International Labour Conference

Provisional Record

98th Session, Geneva, 2009

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PART TWO

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

Report of the Committee on the Application of Standards

PART TWO

OBSERVATIONS AND INFORMATION CONCERNING PARTICULAR COUNTRIES

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A. Discussion of cases of serious failure by member States to respect their reporting and other standards-related obligations

(a) Failure to supply reports for the past two years or more on the application of ratified Conventions

A Government representative of the United Kingdom expressed apologies on behalf of the non-metropolitan territories of Anguilla, Bermuda, British Virgin Islands, Falkland Islands, Gibraltar, Isle of Man and St Helena, as they had been unable to provide the reports requested under article 22 of the Constitution. He emphasized that this failure was not due to a lack of political commitment on the part of the territories, but rather a lack of capacity. He recalled that non-metropolitan territories were usually very small and largely autonomous island administrations with limited human and financial resources. Heavy reporting schedules burdened even the largest of administrations, and for small administrations, the disruption of work schedules resulting from the need to recruit or retain staff in the event of retirement, sickness or bereavement stretched their resources. However, he was pleased to report that the Government of Anguilla, after having received technical assistance from the ILO, had completed all its outstanding reports, which had recently been submitted to the Office, along with the remaining article 22 reports for the Isle of Man. In general terms, his Government was working with the governments of the non-metropolitan territories to ensure that they continued to raise their human rights standards. Work was currently under way for the extension to them of a number of fundamental ILO Conventions. In that respect, it was to be welcomed that St Helena had written to the Office requesting the extension of Convention No. 182.

A Government representative of the United Republic of Tanzania reaffirmed the commitment of his Government to submit reports in respect of the requests of the Committee of Experts within the specified schedule, namely before 1 September 2009. Nevertheless, he noted that some of the issues raised had already been overtaken by events. For example, the need to request a recommendation from the political party as a condition for admission to a higher learning institution was no longer applicable. He noted that his country had been a multipartite nation since 1995 and the only obligation to join higher learning institutions was to abide by the laws governing these institutions.

A Government representative of Togo explained that the failure of his Government to supply reports on a number of Conventions was related to the numerous difficulties hindering the country's desire to move forward. He noted that the main difficulty was the lack of qualified and sufficient number of human resources to gather the relevant information for the preparation of reports. Recruitment in the civil service had been frozen and labour inspectors who retired were not replaced. In 2006, the country had only 15 inspectors, who did not manage to fulfil their numerous duties. In addition, the qualifications of inspectors had to be updated so as to enable them to deal with the new challenges of the world of work. Furthermore, he indicated that the long socio-political crisis experienced by Togo had resulted in the destructuring of the internal and external systems of coordination of the labour administration. The standards and international relations unit of the Ministry of Labour, which was responsible for monitoring the implementation of Togo's commitments in relation to the ILO, had been non-operational for a long time. These difficulties had a negative impact on the Government's capacity to respond to the multiple requests from the Committee of Experts.

He recalled that, despite these obstacles, the Government of Togo had not been inactive. The Ministry of Labour had been restructured in 2008, responsibilities had been attributed and staff had been recruited. With a view to having personnel with the capacity to prepare reports, the ILO had been requested to provide training for around 20 inspectors at the Turin Centre. The training of 15 inspectors had been scheduled for July 2009. It was to be hoped that this technical assistance, which had been requested for three years, would result in the acquisition of the necessary capacity for the preparation and supply of reports.

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

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

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

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

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

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

- **Antigua and Barbuda**
  - since 2004: Conventions Nos 161, 182;
- **Armenia**
  - since 2007: Conventions Nos 14, 150, 160, 173;
- **Dominica**
  - since 2004: Convention No. 169;
  - since 2006: Convention No. 147;
- **Equatorial Guinea**
  - since 1998: Conventions Nos 68, 92;
- **Kyrgyzstan**
  - since 1994: Convention No. 111;
  - since 2006: Conventions Nos 17, 184;
- **Liberia**
  - since 1992: Convention No. 133;
- **Saint Kitts and Nevis**
  - since 2002: Conventions Nos 87, 98;
  - since 2007: Convention No. 138;
- **Saint Lucia**
  - since 2002: Convention No. 182;
- **Sao Tome and Principe**
  - since 2007: Conventions Nos 135, 138, 151, 154, 155, 182, 184;
- **Seychelles**

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

■ **Tajikistan**

– since 2007: Convention No. 182;

■ **The former Yugoslav Republic of Macedonia**

– since 2004: Convention No. 182;
– since 2007: Convention No. 144;

■ **Turkmenistan**

– since 1999: Conventions Nos 29, 87, 98, 100, 105, 111.

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

A Government representative of Cape Verde apologized for the failure to provide the reports due under article 22. This was mainly due to the lack of information resulting from the shortage of human and material resources. She undertook to send all the reports due and repeated her request for ILO technical assistance. She emphasized that, despite the above, her country had prepared a new Labour Code, which had been adopted in April 2008 and which was in compliance with the principles of international labour Conventions and other international standards, such as those relating to domestic and migrant workers.

A Government representative of Congo recalled that the information expected by the Conference Committee concerned responses to the observations made by the Committee of Experts in its 2009 report and the submission to the competent authorities of the instruments adopted by the Conference. The report of the Committee of Experts noted the receipt of 17 reports, with another three pending. An observation from 2004 related to Convention No. 150. All other observations and direct requests were from 2008. In its commitment to comply with its obligations, reports were now being prepared which would be received by the Office with the reports due for 2009 before the 1 September 2009 deadline.

With regard to submissions, the report of the Committee of Experts recalled the communication in December 2007 indicating that the Minister of Labour had requested the General Secretariat of the Government to submit 34 Conventions and 43 Recommendations which had not yet been referred to the National Assembly. Following the delay in submissions, the Ministry of Labour now hoped to be able to ratify the instruments quickly and had submitted the instruments on a thematic basis, with comments on the Conventions to be ratified, and on Recommendations that could be integrated into the national legislation. During the second quarter of 2008, the Ministry of Labour and the General Secretariat of the Government had decided that each instrument was to be submitted separately. Accordingly, Conventions had to be accompanied by the texts required for their ratification. This work was currently being carried out by the Ministry of Labour, but the Office had not been informed of the delay in the submission procedure.

In conclusion, he reaffirmed Congo's willingness to meet its obligations. However, in view of the complexity of the ratification procedure, it would be useful if the Subregional Office in Yaoundé would undertake a mission to support the efforts of the Ministry of Labour to resolve this issue.

A Government representative of the Islamic Republic of Iran regretted that his Government had failed to meet the deadline for its article 22 reporting obligations. He noted that the failure to supply information in reply to comments made by the Committee of Experts had given the Government the opportunity to deal with this issue more accurately. He explained that delays occurred in receiving information from the provinces. Nevertheless, he pledged that his Government was fully determined to fulfil its reporting obligations.

A Government representative of Ireland indicated that the non-submission of replies to the comments of the Committee of Experts in respect of the Conventions mentioned was due to the pressure of work relating to the ongoing detailed negotiations under the social partnership, including delivery of commitments arising out of negotiations, such as legislation. Matters were now in hand and it was intended to immediately submit several outstanding national reports, with the remaining reports to be submitted as soon as possible thereafter.

With regard to the non-provision of information on submission to the competent authorities of instruments adopted by the Conference for the last seven sessions, she indicated that her country was in the process of considering the ILO instruments that were to be considered in the first instance by the relevant competent authorities, with a view to obtaining Government approval to either ratify the Conventions and adopt the Recommendations in question, or to obtain agreement to defer ratification or adoption until such time as the legislation and practice were in conformity with the provisions of the ILO instruments.

A Government representative of Liberia stated that his Government had already submitted reports concerning the application of Conventions Nos 22, 53, 55, 58, 92, 105, 111 and 112, although their receipt had not yet been acknowledged. The Government had been facing problems relating to capacity in its efforts to submit reports, but the Office had provided technical assistance in October 2008 and the relevant officials had been trained. He indicated that the remaining reports would be submitted in due course. He highlighted the improvement in the number of reports submitted, namely zero in 2007, three in 2008 and 14 out of 18 in 2009, and reiterated the commitment of his Government to submit the rest of the reports due.

A Government representative of Nigeria emphasized that her Government was committed to fulfilling its constitutional obligations including those relating to reporting. She acknowledged that in certain cases the Committee of Experts had indicated that the information provided in the reports supplied had been inadequate. She further acknowledged that her Government faced problems in its capacity to prepare reports. She therefore requested technical assistance, which might bring about an immediate improvement in compliance with reporting requirements, as in the case of Liberia.

A Government representative of Uganda regretted the delays for several years in the submission to the competent authorities of the instruments adopted by the Conference and the failure to provide reports on unratified Conventions and Recommendations. This had been due to staff constraints and weak linkages between the various ministries, institutions and departments that were involved in the implementation of the law. However, she reaffirmed her Government's commitment to meeting its reporting obligations. The first step had been taken by submitting the outstanding reports on ratified Conventions in November 2008. Focal persons had also been identified from different ministries and departments as means of improving reporting in the future. She gave an understanding that the remaining reports and the replies to the comments of the Committee of Experts would be provided by November 2009, as already indicated to the Office.

A Government representative of Panama stated that since the meeting of the Committee of Experts the Government had provided replies to most of the Committee's comments. He undertook to send the rest very soon.

A Government representative of Paraguay, with reference to paragraphs 36 and 87 of the report of the Committee of Experts, indicated that a new government had taken office in August 2008 which from the outset had established close relations with the ILO. Accordingly, in February 2009, the President of the Republic had approved the new National Decent Work Programme, in the presence of the Director of the ILO Subregional Office for the Southern Cone of Latin America and the Minister of Justice and Labour, as well as the presidents of the principal

employers' and workers' organizations. The comments made by the Committee of Experts had been taken very seriously and the Government undertook to reply in the near future and to reflect them in the legislative provisions. With regard to the comments of the supervisory bodies, she said that the Government undertook to reply in 2009 to the observations and direct requests made by the Committee of Experts and to provide the necessary reports at the appropriate time. With reference to the submission of the instruments adopted by the Conference, the Government requested the secretariat to provide authenticated copies of the instruments to which reference was made and undertook to forward the text of the Conventions to the Executive so that the corresponding procedure could be set in motion. The information that Paraguay provided to the Director-General on these matters would also be communicated to the principal employers' and workers' organizations.

A Government representative of the Czech Republic apologized for the failure to submit certain reports on ratified Conventions. This had been due to an unexpected situation affecting the personnel concerned, which had since been resolved. He therefore hoped that his country would rapidly return to its customary situation of compliance with its reporting requirements.

