 4 of the Convention. Furthermore, a failure to provide adequate inspectors with powers to conduct their work and power to prosecute offenders is a serious neglect of responsibility by the Government of India.

Labour inspection is an essential part of the labour administration system, with a fundamental function of enforcement of labour legislation to foster compliance. It also provides technical information and advice to employers and workers concerning the most effective means of complying with the legal provisions. This dual nature means that labour inspection plays a key role to ensure fairness and respect for rights in the workplace. It ensures good governance of the labour market and an opportunity to timeous response to changes in the labour market.

Some speakers here come to praise what is wrong; this is a worrying development in this discussion. If they cannot separate progress and promise they become an accomplice to the injustice perpetrated to the working people of India. Promising is not progress but we expect action.

Once more we call upon the Government of India to act in compliance, when they ratified the Convention they accepted the obligation attached to it. They therefore should comply with the Conventions with sincerity.

Interpretation from Arabic: **Government member, Iraq (Ms AL OGAILI)** – The Government of Iraq would like to support the statement made by the representative of India. We appreciate all of the initiatives and measures adopted by the Indian Government to ensure the implementation of Convention No. 81. We note that today, India has reformed its Labour Code and has made it more modern and more in line with Convention No. 81 and other international standards.

We note that India sees to the respect of the Labour Code and is cooperating with both workers' and employers' organizations. We would like to point out that India is one of the largest countries in the world, is the greatest democracy and is the second country that joined the ILO, and India has ratified the ILO Constitution as soon as it was created. We believe that the wish of India to cooperate with the ILO deserves encouragement from our side. Therefore, we would encourage India to continue its efforts.

Government member, Kazakhstan (Mr BAISSUANOV) – Kazakhstan notes India's commitments to fully implement its obligations under the ILO, including Convention No. 81. We also note that the detailed and thorough report of the Government representative today, as well as the remarks by the Employer spokesperson. We take into account commitments by the Government to strengthen this inspection system, ensure inclusiveness and transparency and work with social partners and the ILO. We believe that the Government of India takes all relevant measures to address the issue of the Convention.

Interpretation from Russian: **Government member, Russian Federation (Ms RAYAZANOVA)** – First of all, we would like to thank the distinguished representative of the Government of India for a constructive approach to the matter at hand, the fulfilment of the provisions in Convention No. 81 which regulates the creation of a framework system for labour inspection, allowing the country itself to choose its own approach within that framework. India is seeking to improve the application of said Convention, and we are confident that, in the near future, India will take exhaustive measures to provide further information requested by the Committee of Experts.

With regard to the observations relating to a number of different cases in these SEZs, we would like to note that the preferential application of the particular provisions in this area has been covered by the information, and we are sure that the measures taken by the Government are well founded.

We believe that the provisions of the Convention are exclusively technical in nature and that the technical comments that have been made will be dealt with by the Government. And we are sure that it is necessary to take into account not just the application in practice, but also the context a State is dealing with. What is important is for a State to show a constructive approach and cooperation with the ILO. We believe that that is something that should be encouraged. We very much hope that the Committee will note with satisfaction the information provided by India, and will close the consideration of this case, noting a satisfaction.

Government member, Philippines (Mr TALISAYON) – The Philippines notes with compliment the submissions of India with respect to the numerous reforms put in place to give full effect to the Convention at hand. Based on the detailed information provided by India as already published in the Committee website, India has a comprehensive system of labour legislation and an elaborate system of labour inspectorates, both at the central and the state level. In law and practice, all of its labour laws are applicable and enforceable in all geographical regions including the SEZs. Labour inspections are also conducted in all SEZs.

The information also indicates the details of the inspections conducted from 2016 up to the present, including the number of announced and unannounced inspections; status of enforcement in the three years; number of enterprises inspected; workers covered; offences reported; violations detected; criminal prosecutions launched; penalties imposed and fines collected.