The Committee took note of the information provided and of the explanations given by the Government representatives who had taken the floor. The Committee underlined the vital importance, to permit ongoing dialogue, of clear and complete information in response to observations of the Committee of Experts. It recalled that this was one element of the constitutional obligation to transmit reports. In this respect, the Committee expressed serious concern at the large number of cases of failure to transmit information in response to the observations of the Committee of Experts. The Committee recalled that Governments could request technical assistance from the Office to overcome any difficulty that might occur in responding to the observations of the Committee of Experts.

The Committee requested the Governments of Bolivia, Burundi, Cape Verde, Congo, Czech Republic, Dominica, Equatorial Guinea, Gambia, Guinea, Guinea-Bissau, Guyana, Islamic Republic of Iran, Ireland, Kyrgyzstan, Lao People's Democratic Republic, Liberia, Nigeria, Paraguay, Russian Federation, Saint Kitts and Nevis, Saint Lucia, Sao Tome and Principe, Sierra Leone, Solomon Islands, United Republic of Tanzania, Thailand, Togo, Uganda and United Kingdom (Bermuda, British Virgin Islands, Falkland Islands (Malvinas), Gibraltar and St Helena), to make all efforts to transmit as soon as possible the required information. The Committee decided to note these cases in the corresponding paragraph in the General Report.

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

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

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

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

Chad. Since the meeting of the Committee of Experts, the Government has sent the first report on the application of Convention No. 138 and replies to most of the Committee's comments.

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

Denmark (Faeroe Islands). Since the meeting of the Committee of Experts, the Government has sent most of the reports due concerning the application of ratified Conventions and replies to all of the Committee's comments.

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

Dominica. Since the meeting of the Committee of Experts, the Government has sent the first reports on the application of Conventions Nos 135, 144, 150 and 182.

France (French Southern and Antarctic Territories). Since the meeting of the Committee of Experts, the Government has sent replies to all of the Committee's comments.

France (St Pierre and Miquelon). Since the meeting of the Committee of Experts, the Government has sent replies to most of the Committee's comments.

Gambia. Since the meeting of the Committee of Experts, the Government has sent the first reports on the application of Conventions Nos 105, 138 and 182.

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

Lao People's Democratic Republic. Since the meeting of the Committee of Experts, the Government has sent the first reports on the application of Conventions Nos 138 and 182.

Liberia. Since the meeting of the Committee of Experts, the Government has sent the first reports on the application of Conventions Nos 81, 144, 150 and 182.

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

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

Netherlands (Aruba). Since the meeting of the Committee of Experts, the Government has sent replies to most of the Committee's comments.

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

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

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

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

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

The former Yugoslav Republic of Macedonia. Since the meeting of the Committee of Experts, the Government has sent replies to most of the Committee's comments.

United Kingdom (Anguilla). Since the meeting of the Committee of Experts, the Government has sent all the reports due on the application of ratified Conventions and replies to most of the Committee's comments.

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

Convention No. 29: Forced Labour, 1930

MYANMAR (ratification: 1955)

See Part Three.

Convention No. 35: Old-Age Insurance (Industry, etc.), 1933

CHILE (ratification: 1935)

A Government representative first referred to the current social insurance system and the ILO's contribution to its development. She said that income protection for the elderly was a fundamental component of the current system of social protection in Chile. The basis of this system of social protection was the Social Insurance Structural Reform of 2008 of the Individual Capital Accumulation Social Insurance System that had existed since 1981. The recent reform was based on the Solidarity Pensions System, called the "solidarity pillar", which covered those who, for various reasons, had not been able to save enough to constitute a decent pension. The reform provided protection to all the country's workers, including salaried employees, self-employed workers, permanent, seasonal and temporary workers, both men and women. The coverage provided by this new social insurance system was universal.

She considered that the new system rewarded personal savings and efforts: those who contributed more to the system would enjoy higher pensions. It also was a reform that supported those who had been left behind: it was not acceptable that old age or retirement should be synonymous with poverty or a sudden deterioration in living conditions. The new system not only supported the poor, but the middle class would also find a real space in the pension system, with the assurance that their efforts and savings for the future would be duly protected and compensated. Greater security not only contributed to equity, but also to growth. When people felt safer, they were more likely to be bold, take initiatives, innovate and give effect to their best ideas in practice, thereby generating wealth and prosperity.

Historically, the ILO had been critical of the Chilean Individual Capital Accumulation Social Insurance System set out in Legislative Decree No. 3.500, which had been implemented in Chile since 1981. That system, despite the fact that it was articulated with other institutional and economic reforms for the development of a capital market and promoted a phase of growth, violated the basic principles of the social security systems promoted by the ILO based on tripartism. In this respect, the solidarity, coverage, gender equity and lack of representation of beneficiaries constituted aspects that precluded its social legitimacy. In this context, the ILO had published studies criticizing the system as early as 1992. Between 2001 and 2003, in accordance with the conclusions concerning social security adopted by the Conference of 2001, the Office had undertaken technical cooperation to identify priority aspects of the reform. Based on this work, in 2002 the Social Security Department in Geneva, together with the ILO Office for the Southern Cone of Latin America, and the Directorate of the Budget of the Ministry of Finance of Chile, had signed an agreement to carry out a project for the development of a model for the financial protection of the pension system in Chile, initiating the design of a model to estimate the costs of the various components of the existing system and to train officials in the area of social insurance. As a result of this cooperation, a book had been published in 2003 on the financing, coverage and implementation of social protection in Chile between 1990 and 2000, which demonstrated the level of fragmentation of social insurance and cash subsidies, together with their impact on coverage.

In 2004, together with the Ministry of Labour and the "Fundación Chile 21", the ILO had organized an international seminar on the future of social insurance in Chile. The social partners, experts and members of Parliament had been convened to identify ways of reforming the system. ILO assistance was maintained through a project to support the Budget Department in the process of social insurance reform, its contribution to the development of an actuarial model, and an in-depth analysis of the interaction of labour market dynamics and social security implementation.

In 2006, the formulation of the draft reform had been initiated in Chile, and the ILO's contribution had been essential, both in the diagnostic phase of the model and in the final design of the Proposal for Social Insurance Reform which had been enacted in March 2008 in the form of Act No. 20255. It was the most significant social reform in fiscal matters undertaken for the past 20 years. An essential step in securing this reform had been the prior creation of a Pension Reserve Fund. An actuarial system would make it possible to evaluate the sustainability of this fund every three years, with the first evaluation being carried out this year. Projections for the number of beneficiaries obtained through the model indicated that the Solidarity Pension System would increase from an estimated 600,000 beneficiaries in December 2008, to approximately 1,200,000 beneficiaries in December 2012.

The second item addressed was Chile's replies to the recommendations contained in Document GB.277/17/5 of March 2000. With regard to the pension system established by virtue of Legislative Decree No. 3.500 of 1980 and the recommendation that it should be administered by non-profit-making organizations, she indicated that the administration of the system was being transferred to the Institute for Labour Security (ISL), the Institute for Social Provision (IPS), Pension Fund Administrators (AFPs) and Unemployment Fund Administrators (AFCs). ISL and IPS were public entities, while AFPs and AFCs were private non-profit-making entities.

With reference to the recommendation that the representatives of the beneficiaries should participate in the administration of this system, in accordance with conditions established by national law and practice, she said that, since the Social Insurance Reform of 2008, the system's users had been instrumental in monitoring its implementation and operation, as well as in its evaluation and the formulation of policy proposals intended to strengthen its development. The new system incorporated a Board of Pension System Users, an entity with the role of informing the Sub-Secretariat for Social Insurance and other public bodies in the sector of the evaluations made by its representatives of the functioning of the pension system, and of proposing strategies to educate and inform the population about the system.

With regard to the recommendation that employers should contribute to the insurance system, she said that the employers contributed to the social insurance system created by the reform through the financing of contributions to fund the scheme as set out in section 59 of Legislative Decree No. 3.500 of 1980, namely survivors' insurance, and that the financing of the compulsory employment injury, health and unemployment insurance was maintained.

She then provided replies to the recommendations made in the report adopted by the Governing Body concerning the representation made by the College of Teachers of Chile AG under article 24 of the Constitution (Document

GB.298/15/6 of March 2007). Firstly, she referred to the recommendation to take all the necessary measures to solve the problem of the social security arrears arising from non-payment of the further training allowance. She indicated that, to solve the problem of social security arrears in public, municipal and privately subsidized education, the system for controlling subsidies had been strengthened by reinforcing the inspection mechanisms controlling the use of State resources allocated to the sector for the purposes for which they were intended, including wage payments and contributions to the social insurance system. She also emphasized the increased number of inspections undertaken by the Labour Directorate.

She added that, in cases of judicial action, since March 2008, Chile had been gradually implementing an unprecedented reform of the labour courts which had significantly shortened the duration of cases, and had had a positive dissuasive impact on violations of the law. In the new court system, workers who did not have the means to pay for their defence had access to free legal assistance through a Programme for Labour Defence which provided appropriate, specialized and high-quality advice to workers.

With regard to the recommendation to ensure the application of dissuasive sanctions in the event of arrears in the payment of the allowance, she indicated that there existed a complex structure of remuneration that complicated the determination of the exact amounts to be paid, in the event of arrears in the payment of allowances, which was why both the General Inspectorate of the Republic and the Labour Directorate needed to resolve these matters. With regard to employers in the municipal education sector, in which most of the problems occurred, the Organic Municipal Act had been amended to duly sanction any mayor whose municipality failed to pay the contributions due, including of course the insurance contributions of its workers, and those of teachers. Based on the definition of what constituted a "significant neglect of duties", the penalty provided for was removal from office and ineligibility to hold certain public offices, which were drastic measures intended as deterrents for any failure to comply with laws of any nature, including those related to social insurance. Moreover, the Social Insurance Reform of 2008 had given mayors and other authorities greater responsibility in relation to failure to pay social insurance contributions, which were deductions for that purpose from the wages of public employees, in which case the provisions of sections 12 and 14 of Act No. 17322 or subsection 23 of section 19 of Legislative Decree No. 3.500 of 1980 would apply; with the offence being considered a serious violation of the principle of administrative integrity envisaged in section 52 of Act No. 18575, the Organic Constitution of the General Bases of the State Administration, the reformulated, coordinated and systematized text of which had been established by Legislative Decree No. 1 of 2001 of the Ministry of the General Secretariat of the Government.

Mayors who committed the above violation would be removed from office on the grounds provided, set out in section 60(c) of Act No. 18695, the Organic Constitutional Bases of Municipalities, the reformulated, coordinated and systematized text of which had been established by Legislative Decree No. 1 of 2006 of the Ministry of the Interior. The same sanction would apply to town councillors who committed such offences when acting as substitute mayors.

The General Inspectorate of the Republic, at its own initiative or at the request of any elected municipal officer, would conduct the necessary investigations. This did not prevent the drawing up of administrative investigations intended to enforce the responsibilities of municipal councillors.

With respect to the so-called "historic debt" of social security resulting from the non-payment of full wages in conformity with Legislative Decree No. 3.551 of 1981 to nearly 80,000 teachers who had been deprived of their wages, which had consequently affected their social security entitlements since 1981, she indicated that this was a political demand by workers in the education sector regarding a certain special allowance that they had been granted on a "non taxable" basis or, in other words, which was not taken into account for the calculation of the social insurance contributions. It was a political demand, and the fact that discussions were being held in the Chilean National Congress, in a Special Commission on "historic debts" in the Chamber of Deputies, reflected the interest of these bodies in understanding this demand. Although the Congress had no authority to propose laws that involved fiscal expenditure, it was examining in the above commission the various historical claims and demands of its citizens so as to formulate a position on the matter and establish priorities in the social and political agenda.

With respect to the observations made in January 2008 by the Circle of Retired Police Officers alleging the loss of acquired rights relating to old-age pensions *(quinquenio penitenciario)* by prison staff, she reported that the benefit referred to had been established under Legislative Decree No. 2 of 1971 of the Ministry of Justice issued by the President of the Republic in accordance with the powers set out in section 117 of Act No. 17399, and had benefitted the staff of the prison service (now the Gendarmerie of Chile) between 2 January 1971 and 31 December 1973. As of 1 January 1974, Legislative Decree No. 249 of 1973 respecting the single salary scale had introduced this single and uniform remuneration system for all workers in the public sector in the institutions listed in the legislative text itself, including the prison service; it expressly abolished all wage schemes existing on 31 December 1973, including that of the prison service, with no exception being allowed for the *quinquenio penitenciario*. As the retirement pensions of the staff covered by the Carabineros Social Insurance scheme (the former Insurance Fund for Carabineros) were based on the taxable revenue registered on their pay slips, the *quinquenio penitenciario* had been taken into account as payments to officers of the former prison service who had left the institution with pension entitlements when this allowance was still paid, that is between 2 January 1971 and 31 December 1973. Therefore, as the *quinquenio penitenciario* had no longer been paid to prison staff from 1 January 1974, the pensions of officers reaching retirement age after this date were determined without taking this allowance into consideration, as it no longer formed part of the total legal remuneration for this purpose.

In general, Chilean public employees still maintained their claims concerning changes in the components of their wage structure, but considering that they were public employees governed by their conditions of service, these changes were adopted by law. In this context, they were political claims, rather than failures by the institutions that employed them to comply with their obligations. The changes in allowances were related to changes in the structure of the services, the modernization of systems and other factors. As some of these statutory changes had been made without consultation or negotiations with the organizations, the Government understood the workers' position on this point. However, the capacity to analyse and resolve all the issues raised by public employees in practice had to be reconciled with other urgent matters in the country.

The Government understood that the workers' demands were related to the possibility of increasing their social insurance funds, possibly based on a contribution associated with the allowance. In this context, priority had been given to examining direct solutions to improve the retirement conditions of civil employees. A series of retirement laws had been adopted in consultation with trade unions, and other measures had been implemented to ensure that

workers did not lose income and could retire. One example was the granting of a lifelong monthly supplement to retirees in the public sector thereby increasing their pension. This initiative, the Post-Employment Supplement, had been in force since 1 January 2009 with the adoption of Act No. 20305.

In addition to the Post-Employment Supplement, each branch of the public sector was currently governed by special laws, negotiated on a sectoral basis to improve retirement conditions. For the central State administration, Act No. 20212 had been adopted to cover the demands of the group of fiscal employees concerning the social insurance deficit in this sector; for the municipal education sector, Act No. 20158 had been adopted; for the municipal health sector, it was Act No. 20157; and for municipal employees Act No. 20198.

The Employer members thanked the Government representative for the detailed information provided and recalled that the present case had been marked out by a double footnote by the Committee of Experts and was being discussed against the background of the economic crisis. They further recalled that Chile had been the first country to ratify Convention No. 35, which had only been ratified by 11 countries, and had been denounced by one country. The Cartier Working Party had classified Convention No. 35 among the outdated instruments, which also included the Conventions that had been shelved and those that the Governing Body had invited Members to denounce, while inviting them at the same time to ratify more recent Conventions on the same subject, and in the present case the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128).

They noted that Article 10 of Convention No. 35 was central to the comments of the Committee of Experts and the main reason why the case was being discussed. The case had been the subject of comments by the Committee of Experts since 1983 and had been discussed by the Conference Committee on five occasions, most recently in 2001. The case had initially been triggered by the introduction of a new old-age pension system in 1980 by Legislative Decree No. 3.500, and the present review related to the economic crisis. Under the terms of the Convention, the pension system had to be administered by non-profit- making institutions with the participation of representatives of the persons insured. These conditions were not met by the new pension system.

As the new system was in clear breach of the Convention, the only solution for Chile was to denounce the Convention in order to maintain the new system, which was largely functioning successfully. Although the Governing Body had invited parties to Convention No. 35 to ratify Convention No. 128, it should be noted that, with regard to the administration and funding of pensions, Convention No. 128 did not differ from Convention No. 35. The Employer members therefore considered that the present discussion was somewhat strange. Although they agreed with the Governing Body decision to classify Convention No. 35 as obsolete, the Conference Committee had concluded in 1995 that it needed to be revised. Chile was one of the first countries that had privatized its pension system and many countries, particularly in South America, had followed its example. The attempt to prevent the development of private pension systems could never be successful. It was absurd to require Chile to comply with Convention No. 35. Although the current pension system in Chile was in clear violation of the Convention, it was a contradiction in terms to request the Government to ensure the application of the Convention, particularly in the light of the ILO's own view that the Convention was obsolete.

The Worker members noted with surprise that the Government had provided information to the Committee on a law adopted in March 2008, which had entered into force in July 2008, and which made important changes to the pension system, particularly since the Committee of Experts did not appear to have been informed of its adoption. The case was important because it not only failed to comply with ILO constitutional procedures, but also for substantive reasons, namely the pension policy adopted against the background of economic and financial crisis. Since the establishment of a new pension system which was fundamentally contrary to the Convention, the Chilean trade unions had been appealing to the ILO, without any reaction from the Government. They had therefore made a representation under article 24 of the ILO Constitution, in respect of which the Governing Body had adopted a report in March 2000 containing three recommendations. First, the new pension system should be administered by non-profit-making institutions, which excluded banks and insurance companies, which imposed phenomenal fees that could amount to one-third of the contributions paid. Second, insured persons should participate in the management of the system, which was not the case in Chile. Finally, employers should also contribute, alongside the workers, to the financing of pensions, which was not the case as it was a fully funded system. The Chilean Government had never adopted any of these recommendations. In the wake of the economic and financial crisis, and the failure in private pension fund systems, the Government had needed to reform the system, among other measures through the establishment of a basic social pension for persons of 65 years of age and above who did not receive or no longer received the social minimum income. The reform had two main shortcomings: the new basic social pension did little to make up for the vertiginous fall in private pensions, which had often fallen below the minimum level. It was a cruel lesson for those countries that had adopted or envisaged adopting the "Chilean model" based on financial investments in banks and insurance companies, as they risked facing the same problems: old-age pensioners having no guarantees as to the amount of their pension and the State being obliged to establish a new pension system. The failure of the Chilean model gave out a strong message to global leaders and institutions that stable pension systems had to form part of the policies adopted to combat the crisis. The second shortcoming was that the Government had not seized the opportunity of the adoption of the new law and the changes in the financial situation to give effect to the recommendations of the Governing Body. Insured persons were not always associated with, let alone informed of, the manner in which their pensions were administered. Their administration was still for profit, as the new Act only abolished the set fees of financial administrators. Employers were still not contributing to the financing of pensions. The only change was that invalidity and survivors' insurance would no longer be managed by private funds, but would be the responsibility of employers. The current system was one in which employers could deduct 20 per cent of the wages of salaried workers for social contributions, without any supervision of the actual payment of these contributions to social security funds, and without employers being liable to sanctions. For 30 years, that had been the situation of 80,000 teachers, entailing repercussions on their social rights and pensions. After so many years, the non-payment of these social contributions had resulted in a considerable debt. The Government had never wished to give effect to the Governing Body's recommendations in the case of the representation made by the College of Teachers of Chile. The Government had nevertheless taken some initiatives to examine the question of the arrears and very tangible proposals were under discussion with the teachers. The new 2008 Act should also make it possible to make up the gaping hole of unpaid contributions by establishing adequate financial penalties. It was regrettable that the Government had not supplied information earlier on the measures taken on this issue.

The Worker member of Chile acknowledged the efforts made by democratic governments to improve the social security system, and particularly for the coverage of the most vulnerable categories of society. The reform initiated by President Bachelet was intended to provide assistance pensions to those who had not been able to contribute throughout their working lives, and to those whose accumulated funds were insufficient to attain the minimum pension level. He emphasized that this reform strengthened solidarity measures and established a basic pension of approximately US$150 for the 60 per cent of the population that suffered from the greatest poverty and a solidarity supplement for those on lower pensions. The whole of the reform was being implemented through the taxes paid by the people of Chile.

While recognizing these efforts, he emphasized that workers continued to hope, as indicated by the Committee of Experts in its last report, that the Government would give effect to the recommendations made in 2000 and 2007 in the reports on the representations adopted by the Governing Body concerning failure to comply with social security Conventions. These recommendations urged the Government to reform the system of the management of private pension funds, take measures to resolve the problem of arrears in the payment of the further training allowance and solve the delay in the payment of the so-called "historic debt" relating to the wages of teachers which undermined their social security entitlements.

Structural problems remained in the management of private pension funds, which could be summarized under eight headings:

(1) The ILO had recommended that the pension system should be managed by non-profit making institutions. Nevertheless, pension fund administrators (AFPs) continued to be private enterprises that were highly profitable for their administrators, as one in three pesos paid in contributions were for their benefit. They were managed by an exclusive club of directors for whom the selection criterion was not known, nor was their income. The AFPs exercised great political and economic influence in the country, such that they had decided to invest in only 60 enterprises the owners of which were aligned with their economic and political tendencies.

(2) The ILO had indicated to the Government that the representatives of insured workers needed to be able to participate in the administration of the system. Nevertheless, workers did not participate in any way in decisions on the management of their money (investment, management and control).