In its submission, India further accounts for the total number of labour inspectors, number of vehicles provided and other human and material resources in connection with its

inspection function. Other significant reforms are also instituted to ensure its compliance with its obligation under the Convention. The Philippines thus trusts that India will remain committed to its obligations under Convention No. 81, and to continue its constructive engagement with all its social partners.

Finally, the Philippines requests the ILO, including its supervisory bodies, to continue providing its member States the needed technical assistance and guidance to ensure full compliance with Conventions with the end in view of a Work for the Brighter Future.

Miembro gubernamental, Estado Plurinacional de Bolivia (Sr. ALANOCA MAMANI) — El Estado Plurinacional de Bolivia, agradece la información presentada por el Gobierno de la India en relación al Convenio. Saludamos las estadísticas detalladas proporcionadas por la India, las cuales muestran un incremento de inspecciones realizadas en las zonas económicas especiales, en 2018 y 2019, en comparación con el bienio anterior. Destacamos también el compromiso manifestado por el Gobierno de la India para la promoción de un desarrollo económico, inclusivo y sostenible, con equidad y condiciones de trabajo decentes para todos. En ese sentido, tomamos nota con interés de las medidas existentes para abordar quejas y mejorar las condiciones de trabajo. Consecuentemente alentamos al Gobierno de la India a continuar las medidas encaminadas con respecto al Convenio.

Government member, Bangladesh (Mr ROY) – We welcome the efforts of India for the application of the ILO Convention No. 81 concerning labour inspection in the country, particularly in improving its labour inspection system in the SEZs. It is encouraging that more than 550 new inspectors have been recruited in various states of India to strengthen labour inspection in the country. For a smooth and efficient delivery of duties of the labour inspectors, they have been provided logistics support. We appreciate that India has initiated a recodification of all central labour laws, to simplify, rationalize, and amalgamate various provisions to enhance the compliance of the legislation. Considering the progress made, we

call on the Committee to take into account the significant efforts and progress made by the Government of India to address the issues raised in the complaint.

Government member, Brazil (Mr SANGES GHETTI) – Brazil thanks the Government of India for the presentation of detailed information to the consideration of this Committee. Brazil shares India's unease with a wide range of aspects of the supervisory system and in particular the drafting of the lists of cases for examination at the Conference. This Committee is far from conforming to best practices in the multilateral system. A strong, effective and legitimate ILO, adapted to the contemporary challenges is of interest to all, governments, workers and employers. Looking forward to a future with prosperity, decent work and more jobs, the ILO should increase cooperation and partnerships, while reviewing its standards supervisory system towards transparency, objectivity, impartiality and true tripartism.

The information from the Government shows that it is committed to promoting and achieving sustained, inclusive and sustainable economic growth, employment opportunities, equity and decent working conditions for all. We reiterate that in Brazil's view, national circumstances, capabilities and legal frameworks ought to be fully taken into account in the examination of all cases before this Committee. India's is a case in point, in as much as the enforcement of the relevant provisions of various labour acts is secured through a system of labour inspectorates, both at the central and the state level. A separate labour inspection machinery works at the state level to ensure enforcement of the legal provisions relating to the service conditions of workers.

Moreover, SEZs are an important policy initiative for India within the remit of its national sovereignty. I recall that according to the relevant legal provisions the central Government shall have no authority to relax any law relating to the welfare of the labour in the special economic zones. All labour laws are applicable in SEZs and the rights of the workers therein are protected by a strong legal framework. Special arrangements are in place

for SEZs whose territories extend beyond one single state in order to secure efficiency and avoid conflicts of interest.

Government representative, (Ms TRIPATHI) – I thank you for this opportunity to respond to some of the observations made by the distinguished speakers and reiterate the Government of India's views on the issue of effective enforcement of labour laws in the country and compliance with Convention No. 81. I also thank the distinguished delegates who participated in the deliberations. We have taken note of all the comments and suggestions provided by the representatives of Employers, Workers and Government.