(3) The ILO had also urged the Government that employers should provide funds to the pension system. No effect had been given to this recommendation, as workers paid 100 per cent of the contributions to their individual accounts, paid on a monthly basis. Employers did not make contributions to these funds.

(4) With regard to coverage, around 40 per cent of the population was outside the system, which placed a very heavy burden on the State. Statistics showed that only 11 per cent of workers paid contributions regularly.

(5) The contributions of over 50 per cent of workers did not guarantee a minimum pension.

(6) The pension system was based on the income that could be obtained from financial markets. However, this basis for the sustainability of the system had failed to prove its worth. Over the course of the last century, global financial markets had mainly operated at a loss and rarely exceeded inflation. This situation had been aggravated by the current global financial crisis.
The capital accumulation and income on workers' funds had made losses ranging between 30 and 40 per cent of the accumulated assets which, in terms of contribution years, amounted to between seven and 14 years on average. Nobody accepted responsibility for this situation, with the Government claiming that it was inhibited by the law and the enterprises administering the funds claiming that it was the fault of the markets. In practical terms, this meant that many workers had not been able to take retirement, and others would not be able to do so because their funds were inadequate.

(7) The situation was deteriorating because the system was compulsory and there was no freedom to opt for other systems, which meant that workers' contributions were captive.

(8) This system, which was unique in the world, allowed the employer to deduct the contribution, declare it and fail to deposit it in the worker's individual account, based on the ill-termed "declaration without payment".

He reiterated the firm belief of the trade union movement that it was necessary to make progress in the achievement of the fundamental principles of social security, namely a democratic system, centralized contributions, pluralism and competence in relation to investments, solidarity between the generations, financial sustainability, the strict prohibition of the investment of assets in risky shares, a tripartite system of control and supervision with the participation of the users, a public guarantee, contributions by employers, which were not currently paid, and universality. These principles ensured that the system was sustainable over time and involved the important element of solidarity. Social protection was inseparable from social justice and decent work.

He called on the Conference Committee to urge the Government to give effect to the observations made in the reports of 2000 and 2007 in relation to measures to safeguard the rights of workers in the pension system, and the payment of the historic debt of teachers. He emphasized that if this was not done it would be necessary to make a new representation against the Government for failure to comply with ILO Conventions before the next session of the Conference in 2010. He also called on the Conference Committee to urge the Government to undertake a structural reform of the private pension system based on the fundamental principles that it described and for the State to fulfil its central role in the system by securing the broadest and decisive participation of the social partners. The ILO should provide technical assistance to the social partners and the Government for that purpose.

The Employer member of Chile indicated that the crisis was also affecting pay-as-you-go systems. In fact, among the countries having adopted such a system, 57 countries had increased contribution rates, 18 had raised the retirement age and 28 had modified the systems for calculating pensions, for example by decreasing the replacement rate and increasing the number of years required for retirement.

Concerning the sustainability of the pay-as-you-go system, the percentage of workers over 60 years of age throughout the world had been 10.7 per cent of the population in 2007 and would reach 22 per cent in 2050. The figures for Latin America and the Caribbean were currently 9.1 per cent and would reach 24.3 per cent in 2050, compared with 21.1 per cent in Europe, rising to 34.5 per cent in 2050. In this demographic framework, it was not feasible to maintain a system in which active workers paid for the pensions of passive members of society. For this reason, a group of 25 countries had already replaced their pay-as-you-go systems by fully funded systems for practical reasons rather than on ideological grounds as it was often claimed. Pay-as-you-go systems were not viable in view of the inversion of the demographic pyramid. It was claimed that the social insurance system was bankrupt, but those who said so did not know the basics. Pension systems were called upon to make investments over

30 to 40 years and their financial performance therefore had to be analysed over this period, and not only over one, two or three years. Investments were valued on a daily basis and were accordingly subject to certain market variations, although in the long term they had always achieved high levels of return. For this reason, a loss in value did not actually mean a loss at the time when recovery started. In the case of Chile, the funds which fell the most, the most aggressive investments in variable rates, lost 28 per cent, but over the course of the present year had already recovered 20 per cent, which demonstrated the need for long-term analysis, particularly when it was born in mind that this was not the first crisis and others had been overcome. It was indisputable that a private system based on full funding was affected by the economic crisis. Nevertheless, even the so-called defined benefit or pay-as-you-go systems were affected by the crisis.

The following question therefore needed to be raised: were the parametric changes made to pay-as-you-go systems throughout the world an expression of a very strong effect of the economic crisis on them and did they take into account the enormous loss for those who had paid their contributions? For example, the most common parametric changes included increases in contribution rates (between 1995 and 2005 a total of 57 countries had increased contribution rates in their pay-as-you-go systems) and raising the retirement age (which had been done by 18 countries between 1995 and 2005). Was this not the proof of a loss? There were also other parametric adjustments to the formula for calculating benefits: a decrease in the replacement rate, an increase in the minimum number of years of contribution for entitlement to a pension, a decrease in the percentage return on pensions, the adjustment of the number of years taken into account to calculate the reference wage and changes in the systems for the indexation of pensions to inflation (28 countries had made adjustments of this type between 1995 and 2005). Could a system be classified as a defined and certain benefit system when those who had paid contributions to take retirement at the age of 60 realized that they had to pay for another five years, or when those who had contributed to achieve a replacement rate of 70 per cent saw it lowered to 50 per cent? The economic crisis also affected defined benefit systems, but more strongly. With regard to investments, the Worker member had suggested that in certain cases investments were enterprise tools over which a certain influence was exercised. In the case of Chile, over 40 per cent of investments in pension funds were placed in external products, and there could be no influence over the North American treasury bonds in which they were invested, nor in the shares of major global countries. The selection of investments was solely guided by two criteria: better performance and greater security. All the products in which pension funds were invested were set out in a list authorized by the Act and the AFPs. With reference to certain comments on the functioning of the Chilean system, the Government representative had indicated that the President of the Republic had established a committee of experts to analyse the insurance system which had reached a number of conclusions, including: (1) that the funded individual pension system had functioned adequately for 26 years; (2) that it would pay pensions at a similar rate to the wages of all workers who had made regular contributions; (3) that there had never been fraud or bad management of the funds; and (4) that they had made an extraordinary contribution to the economic development of the country. He therefore warned against entering into ideology, and emphasized that it was necessary to find a solution to the pension problem. In view of the demographic changes, the solutions offered by pay-as-you-go and defined benefit systems were not appropriate, as fully funded systems responded much better. With reference to the impact that the economic crisis could have on them, this was lower than the impact on those who had been promised defined benefits when the latter benefits could not be provided for reasons related to the economic situation of the State.

The Worker member of France said that the Committee of Experts had considered that the Government had not given effect to the recommendations that the Governing Body had adopted since 2000 calling for non-profit-making organizations to administer the social insurance system of 1980, participation by the representatives of insured persons in the management of the system and the payment by employers of contributions to the financing of pensions. Almost no progress had been made since then. Nor did the Government's report provide further information on the implementation of the recommendations made by the Governing Body in 2007 in the context of the representation made by the College of Teachers of Chile AG under article 24 of the ILO Constitution, despite the enormous historical debt that had been accumulated, which had been qualified as a political demand by the Government. It should also be emphasized that the shelving of Conventions Nos 35 and 37 by the Governing Body implied that detailed reports were no longer requested on a regular basis, while maintaining the right to invoke their provisions under articles 24 and 26 of the Constitution and to send comments to the Committee of Experts in the context of the regular supervisory system.

The pension systems of which Chile had been the precursor were simply individual savings accounts, with no contributions from employers and without insured persons having any say in their management, which was contrary to the provisions of the Convention. The crisis had caused a major depreciation in the acquired rights and it was now necessary to bring an end to a system that only benefited financial capital, rather than attempting to rescue it. It was urgent to make an in-depth reform of systems that provided no long-term guarantees and were a cause of social exclusion, particularly for elderly workers who had often had precarious jobs that were badly paid. The democratic Government needed to take into account the full scope of the problem, give effect to the recommendations of the supervisory bodies and adopt a pension system that was based on solidarity between generations, without being subject to the fluctuations of financial speculation and disproportionate fees, which currently amount to one-third of the amounts deposited. The minimal pension assistance for salaried workers who suffered from great discrimination was only a first step; although charity would never replace solidarity. It was therefore important for the Government to provide a detailed report on the initiative begun in the Senate at the end of 2008 with a view to finding solutions to the financial crisis.

In conclusion, he indicated that the system whereby contributions were deducted from wages but were not actually paid was inadmissible, and he considered the Government's succinct explanations in this regard to be confusing and largely unconvincing.

The Government representative of Chile indicated that her Government was not convinced that it was too early to evaluate the social insurance reform. She added that this reform was part of a process that was receiving ILO technical assistance.

She apologized for not having provided all the information requested on the implementation of the reform and indicated that much of the information was available on the website of the Ministries of Finance, Labour and Social Insurance, as well as the Parliament. Her Government had not yet submitted the information about the reform to the Office because the deadline for submitting the corresponding report had not yet expired.

The Worker members noted the Government's initiatives and projects to take action, at least partially, on matters that had long remained pending. The Government should therefore provide in time full information on the development of both public and private pension schemes,

explaining when and how it intended to implement the recommendations of the Governing Body, and specifying the manner in which it intended to preserve pensions based on shaky foundations, and providing detailed information on the outcome of current discussions on the "historical debt" in the case of teachers. It was to be welcomed that the Government was willing to provide information, which should be submitted by the next session of the Committee of Experts at the latest.

Finally, the Worker members emphasized that Convention No. 35 remained in force for countries that had ratified it and that workers' and employers' organizations which wished to do so still had the right to make comments on their application and have recourse to the procedures under articles 24 and 26 of the Constitution.

The Employer members thanked the Government representative for the information provided and endorsed the statement made by the Employer member of Chile. They had taken note in particular of the indications provided by the Worker member of France, which overlapped considerably with their own statement. They recalled that the ratification of shelved Conventions was no longer encouraged and their publication in Office documents, studies and research papers was to be discontinued. Shelving meant that detailed reports on the application of the respective Conventions were no longer requested. However, it left intact the right to invoke the provisions relating to representations and complaints under articles 24 and 36 of the ILO Constitution. It also allowed employers' and workers' organizations to make comments in accordance with the regular supervisory procedures, and the Committee of Experts to review those comments and to request, where appropriate, detailed reports under article 22 of the Constitution. He pointed out that shelving had no impact on the status of these Conventions in the legal systems of the member States that had ratified them. Although the Conference Committee could discuss cases of the application of shelved Conventions, the action available to it was limited. They therefore called on the Government to provide a detailed report to be examined at the next session of the Committee of Experts and to make every effort to resolve the situation.

Conclusions

The Committee took note of the statement of the Government representative and of the discussion that took place thereafter. The Committee observed that the discussion of this case manifested concern over the viability of the private pension scheme established by Decree Law No. 3.500 of 1980 in conditions of the current financial and economic crisis, as well as preoccupation with the fact that for many years the Government has been apparently ignoring the recommendations for reforming the scheme on the principles set out by the Governing Body, in 2000, in the report of the Committee to examine the representation of the Chilean unions of employees of pension fund administrators (AFPs) under article 24 of the ILO Constitution. Following-up on the Governing Body recommendations, the Committee of Experts observed that the Chilean pension scheme based on the capitalization of individual savings managed by private pension funds (AFPs) was organized in disregard of the principles of solidarity, risk-sharing and collective financing, which formed the essence of social security, combined with the principles of transparent, accountable and democratic management of pension scheme by non-profit-making organizations with the participation of the representatives of the insured persons. The Committee of Experts pointed out in its General Report of this year that these principles underpinned all ILO social security standards and technical assistance and offered the best guarantees of financial viability and sustainable development of social security; neglecting them, on the contrary, exposed members of private schemes to greater financial risks while removing state guarantees.

The Committee was glad to know, from the oral intervention of the Government's representative, that in the last few years the Government has been closely working with the technical department of the ILO on reforming the Chilean pension system on these principles, which has finally led to the establishment in July 2008 of a basic universal public solidarity pension by Law No. 20.255 on pension reform. The Government representative stated that in 2012 there would be close to 1,200,000 people of those who would be able to receive the new minimum solidarity pension or a complement to the private pension, which served as a safety net for those who failed to get a sufficient private or any pension to live on.

In view of the importance of the changes brought by Law No. 20.255 to the Chilean pension system, the Committee invited the Government to furnish a detailed report on the application of the Convention for consideration by the Committee of Experts at its next session in November–December 2009. However, while welcoming the establishment of the public solidarity tier in the Chilean pension system, the Committee could not but observe that no major changes were brought to the private pension scheme established by Decree Law No. 3.500 of 1980. Taking into account the gravity of the situation, the Committee urged the Government to continue reforming the system along the lines of the recommendations made by the Governing Body in 2000 and to include in its report information on the measures taken to protect the private pension scheme from the financial crisis.

The Committee further noted the detailed oral explanations given by the Government representative concerning measures taken to give effect to the recommendations of the committee set up to examine the representation made by the College of Teachers of Chile AG under article 24 of the Constitution. The Government representative also responded to the observations made by the College of Teachers of Chile AG concerning repayment of the so-called "historic debt" of social security resulting from the non-payment of the full wages in conformity with Decree Law No. 3.551 of 1981 to nearly 80,000 teachers, as well as to observations made by the Circle of Retired Police Officers alleging the loss of acquired rights related to old-age pension by penitentiary staff. The Committee recalled that some of these questions dated back a number of years without, it would seem, effective solutions being found by the Government. While expressing concern that no information had been previously supplied on these issues in the Government's reports, the Committee understood, from the intervention of the Government's representative, that the Government intended now to transmit detailed legal and technical information to the secretariat. It therefore hoped that this information would be made available for examination by the Committee of Experts together with the detailed report of the Government.

Convention No. 81: Labour Inspection, 1947

NIGERIA (ratification: 1960)

A Government representative reaffirmed her country's commitment to its constitutional and reporting obligations as an ILO member State. Nigeria was mindful of the fact that its economic development depended in part on workers being protected. An unprotected worker could not be a productive worker. Convention No. 81 was key to the implementation and enforceability of labour standards, and Nigeria therefore strived to monitor and implement the enforcement of labour standards through the process of labour inspection, within its limited human and material resources.

Nigeria's labour inspectorate staff were not political appointees but career civil servants in permanent and pensionable employment, and their tenure was independent of changes in government, in keeping with Article 6 of Convention No. 81. They were primarily university graduates

with at least a first degree in social sciences, arts, humanities, law, engineering, sciences or medicine. As soon as they were recruited, they participated in an induction programme that included training on the Labour Act and the Factories Act, which contained wide-ranging provisions for the protection of workers' rights, welfare, health and safety at work, deriving essentially from ILO Conventions ratified by Nigeria since it had become a Member of the ILO in 1960. Labour inspectorate staff were also trained in inspection procedures, checklists, etc. They underwent periodic refresher courses locally and abroad, at the ILO International Training Centre in Turin and at the African Regional Labour Administration Centre in Harare, Zimbabwe. Over the previous three years, some 380 staff had undergone training to enhance their performance, and 63 maritime labour inspectors had recently received training on port and flag State control activities. A critical mass of inspection staff had also been trained in child labour issues.

Nigeria's 550 inspectors, including 105 women, were distributed among 37 field offices (36 in the regions and one in the capital). The inadequate level of staffing to cover the country's large geographical areas and more than four million workplaces resulted partly from the embargo that had been placed on employment into the civil service for some years. As soon as it had been lifted in 2001, 171 male and female inspectors had been recruited and 34 more had been recruited since, with recruitment efforts still ongoing.

In order to complement the services of Government inspectors, particularly for specialized activities, certified experts were contracted for inspection of boilers, air receivers, pressure vessels, cranes and other lifting equipment. Independent consultants from technology colleges were used for the purpose of appraising and certifying this group of inspectors. Inspectorate staff also carried out specialized inspections on child labour, gender issues and labour conditions in the maritime sector. The new labour standards bill, one of five before the National Assembly, contained provisions to combat the worst forms of child labour.

In order to improve coverage of labour inspection and motivate inspection staff, project vehicles dedicated to inspection activities had been purchased for all 37 field offices, and the funds allocated to inspection activities had been boosted to enable settlement of claims by inspectorate staff. Staff were also given regular promotions as appropriate.

Inspectorate staff were empowered by the Factories Act to require alterations to an installation or plant and to stipulate the period within which such alterations should be carried out in order to ensure compliance with legal provisions relating to the health and safety of workers.

The central budget allocation from which inspection training was primarily funded was insufficient, partly because so many other government agencies were in competition for the same resources. The situation had been aggravated by the challenges arising from the current global financial crisis.

Over the years, Nigeria had communicated reports to the ILO on the work of its inspection services. Such reports were usually derived from the mandatory reports submitted by field offices. Information extracted from such reports was reflected in the International Labour Review in December 2008, showing the estimated active working population per labour inspector in Nigeria between 2003 and 2006. Nevertheless, it had been commented that the reports submitted were not detailed or comprehensive enough. The Government recognized the need to improve the quality of its reports and had therefore already requested technical assistance from the International Labour Standards Department, a request it now reiterated, particularly in view of the demonstrable effects of such assistance in other countries. Technical assistance and training for inspectorate staff to enhance inspection and monitoring activities would also be appreciated.

The speaker stressed that her Government had the political will to take all measures expected of it but lacked the capacity. She expressed appreciation to the Committee of Experts for drawing attention to lapses in its reporting system and pledged the commitment of her Government to protect the rights, welfare, health and safety of its workers through a modernized inspection system, which it was hoped could be achieved with ILO assistance, in keeping with the 2008 Declaration on Social Justice for a Fair Globalization.

The Employer members, while expressing appreciation to the Government of Nigeria for its stated commitment and willingness to improve reporting and its affirmation of the independence of labour inspectors, who received ongoing training, highlighted the fact that the reports submitted by the Government contained insufficient information to determine the nature and extent of the application of Convention No. 81. The Committee of Experts had noted that the most recent inspection report to reach the ILO had been received 13 years ago.

Convention No. 81 was one of the four ILO priority Conventions and had been ratified by more than 130 countries. Labour administration, labour legislation and labour inspection all reinforced compliance. Labour inspection was therefore an integral part of the implementation of ratified Conventions. The Committee of Experts had noted that the reports provided had not been sufficient to determine the basis of the Government's affirmation that inspections had been effective. The Committee had also sought information on how the Government's statement that inspections had been effective, in that the level of compliance by employers with labour legislation had improved, could be made.

The Employer members acknowledged the importance of the Convention in that it set out, in a non-prescriptive manner, a series of principles establishing the functions and organization of the system of labour inspection that were essential in ensuring the protection of workers in a coordinated and effective way. Importantly, the Convention gave labour inspection a role not only in prosecution but also in providing information and technical advice, enabling a balanced approach to compliance.

Under Convention No. 81, two types of reports on the work of labour inspectorates were due: periodical reports, to be submitted by labour inspectors of local inspection offices to the central inspection authority; and annual general reports, to be published by the central inspection agency. Under Article 20, paragraph 3, of the Convention, annual reports should be submitted to the ILO within three months of their publication.

The Government had been requested to supply inspection reports for a number of years. Despite the fact that such information had not been provided, the Government had affirmed to the Committee that labour inspection activities were effective, and that there had been an improvement in the level of compliance with labour legislation. The Employer members supported the call by the Committee of Experts for the provision of information that would substantiate those points, together with detailed information to determine the extent of compliance with the Convention. They also supported the call for information about measures taken to give effect to the requirement to draw up annual reports required by the Convention. The Employer members noted with concern the Government's continued failure to supply detailed information on the issues raised by the Committee of Experts in its observations and requested the Government to provide the relevant replies without further delay. They welcomed the Government's request for technical assistance from the ILO to meet requirements and overcome obstacles. Such assistance should be given and reports made to the Committee on progress achieved.

The Worker members said that as in the case of Uganda, which had been discussed the previous year, significant weaknesses affected the proper functioning of the labour inspection services of Nigeria. However, this case entailed a particular importance, considering the discussion which had taken place at this session with respect to the General Survey on Convention No. 155 and Recommendation No. 164 concerning safety and health of workers. In this connection, they highlighted the fundamental role of labour inspectors who were sufficient in number, trained and acting in a prevention-oriented manner, and cited the General Survey of 2006 on labour inspection, which stated that it was important to provide labour inspection services with means of action, materials and personnel necessary for their effective functioning so that they could at least inspect in a complete manner at sufficient intervals the workplaces under their responsibility.

According to the comments of the Committee of Experts, the Government had provided only general information on the recruitment and training of inspectors. The Committee of Experts also indicated that the report provided for in Article 20 of Convention No. 81 had been last communicated 13 years ago in spite of its repeated requests, which conveyed ill will of the Government in application of Convention No. 81. This Convention provided orientations to public authorities in order to put in place labour inspection services which enabled to guarantee the protection of workers. In this regard, preventive actions in the field of safety and health constituted an absolute priority. Nevertheless, unacceptable practices aggravating risks, particularly in the private sector in connection with foreign investments, had been reported. One more problem had to be identified: non-compliance with standards concerning minimum age and worst forms of child labour. The protection provided for in a law albeit in full conformity with ILO Conventions remained dead letter in the absence of effective supervision. For this purpose, the organization and development of labour inspection, in conformity with the provisions of Convention No. 81, were essential, not only in the interest of workers, but also for the entire economy.