I would like to inform the Committee that a wide spectrum of data with respect to SEZs regarding number of employees, number of enterprises, number of inspections carried out in SEZs, both announced and unannounced, number of violations, prosecutions and convictions have been provided by the Government. Besides the elaborate data on SEZs, statistics on inspection machinery has also been provided with respect to central and state spheres. As far as enforcement of labour laws is concerned, we wish to submit that India has a very elaborate system of labour legislations and we agree that the intent on the legislation may only be achieved through effective enforcement. The enforcement of the various labour laws has been prescribed under the relevant provisions of the Act and is secured to a system of labour inspectorates, both at the state as well as the central level. The system of inspection and follow-up action exists in the formal prosecution launch and convictions done in courts of law.

The data speaks for itself. The date of inspection in the central sphere indicates that 6,000 violations were detected during the last three years and 55,000 criminal prosecutions were launched against the offenders, amongst which 38,000 cases penalties were imposed. An amount of INR307 million Indian rupees was collected as fines. At the state level, during the last three years 395,000 offences were reported and 642,000 violations were detected. In 71,000 cases, criminal prosecutions were launched and an amount of INR236 million was collected as fines.

I would like to highlight that during the last three years, 620 cases were reporting in seven SEZs in which 18 violations were detected. In 166 cases, criminal prosecutions were launched and in 58 cases, penalties convictions were ordered. Enforcement mechanism in India is multi-layered and involves physical inspection system, claim authorities, appeal authorities, tribunal at central and state government levels, supported by on-line portals at central and state level.

I would like to inform the esteemed Committee regarding the issue of delegation of powers to Development Commissioners in SEZ. The delegation of power to the Development Commissioners of SEZ in no way implies dilution of power of enforcement by a labour inspector. The SEZ Acts clearly states that the role of development commissioner shall be to supervise and monitor inspection systems in the SEZ. All state labour inspectors are drawing the salary from the respective consolidated funds of the state government and function independently to enforce labour laws. The provisions of the Employers Provident Fund Act and Employees State Insurance Act, which are central legislations are applicable on all SEZ also. It is emphasized that the Employers' Provident Fund Act provides social security benefit to about 60 million workers and ESIC Act provides the health insurance benefit to 36 million workers. The enforcement of both the Acts is being done stringently by an independent inspectorate system of central Government in all establishments of the country, including the SEZ. The inspections which are being conducted are 100 per cent unannounced. The above arguments strengthen that SEZs have a fully operational inspection system in place which aims at enforcement of various labour laws.

I would like to clarify to the esteemed Committee regarding the less number of violations in the SEZs in spite of increasing the number of inspections in SEZ by five times, specifically in Mumbai and Vishakhapatnam. As highlighted in the opening remarks of India, a robust agreement addressing mechanism through e-portal is present at various levels of governance which provides every worker, including of an SEZ, with the opportunity to raise their problems directly to the Government instead of it being escalated into a violation

and then getting it detected by the inspectorate. It is an example of use of technology to bring governance at the doorstep of the citizen and take preventive measures for their welfare. The efficacy of the existing system may be highlighted by the fact that in the last three years, about 80,000 complaints have been registered at the central government's e-portal with the disposal percentage of 95 per cent. Further, for the effective implementation of the Employers Provident Fund, about one million grievances have been received during the last four years with the average disposal rate of 98 per cent. This is an illustration of a preventive, responsive and efficient enforcement mechanism.

We believe that use of technology in administration will promote minimum government with maximum governance. It will promote transparency, reduce corruption, enhance time-bound response and make the overall system more efficient. In conformity with this vision, the concept of self-certification schemes is being implemented wherein the employer provides complete information about the enforcement of the labour laws. I would like to reiterate that self-certification is not undermining the inspection system however, it complements the inspection system as it facilitates the examination of the records beforehand and understand the issues in advance before making physical inspection.