The Worker members requested the Conference Committee to make a strong appeal to the Government to take the necessary measures to ensure the functioning of the inspection system in accordance with Convention No. 81, that was to say:

- provide a sufficient number of inspectors according to their tasks;
- ensure the functioning in complete independence in accordance with Article 6 of the Convention;
- make available to inspectors sufficient material means;
- provide appropriate training; and
- publish annual reports as required under Article 20 of Convention No. 81.

The Worker member of Ghana encouraged the Government to take action on issues relating to the implementation of Convention No. 81 in the interest of the working people of Nigeria, including by providing detailed information to the Committee of Experts, as required, with technical assistance from the ILO. Nigeria's workers needed adequate levels of safety and a healthy environment for their work. He therefore called on the Government to ensure that workers were given the necessary protection in the world of work to promote maximum productivity at all times, and to ensure that the institutional structures responsible for conducting labour inspection were provided with all the necessary equipment and capacity to undertake their work efficiently and effectively.

Labour inspectorate officials, who were experts in the industry, should monitor and identify hazards in the workplace, in order to raise awareness among the social partners and ensure occupational safety and a healthy working environment. To that end, periodic sensitization was required to prevent unwanted occurrences in the workplace. The speaker encouraged the Government to arrange initial and subsequent training of labour and factory inspection staff to enable them to carry out their duties efficiently and effectively. More inspection staff should be employed and the stability of their jobs should be ensured. He invited the Government to protect and ensure adequate investment in human capital in order to promote sustainable economic development. Nigeria was rich in human resources, and he expressed the fervent hope that the Government would address labour inspection issues positively, in line with the statement made by the Government representative.

The Worker member of Côte d'Ivoire observed that the Committee of Experts, in its previous comment, had requested the Government to provide details on the status and conditions of service necessary to guarantee the stability of employment and independence of labour inspectors in Nigeria, in accordance with objectives provided for in Article 6 of Convention No. 81. The speaker pointed out that in the daily reality in Western Africa, labour inspectors were simply underpaid civil servants without the material means necessary to accomplish their mission, and their number was clearly insufficient. This situation explained the failure to apply ratified Conventions. The Committee of Experts also indicated that for 13 years the Government had not published an annual report on the activities of the labour inspection services, as prescribed by Article 20 of Convention No. 81. He was particularly concerned that Conventions Nos 138 and 182 concerning child labour were not applied.

The Government representative of Nigeria, responding to comments made, expressed regret that some Worker members had cast doubt on the information provided by her Government. She reasserted the independence of labour inspectors, which could be verified, and reiterated that they were career civil servants. Furthermore, they received the same salaries as the rest of their civil service colleagues, without discrimination.

She stressed that her Government had submitted reports to the ILO more recently than 13 years ago, but fully acknowledged that they had not been detailed enough. With the technical assistance previously requested, reporting standards would be improved, but labour inspections in Nigeria continued regardless. Despite its significant constraints in terms of human and material capacity, she stressed again that Nigeria did not lack the political will or commitment to improve its performance in reporting on labour inspection activities, given the importance of labour inspection for productivity and workers' protection. In that regard, the Government was committed to implementing and enforcing Convention No. 81 and all others ratified by Nigeria. The Government would be open about the challenges it faced, in the expectation that support would be forthcoming from the ILO and social partners. Working together, much could be achieved. For example, trade unions could assist in identifying and reporting problems in the absence of inspection staff, so that such problems could be dealt with and danger to workers and others averted.

In response to the comments made by the Worker member of Cote d'Ivoire, she categorically denied that any cases of worst forms of child labour had been identified in Nigeria. If information were received demonstrating otherwise, it would be acted upon at once. The new labour standards bill would contain provisions to combat the worst forms of child labour, and the Government was committed to protecting all workers, young and old. The importance attached to children being educated rather than forced to work was reflected in Nigeria's policy of providing free and compulsory schooling for nine years and in additional measures to encourage children to stay

in education. A law existed on child trafficking and the Government worked with other organizations to ensure that perpetrators of offences related to child labour were prosecuted. Similar measures were taken with respect to other vulnerable groups. In conclusion, she expressed the hope that, with assistance from the ILO and social partners, the problems her country experienced due to lack of capacity could be addressed and the situation improved.

The Employer members again highlighted the request made by the Government of Nigeria for technical assistance from the ILO, which should be granted. The issue could then be considered again in the light of developments.

The Worker members observed that the Government had not provided a report on the functioning of the labour inspection service for 13 years and that the elements it had presented did not really match the review of the situation of labour inspection in Nigeria provided by the Committee of Experts. The Worker members noted in this lack of transparency a certain will of the Government to let pass quietly the real weaknesses in the protection of health and safety of workers, as revealed by the astounding number of industrial accidents, due to non-compliance with safety regulations, as well as regulations concerning child labour. They therefore hoped that the Conference Committee would send a clear message to the Government concerning its obligations under Convention No. 81: to provide a sufficient number of labour inspectors, to guarantee the independence of their functions by means of adequate working conditions and salaries, to provide them with necessary training and finally to ensure the yearly publication and communication to the Office of annual reports provided for in Article 20 of Convention No. 81.

Conclusions

The Committee took note of the information provided by the Government representative and the discussion that followed. It recalled that the observation of the Committee of Experts related mainly to the lack of information in the Government's report on the application of the Convention and to the failure by the central labour inspection authority to comply with its reporting obligations concerning the work of the labour inspectorate, as prescribed by Articles 20 and 21 of the Convention.

The Committee noted that, according to the Government, the labour inspectors were, as required by the Convention, public officials with career prospects for personal growth. They were recruited from university graduates in the fields of arts, humanities, law, engineering, sciences and medicine. In addition, they were independent, including from any changes of government. The Committee further noted the information provided in regard to the training provided to them in the country, by the African Regional Centre for Labour Administration (CRADAT) and the International Training Centre in Turin. The Committee also noted the information provided by the Government representative concerning the strengthening of the means of transport available to the labour inspection offices with a view to extending the coverage of their activities.

The Committee noted, however, that despite the efforts undertaken by the Government for the establishment and the functioning of an effective labour inspection system aimed at providing adequate protection for workers, labour inspection remained faced with a lack of human and material resources in view of the number of establishments to inspect and the number of workers concerned.

The Committee recalled the Government's obligation to take the necessary measures with a view to ensuring a sufficient number of inspectors so as to extend the protection of labour inspection to the largest number of workers. It requested the Government to provide information in this regard in its next report, as well as information regarding the measures taken by the central labour inspection authority for the purpose of obtaining the necessary funds for the training of labour inspectors.

The Committee noted the statement of the Government representative concerning the Government's political will to meet its obligations arising from the ratification of the Convention, in particular, those relating to the provision of reports concerning its application as well as the annual report concerning inspection activities. In response to the Government's request for technical assistance from the Office and the support expressed by all speakers for such request, the Committee requested the Office to take the necessary measures to respond positively.

Following up on the observation of the Committee of Experts, the Conference Committee expressed the hope that the Government would be able to remedy the insufficiencies of the report on the application of the Convention under Article 22 of the ILO Constitution and that the annual labour inspection report would shortly be published and communicated to the Office.

Finally, the Committee requested the Government to indicate in its next report all further developments concerning the functioning of the labour inspection in industrial and commercial workplaces covered by labour inspectors under the present Convention. It also requested the Government to provide information on the impact of inspection activities on general labour conditions, occupational safety and health, especially as regards child labour, and to supply relevant statistics.

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

BELARUS (ratification: 1956)

The Government communicated the following written information concerning measures taken to fulfil the recommendations of the Commission of Inquiry.

Since the International Labour Conference in June 2008, the Government continued to take measures to implement the recommendations of the Commission of Inquiry with the participation of all social partners. On 18 June 2008 in Minsk, together with the ILO, the Government organized a seminar on trade union protection against discrimination with the participation of all interested parties: the Federation of Trade Unions of Belarus (FTU), the Congress of Democratic Trade Unions (CDTU), the Radio and Electronic Workers' Union (REWU), the employers' organizations, state bodies, the office of the public prosecutor and the judiciary. In autumn 2008, the Government reduced ten times the price of renting the premises occupied by the trade unions irrespective of their affiliation. In December 2008, a General Agreement for 2009–10 was signed between the Government and the national associations of employers, FTU and CDTU. The Agreement stipulated for the first time that it applied to all employers and all trade unions in the country irrespective of their affiliation. On 21 January 2009 in Minsk, the Government and the ILO jointly organized a tripartite seminar on the fulfilment of the recommendations of the Commission of Inquiry with the participation of an equal number of representatives from the Government, trade unions (FTU, CDTU and REWU) and employers, followed by the tripartite mission of the ILO, the International Trade Union Confederation (ITUC) and the International Organisation of Employers (IOE).

On the basis of the recommendations and with the support of all parties participating in the above seminar, the Government in collaboration with the ILO developed an Action Plan for the implementation of the recommendations of the Commission of Inquiry, which was officially approved by the National Council on Labour and Social Issues on 20 February 2009. The Plan established an effective mechanism for the protection of trade union rights with the key role played by the tripartite Council for the

Improvement of the Legislation in the Social and Labour Sphere formed by an equal number of representatives (seven) from the sides of the Government, the trade unions and the employers' associations. The Government was represented by the Ministry of Labour and Social Protection, including the Department of the State Labour Inspection, the Ministry of Justice, the Republican Labour Arbitration and the Office of the General Public Prosecutor. The trade unions were represented in the Council by four members from the FTU and three members of the CDTU. The employers had four members from the Confederation of Industry and Entrepreneurs and three members from the Business Union of the employers and entrepreneurs named after Professor Kuniavsky. The Council was headed by the Minister of Labour and Social Protection of Belarus.

The meeting of the Council on 30 April 2009, with the participation of a representative of REWU, discussed the question of the registration of trade union organizations and worked out agreed conclusions concerning regional organizations of the Belarus Free Trade Union (BFTU) in Baranovichi, Mohilev and Novopolotsk-Polotsk, the trade union of individual entrepreneurs "Together", primary-level organization of the Belarussian Independent Trade Union of the workers of OAO "Belshina" (city of Bobruisk), primary-level organizations of the REWU in Rechitsa, Smolevichi, Mohilev and Gomel (two organizations). The Council had confirmed the status of the regional organization of BFTU in Novopolotsk-Polotsk and the primary-level organizations of the REWU in Smolevichi and Rechitsa, which were subsequently registered. The Council had noted that the regional organization of BFTU in Baranovichi had not submitted documents for registration to the competent bodies. It had considered the information of the Ministry of Justice and of the representatives of the CDTU concerning refusal in 1999–2000 to register the regional organization of BFTU in Mohilev, as well as the refusal to register the trade union of individual entrepreneurs "Together" in 2007, and observed that, in the situation which existed at the time, certain problems could not have been overcome. At the time of the Council's meeting only one trade union organization of those under consideration had difficulties in obtaining a legal address – the primary-level organization of the workers of OAO "Belshina", and could not for this reason receive registration. The Council unanimously supported the need for a positive solution to this situation and at present appropriate premises to establish the legal address had been found, which should enable this organization to register in due course.

Having considered the refusals to register primary-level organizations of the REWU in Mohilev and Gomel, the Council had unanimously decided that the refusals in question were justified because these organizations were not genuine trade unions as their members were not united by common professional interests in breach of article 1 of the Law on Trade Unions. The Council had rejected the argument advanced by the representative of REWU that common interests of the members of these organizations resulted from the fact that all of them were salaried employees. It did not, however, infringe on the right of the REWU to freely determine the structure and activities of its organizations and confirmed the legitimacy of creating such organizations inside professions and industries other than the radio and electronic industry, provided that article 1 of the Law on Trade Unions was fully observed.

The same meeting of the Council dealt with the future development of Belarussian legislation on trade unions on the basis of Conventions Nos 87 and 98. It recognized the need for consultations between the social partners on these issues, the priority areas of which concerned the principles and conditions of the creation of trade unions, including their registration, collective bargaining in conditions of multiplicity of existing trade unions and their representativeness. The members of the Council had to submit their concrete proposals on these issues for consideration by the Council by 1 July 2009.

With regard to the application of the existing legislation on trade unions, the representative of the Ministry of Justice confirmed that the requirement to have 10 per cent of the total number of employees in the undertaking does not concern the organizational structure of the trade unions. Primary-level organizations could be formed with such number of members as stipulated in the statute of the trade union (usually from three to ten members). This clarification was included in the minutes of the Council's meeting and transmitted by the Ministry of Justice to the local authorities responsible for registration of the trade unions. In Belarus, trade unions were traditionally formed at the national level, affiliated or not to the FTU, with their primary-level organizations acting at the enterprise level. The decision of the Council concerning the 10 per cent requirement would have a direct impact on safeguarding the principles of freedom of association under the existing national law.

The meeting of the Council on 14 May 2009 dealt with the cases of dismissal of the workers mentioned in the report of the Committee on Freedom of Association (Gaichenko, Duchomenko, Obuchov, Shaitor, Cherbo, Stukov), who were invited to and participated in the meeting (except Mr Gaichenko) and given a day of leave for this purpose by their employers. Mr Gaichenko informed the secretariat of the Council that he was satisfied with his present employment at the enterprise "Naftan" (city of Novopolotsk). The Council noted that each of the above cases was settled by a court decision against the worker in question. In this situation any attempt of the Council to reinstate these workers in their previous employment would have been null: reinstatement would have been possible only after revision of the previous court decisions and qualification of dismissals as unlawful, whereas the workers concerned refused to appeal against the court decision taken in 2004. Having considered each individual situation in detail, the Council had taken measures which resulted in finding new employment for Mr Cherbo and Mr Shaitor, confirming an uninterrupted period of employment for Mr Stukov despite his dismissal and subsequent reinstatement in his previous job, and offering other types of assistance to Mr Duchomenko and Mr Obuchov.

The Government of Belarus considered that during the last year there had been radical change and substantial progress in the implementation of the ILO recommendations. Problems with registration of trade unions were being resolved and cases of pressure on trade union members were being dealt with by the tripartite body trusted by the interested parties. It should be noted that all the decisions of the Council for the Improvement of the Legislation in the Social and Labour Sphere taken on 30 April and 14 May 2009 reflected a concerted opinion of all its members. With regard to future activities, the Council decided to consider the question of improving existing legal mechanisms of protecting persons against discrimination in employment due to their trade union membership on the basis of proposals submitted by the members of the Council not later than 1 August 2009. The Government would continue cooperation with the ILO concerning the activities of the Council.

In addition, before the Committee **a Government representative** (Deputy Prime Minister) stated that the Government was optimistic about the present situation and that considerable progress had been made in the implementation of the recommendations of the Commission of Inquiry as a result of the constructive steps taken by the Government. He emphasized that, on the basis of social partnership and in close cooperation with all the social partners, a considerable number of issues had been dealt

with. However, he indicated that the Government would not stop there. He therefore called for the Conference Committee to take into account in its conclusions the positive steps that had been made in the implementation of the recommendations of the Commission of Inquiry and to give effect to the Convention.

The Employer members noted that this case had been the subject of a double footnote in the report of the Committee of Experts, and that it was the ninth time that it had been examined by the Conference Committee. They recalled that a Commission of Inquiry had been set up in November 2003 by the Governing Body. They believed that it was important to note the change in the case when compared with the situation in 2005 and 2006. The Government's attitude was now much more positive. It was to be welcomed that where the Government had previously talked of the need to adapt the recommendations of the Commission of Inquiry to the national situation, it was now speaking of their direct and full implementation without reservations. Over the past three years, the Government had discussed its cooperation with the ILO, which included seminars and technical assistance, and had resulted in a new draft law which was intended to address the recommendations of the Commission of Inquiry. However, as the Committee of Experts had pointed out, problems remained with the content of the draft bill, such as: establishing unions at the enterprise level without legal personality; the requirement of a legal address for registration; the link between representativeness and the rights of trade unions; the level of formality of the registration procedure; the power of registration authorities to request and obtain information on the statutory activities of trade unions; and the requirement of 10 per cent membership to be registered at the enterprise level. They emphasized that, to the Government's credit, it had withdrawn the draft bill and had proceeded in another direction.

The Employer members noted that the observation of the Committee of Experts was relatively short, due to the changed approach in this case. However, they emphasized that the next observation should be more extensive, providing further detail on the real situation. As indicated in the written information provided by the Government, there were a number of tripartite processes that addressed key issues, such as the action plan, legislation and the regulation of unions. However, they added that it would have been preferable if the Government had been closer to meeting the recommendations of the Commission of Inquiry. The Committee of Experts, had indicated in its observation that the Government had not provided the information requested on certain substantive aspects of the case. The Committee of Experts would have to determine whether the written information communicated by the Government satisfied its requests for information. In particular, the action plan should be submitted to the Committee of Experts.

In conclusion, the Employer members welcomed the information provided and the constructive attitude demonstrated by the Government. However, they expressed concern that what was described was a procedural process with a tripartite basis, and that the process might overcome the substantive legal and regulatory matters. They considered that what was needed was a clear time-bound plan of action to meet the recommendations of the Commission of Inquiry and give full effect to Convention No. 87 in law and practice. For example, the process relating to registration of unions was very bureaucratic and needed to be further streamlined in practice. Finally, they called for urgency and speed in the implementation of the Convention.

The Worker members recalled the conclusions adopted when the case had been examined in 2008 by the Conference and the trust that had been extended to the Government. The conclusions had reflected the commitment of Belarus to organize a seminar on anti-union discrimination with the participation of ILO representatives and also to organize a broader seminar in the autumn of 2008 on the implementation of the recommendations of the Commission of Inquiry established in 2003. The Committee had expressed the firm hope that the Governing Body and the Committee of Experts in November 2008 would be able to observe positive developments and would be provided with full statistics on the registration of trade unions and on complaints on anti-union discrimination.

It should be noted that the representatives of the Office, the ITUC and the IOE had visited Minsk in June 2008 to attend a seminar organized by the Government of Belarus on anti-union discrimination. However, the seminar had not addressed the question of bringing the national legislation on the registration of trade unions, the Labour Code, or the situation of workers who were on strike, into conformity with the Convention. This appeared to be due to the fact that the issue of registering trade unions lay within the competence of the Ministry of Justice, and not the Ministry of Labour. It should also be noted that the seminar had been like a training course and, at least in formal terms, came within the context of the Committee's conclusions adopted the previous year. Moreover, the tripartite seminar on the implementation of the recommendations of the Commission of Inquiry of 2003 had been held in January 2009, after the meeting of the Committee of Experts and had been attended by an Executive Director of the ILO, government representatives, trade unions affiliated or not to the Trade Union Federation of Belarus, employers' organizations, the ILO, the ITUC and the IOE. The independent trade unions had had 20 participants out of the 55 trade unionists present at the seminar, which had resulted in the formulation of an action plan that had been approved by the Tripartite National Council on Social and Labour Issues in February 2009. It was within this context that the Government had made a proposal to modify the composition of the Council for the improvement of the legislation in a tripartite manner. The CDTU had been requested to delegate three representatives of independent trade unions among the seats allocated to trade union organizations. The Council had held two meetings and its main function was to receive the requests and complaints from trade union organizations concerning cases of refusal to register trade unions and discrimination against trade union members.

With respect to the implementation of the recommendations of the Commission of Inquiry, it should be noted that the problems relating to the registration of independent trade unions had not entirely been solved, contrary to the claims made by the Government. This situation was irreparable in cases where trade unions had ceased to exist. Anti-union discrimination had not been completely eliminated as some independent trade unions were still being refused the right to conclude collective agreements, and it was necessary to end harassment against independent trade unions. Finally, no tangible progress had been made concerning most of the recommendations. It was impossible to find solutions in three or four months for matters that had not been resolved for years, as in practice many situations were irreparable. A solution had to be found rapidly, as emphasized by the Committee of Experts, to prevent a degradation of the situation relating to the registration of trade unions.

The Government had shown its will to respond to certain recommendations of the Commission of Inquiry, as illustrated by the new composition and actions of the Council for the Improvement of the Legislation in the Social and Labour Sphere. However, as indicated by the Committee of Experts, the Government had not provided the detailed statistics requested on the registration of trade unions and complaints of anti-union discrimination.

In conclusion, even if a mechanism had been established, this was only a small first step. The Government's credibility in the implementation of this mechanism

would be tested in July 2009, when the Council would address the future development of national legislation on trade unions in the light of the principles and conditions for their establishment, registration and representativeness deriving from Conventions Nos 87 and 98. All trade unions had been invited to submit proposals to that effect. The Worker members did not doubt that the proposals made by the three members of the CDTU would be fully discussed. It was to be hoped that the Government as a whole considered the completion of the adoption of the draft legislation to be a priority. The mechanism that had been set up needed to operate in accordance with tripartite procedures, and ensure the involvement of increasingly independent social partners. It would be unacceptable after so many discussions of this case for the Government to have the feeling that it had fulfilled its obligations.