I would like to inform the Committee that India supports collective bargaining and social dialogue as we firmly believe that it works as a safety valve that prevents escalation of industrial disputes and promotes industrial peace and harmony. Accordingly, as per the legal provisions of the Trade Union Act, the formation of trade unions is permitted in every establishment, including those located in the SEZs. There is no restriction on trade union activity in the SEZs and about ten trade unions have presence in the SEZs. In fact, the Government engages with the trade unions frequently before making any policy decision related to labour issues. Most of the boards and committees constituted by the Government, like advisory board on minimum wages, social security, provident fund, committee on welfare of unorganized workers, etc. are mandatorily of tripartite nature and indicate involvement of all social partners in policy decisions.

On the issue raised on proposed labour reforms, we would like to clarify that the intention of labour reforms being carried out in India is to enhance compliance of labour laws, simplify procedures, reduce multiplicity of authorities, have uniform definitions and provide legislation which is in sync with changing times and caters to all categories of workers with the emergence of new forms of employment. I would like to inform the esteemed Committee that the Government, while framing the Labour Codes, had exhaustive consultation with all social partners, state governments, technical and legal experts. Consultations have also been held with the experts from the ILO during the process. The comments of the general public who are the ultimate beneficiaries of the reforms is also sought by placing the draft legislation on the website of the Government and sufficient time is given for their comments. The suggestions received are compiled, examined, considered and incorporated in the proposed legislation.

I wish to inform the Committee that, during the process of drafting of Labour Codes, about nine tripartite meetings were held. The proposed Labour Codes in no way intend to or propose to weaken the inspection system in the country. In fact, it enhances the role of the inspector by adding the preventive duties and responsibilities to his usual duties of inspection. Further, the inspections as proposed in the labour code, would be unannounced and prior notice is not required to be given before inspection. The provision of appellate authority is provided at various levels to ensure that the principle of natural justice is followed. Though the discussion of elaborate provisions of Labour Code is not related with Convention No. 81, however, I would like to clarify that the applicability threshold for a factory has not been enhanced from the existing ten to 40. In fact, the threshold of other establishments is not proposed to be changed.

I would put on record that the Codes are still at pre-legislative state and are subject to modification. The Government is conscious of its commitment made to labour standards through the ratification of Conventions and will give due regard to the same while framing legislations. I would now request our Secretary to give concluding comments.

Another Government representative (Mr SAMARIYA) – We are committed to the labour reforms through the appropriate tripartite consultation. We are a nation of 500 million workers, including 0.2 per cent workers employed in SEZs and are committed to the welfare of all workers through innovative and technology-based mechanisms.

We have provided substantial evidence to indicate that the provisions of the Convention are being implemented under the enforcement mechanism prevalent in India, including SEZ, which is not in violation of the provisions of the Articles of the Convention. Article 2 that provides for a system of labour inspection which is applicable to all workplaces, is complied with by the applicability of the inspection system through all instruments, including that of the SEZs. The labour inspection system in India, which is under the supervision of the Central Government for the establishments of the central sphere and under State Labour Department for the state sphere is as per Article 4 of the Convention.

In the case of SEZs, the delegation of powers to relevant Development Commissioners who, ultimately report about the inspections to the State Labour Department, is not in violation of Article 4 of the Convention. Similarly, Article 23, which states that the labour inspection in commercial workplaces will be applicable, which is enforceable by the labour inspectorate, is also being complied with. The relevant labour laws applicable to commercial places are being enforced by the inspection system through the officers who are given the powers of labour inspector by the appropriate government. As regards to the compliance with Articles 10 and 11, the statistical data provided indicates that there is an increase in the number of inspectors who are provided with all facilities to undertake the inspection.

Lastly, a labour inspector does not provide any notice to the employer before undertaking any inspection in the establishment, as 100 per cent inspections in the central sphere are unannounced. Even in the state sphere also, 91.7 per cent inspections are unannounced. The inspection system does comply with Article 23 of the Convention. The proposed provisions in the Labour Code also do not place restrictions on the inspector to enter the premises or to give prior information to the employers. However, to break the nexus

between the employer and the employee, the randomized computerized system is being promoted. In view of these facts, it is submitted that India believes and implements the labour standards completely, as enforcement is crucial to achieve the intent of the labour legislation.

India feels that the substantive issues raised in the case have been adequately responded to by us in a series of communications since the year 2015. The Committee has also noted our response sent in May 2019. In view of the detailed statistics provided and our oral reply, we request that this case may be closed. Lastly, we would like to request the Chair of the Committee to submit the draft conclusions on our case well in advance for the consideration by the membership of this Committee to ensure that it is reflective of the discussions held and for the sake of consensual adoption on 20 June.

Chairperson – Thank you to the delegation of India for their participation in the Committee’s work this afternoon, for those concluding remarks and for the information you have provided. In relation to your last comment, the process for the drafting and delivery of the conclusions is outlined in document D.1, so I would refer you to that document.

Worker members – First of all, we noted the comments of the Employers’ group with regard to the submission made by a trade union organization, and the suggestion that such submissions should be subjected to the approval of the Government and other social partners is highly problematic and inappropriate. Representative organizations have the right to submit observations under the Constitution, and such a prior approval that the Employers are seeking in this case would severely limit the freedom of opinion of the social partners. And, we trust that the Employers would not like to see such an evolution of the reporting system.

Other social partners and the Government are indeed invited to respond to the comments sent by the trade unions. But, as we have seen in the comments of the Committee of Experts, the Government of India has failed in fully responding to the persistent allegations that have been brought repeatedly to their attention.

Regarding the Government's compliance with Convention No. 81, there can be no effective compliance with any system of inspections, including labour inspections, without the inspectorates enjoying legislative and policy priority and adequate resources. We call on the Government to ensure that effective labour inspections are conducted in all SEZs. In this regard, the Government should send a complete and detailed report to the Committee of Experts that includes the number of routine and unannounced visits as well as the dissuasive fines imposed against infractions.

The Government must put an end to the operation of the self-certification scheme, which allows employers to self-certify without any credible verification by government officials. The self-certification of workplaces as well as the necessity test that is proposed raise very serious concerns. The Government failed to demonstrate how the self-certificates are verified and has not pointed at any other safeguards put into place to live up to its obligation to ensure effective labour inspections in all workplaces. We call for an immediate review, and indeed reversal, of the self-certification system. It is our expectation that the Government undertakes all necessary measures to ensure that all workplaces, including in the informal economy, are liable to inspection; and that labour inspectors have full powers to undertake routine and unannounced visits as well as to initiate legal proceedings.

We remind the Government that under Articles 20 and 21 of Convention No. 81, the central inspection authority is obliged to publish an annual report on the work of the inspection services under its control and supervision. This is the obligation of the federal Government in respect of both federal and centrally coordinated State's activities.

When it comes to the ongoing labour law reforms, we urge the Government to enter into full and frank negotiations with the social partners in order to ensure that the amendments introduced are compliant with International Labour Standards, and specifically Convention No. 81. Specific attention should be paid on the impact of the limitations put on labour inspections in the informal economy. This is where the vast majority of the workers

are and this regrettably also where the effective labour protections are the weakest. This is particularly a concern when it comes to occupational health and safety.

We have now discussed these issues on numerous occasions and the Government has still not provided the adequate level of information that would allow the Committee of Experts to make a full assessment accompanied by concrete recommendations. Therefore, we believe it is appropriate that the Government accepts an ILO high level mission in order to evaluate progress and to develop a pathway to reform in the form of a tripartite action plan.

Employer members – To begin, I think I may have perhaps phrased things a little unclearly in the sense that the Employers are in no way suggesting that unions should seek approval of anybody to make their complaint. That is absolutely their right. I think the observation I was making was that the complaint as it is, it is self-contained and sufficient information, and it would be good if the process of investigating and lodging the complaint in the report and bringing it forward to this Committee was better understood. I think we have heard throughout this discussion, especially from the Government, that there is a lot more going on than would be evident from the original complaint. It would have been possibly more upfront if that process had been better investigated. That is my point. It is certainly not about a union not having the right to complain. That is absolutely their right.

I think too, the comment is that, as we have heard from the Government and as I said, there has been a lot going on that we had not heard about before and, in that sense, that is good. But, sorry India, that doesn't let you off the hook completely because I think that there are a number of issues that do need to be dealt with, not necessarily an issue of things being bad, but things could be better and I think that is probably the kind of tone that our comments are directed at. For instance, on the issue of the adequacy of resources for labour inspectors, we have heard and we accept that labour inspectors in general are provided with everything they need to do their jobs – cars, laptops, phones, and so on. But that there seem to be some instances where there are some less ideal circumstances, such as labour inspectors being

required to use things like taxis and the like. Our observation is that that can be an inhibiting factor in the carrying out of their work and so one recommendation is that we urge the Government to ensure that all labour inspectors have the equipment and facilities necessary for them to carry out their duties in a completely unfettered way.

The second recommendation in that regard is that the Government continue to provide information on the number of labour inspectors, both at the central and state levels, but also in relation to the ratio of labour inspectors to people because, as we heard in parts of the discussion, the number of labour inspectors has increased very significantly but when you compare that to the working populations and the areas that they serve, it may still be an issue of adequacy that needs to be addressed.

Turning now to the issue of data and data provision. The comment I made earlier and make it again that some aspects of data collection even with the advent of web-based systems is still conducted on a voluntary basis, and that has several issues attached to it, one of which is being voluntary, it means that some of it may not come in on time, or even at all, and it may not necessarily come in standard formats, all of which can diminish the comprehensiveness and usefulness of information at the national and state levels. So we would urge the Government to take steps to ensure that the data collection process is as standardized and comprehensive as it needs to be to operate and inform the processes of labour inspection and regulatory processes as they need to be.

Just turning now to the issue of self-certification. Unlike the Workers, we do not believe that self-certification of itself is a bad thing, the issue for us is whether or not it is a substitute for labour inspection work. Our belief is that self-certification can be a powerful tool in assisting employers to understand what issues are deficient in terms of their compliance and to then take self-regulated steps to achieve those things. That does not absolve them from inspection, or independent audit, but, if it is working properly, it does give them the chance that when an inspector does call unannounced, that their systems are working and that there are not violations. So it is a self-promoting, self-regulating process, but our belief and our

view is that it should not be a substitute for a labour inspection. Given that we do not have enough information, we would call upon the Government to provide in future reports an assurance that self-certification does not diminish the capacity of the State to independently regulate an audit through the means of labour inspection.

With respect to the free access of labour inspectors to workplaces, we note that the work going on in the regulatory reform and legislative reform, does not appear to pick up specifically the rights of labour inspectors to access workplaces and we would urge that those sorts of issues are in fact included. We note that this work is ongoing and that modifications are still possible. This would be one modification that we would absolutely suggest that is made.

With respect to access of unions to workplaces, we note that the Government is working on reducing the thresholds required to establish unions, and we note also their assurance that there is no restriction whatsoever on unions forming at anywhere in their economy, including in SEZs. We would look forward to seeing evidence that that is in fact true in the future.

We would call upon the Government, as have the Workers, to complete the work on the OSH Bill and the Wages Bill and the various other pieces of legislation that have been referred to. They seem to have been in the system for a rather long time, and it seems well due time that these are completed to the level that we have been talking about.

So with all of these points in mind, we call upon the Government to take measures: to ensure that all of the legislation that has been worked upon is in conformity with the Convention; to ensure that the Code of Wages and the OSH and Working Conditions Act explicitly allow labour inspectors on their own initiative to enter workplaces without prior notice, not limited to situations where complaints have been made or indicators exist for labour law violations; to ensure that the Code of Wages and the OSH Working Conditions Act guarantee the discretion of labour inspectors anywhere in the country, including SEZs, to initiate prompt legal and administrative proceedings without prior warning; and, lastly, to

ensure that the acts that are worked on contain thresholds that are appropriate and realistic for the establishment of both workers' and employers' organizations to allow them to flourish and of freedom of association conditions anywhere in the country.