The Government member of the Czech Republic, speaking also on behalf of the Government members of the Member States of the European Union, and the candidate countries Croatia, The former Yugoslav Republic of Macedonia and Turkey, the countries of the Stabilization and Association Process and potential candidates Albania, Bosnia and Herzegovina, Montenegro, the EFTA countries, Iceland and Norway, the members of the European Economic Area, as well as the Republic of Moldova and Ukraine, indicated that the case of Belarus had been discussed by the Committee eight of the previous nine years, and that the report of the Committee of Experts reiterated major problems remaining in the application of Convention No. 87: the registration procedure of trade unions, and in particular the requirement for a legal address; the prohibition of exercising trade union rights; and the prohibition of receiving financial assistance from foreign sources.

He noted the findings of the Committee of Experts, and the updated information provided to the Governing Body in March 2009, when the European Union had welcomed the tripartite adoption of the plan of action. The plan was scheduled for implementation this year and covered most of the problems that had been highlighted by the Committee of Experts. If implemented fully and in good faith, the plan of action would become an important contribution towards the satisfactory resolution of this case.

He recalled that in previous years, the European Union had expressed concern regarding compliance by Belarus with Convention No. 87. He noted that some positive developments had recently taken place and he thanked the Office and the representatives of the social partners involved in this process. He encouraged all parties concerned to redouble their efforts in pursuing cooperation with a view to eliminating all obstacles for the establishment and operations of independent workers' and employers' organizations. The genuine exercise of freedom of association was an indispensable condition for meaningful social dialogue both at the enterprise and national levels, and consequently for any relevant activity in the world of work.

While the European Union acknowledged indications of the renewed commitment of the Government towards its international obligations, it was of utmost importance that such steps were transformed into tangible practical progress in the near future. He expected that the Government would continue in its current course of cooperating with the ILO in order to ensure the full realization of freedom of association and the right to organize for all workers in Belarus. He also called on the Government to provide in its next report on the application of the Convention all relevant information to enable the Committee of Experts to fully assess the situation in practice and the real impact of the various measures adopted by the Government.

The European Union would continue to monitor closely the situation in Belarus. He called upon the Government to comply fully with all the recommendations of the Commission of Inquiry without further delay.

The Government member of the United States noted that since the Conference Committee last discussed this case and since the observations by the Committee of Experts, there had been some significant developments. Last March, the Governing Body had been informed about a tripartite mission and seminar in Minsk – organized jointly by the ILO and the Government – that had permitted a frank and open discussion of the trade union situation in Belarus and had led to the approval of a Plan of Action for the implementation of the recommendations of the Commission of Inquiry. She understood that in furtherance of the Plan of Action, the tripartite parties had recently been examining questions relating to the registration of trade union organizations, the future development of the legislation on trade unions and the application of existing legislation. She noted that the Government considered that during the last year there had been radical change and substantial progress in the implementation of the Commission of Inquiry's recommendations. She welcomed these developments and trusted that the Government would continue to work closely with the ILO, as well as its social partners, in carrying out all the measures envisaged by the Plan of Action. However, she noted that, until the Committee of Experts had assessed the latest developments, she would continue to follow with concern the state of freedom of association in Belarus, particularly with regard to the registration of free and independent trade unions. She looked forward to the day when full respect for freedom of association was a reality in Belarus, when there would no longer be barriers in law or in practice to the right of all workers to associate, organize, register unions and express their points of view without threat of interference or reprisal. She hoped that day would be soon.

The Employer member of Belarus said that, in the opinion of employers in Belarus, the action taken by the Government to give effect to the recommendations of the Commission of Inquiry to improve relations with workers and to normalize the trade union situation had been constructive and had resulted in tangible improvements in the situation with regard to social dialogue. The CDTU, as a member of the National Council on Labour and Social Issues (NCLSI), was a signatory of the general agreement between the Government and workers' and employers' organizations. The NCLSI had discussed and reached agreement on a number of social and economic issues and was promoting agreement between all the parties on national issues. With support from the ILO, an Action Plan had been developed with the support of employers' and workers' organizations. The NCLSI had discussed several issues, including problems relating to the registration of trade unions and the means of overcoming difficulties regarding trade union premises. Employers in the country had also helped trade unions to find premises, which all demonstrated the emerging culture of pluralism. They particularly wanted to see the Government improve the climate for enterprise activity. Belarus was a member of the European Union Eastern Partnership Programme and it was to be hoped that its membership would continue. He emphasized that partnership with the European Union was of great importance in developing the economy of Belarus and in helping workers find employment, particularly those who lived in deprived areas, such as the area affected by the Chernobyl disaster. He therefore called on the Conference Committee to encourage the Government in its action, which would have a positive effect on working and living conditions.

The Worker member of Belarus said that the Government was now taking action to give effect to the recommendations of the Commission of Inquiry. Although it was not yet implementing them in full, it was showing a certain political will to do so and was making progress. The considerable efforts that were being made were reflected in the written information provided by the Gov-

ernment. The Government was now working closely with all social partners, including all workers' organizations throughout the country. The seminar that had been held in June 2008, with the participation of ILO representatives, had been the first occasion on which all trade unions had been able to attend and speak at such an event. It had also offered them the opportunity to enter into discussions with the authorities, including officials of the Ministry of Labour and Social Protection, the Ministry of Justice and the Office of the Public Prosecutor. Since then, social partnership had developed to the extent that discussions were full and free and the seminar organized in January 2009 had included representation of the ILO, the ITUC and the IOE. An important step forward had been the Action Plan adopted by the National Council on Labour and Social Issues and a very broad range of social partners had been involved in the preparation and implementation of the Plan. For example, the last two sessions of the Council for the Improvement of the Legislation in the Social and Labour Sphere had considered a number of important issues, such as the registration of trade unions and the reinstatement of dismissed trade union activists. The Government had subsequently taken a number of measures to improve the process of the registration of trade unions.

He further emphasized that the legislation respecting the registration of trade unions applied to all trade union organizations throughout the country. It was therefore important to ensure that all the partners were represented on the National Council on Labour and Social Issues, including the CDTU. He urged all unions to work together, in particular for the formulation of the new national plan for the coming years, which had been receiving extensive coverage in the press. Although the situation was clearly not perfect, substantial progress had been achieved and it was to be hoped that this would be recognized by the ILO. Although all 12 of the recommendations of the Commission of Inquiry had not yet been implemented, it was not possible to achieve everything overnight. Belarus was now associated with the European Union Eastern Partnership Programme, and it was important that it became a full member of the Programme. However, there was opposition in certain circles to the inclusion of Belarus in the Programme, which was giving rise to unwarranted criticism of the situation in the country.

In conclusion, he emphasized that the social partners needed to work together to achieve full implementation of the Convention. He therefore hoped that the Government would help to improve and expand opportunities for trade union participation in the country. He urged the Government to allow the representatives of other trade unions to participate in the work of the Council for the Improvement of the Legislation in the Social and Labour Sphere. He also called for workers' organizations to be actively involved in the negotiation of collective agreements and he urged all trade union leaders to work together for the implementation of the ILO's recommendations to give full effect to the Convention.

The Government member of the Bolivarian Republic of Venezuela congratulated the Government representative for the excellent description of his Government's efforts to implement Convention No. 87. He emphasized the positive aspects that should be duly acknowledged by the Committee. The Government had described in detail the measures that indicated that there had been progress in implementing the recommendations of the Commission of Inquiry. In 2006, Belarus had taken action to strengthen dialogue with social partners, including the establishment of the tripartite National Council on Labour and Social Issues and the Council for the Improvement of Legislation in the Social and Labour Sphere, known as the Council of Experts.

At previous sessions of the International Labour Conference, the Committee on the Application of Standards had recognized the progress made by the Government of Belarus; as had the Governing Body. At the 304th Session of the Governing Body, in March 2009, the Report of the Director-General referred to the tripartite seminar on the implementation of the recommendations of the Commission of Inquiry, and which had been held in Minsk in January 2009 with the participation of representatives of the ILO, the ITUC and the IOE together with national trade unions and employers' organizations and high-ranking government representatives. As a result of the seminar, a government Action Plan had been developed for the application of the recommendations of the Commission of Inquiry in relation to trade union rights, which had been adopted by the tripartite partners.

He considered that much progress had been made in Belarus regarding its compliance with Convention No. 87, as confirmed by many of the social partners. He emphasized that the Conference Committee should note in its conclusions that this was a case of progress.

The Worker member of the Russian Federation said that the Russian trade union movement as a whole was monitoring very carefully the manner in which the Government was giving effect to the 12 recommendations made by the Commission of Inquiry. He emphasized that there were very close political, economic, social and cultural links between the Russian Federation and Belarus, as well as many human and family links, as many Russian workers had relatives in Belarus. The protection of trade union rights in both countries was therefore of great importance to Russian trade unions. In the discussion of the case in the Governing Body in March 2009, the Workers' group had expressed cautious optimism at the positive steps taken by the Government. Russian trade unions were also quite optimistic, as the system of social dialogue appeared to have the support of all the trade unions in the country, although the measures taken were as yet fragmentary and needed to be pursued further. The legislation that was in violation of the Convention had not yet been repealed and therefore continued to limit collective bargaining and to make it very difficult for trade unions in the country to receive support from the international federations to which they were affiliated. However, there had also been positive changes and the Government and the social partners, with ILO support, had adopted an Action Plan, which was a type of road map, and confirmed the intention of the authorities to solve the problems under discussion. The action taken needed to be carefully examined by the ILO supervisory system and it was to be hoped that the Action Plan would be developed in detail and would result in the full implementation of the recommendations of the Commission of Inquiry, to which effect had not yet been given. In conclusion, he urged the Government to use the various anniversaries that were currently being celebrated, including the 60th anniversary of the adoption of Conventions Nos 87 and 98, and the 90th anniversary of the ILO, as a stimulus to help it achieve fuller and more rapid implementation of the ILO's recommendations.

The Government member of the Russian Federation thanked the Government representative for the information provided on the action that was being taken for the implementation of the Convention. As in the discussions of the case in the Governing Body sessions in November 2008 and March 2009, it was evident that clear and substantial progress was being made in the implementation of international labour standards, and particularly Convention No. 87 and the recommendations of the Commission of Inquiry. Dialogue was now being developed with all social partners on a range of issues, including the implementation of the ILO's recommendations in the present case. Work was being carried out for the development of new legislation respecting trade unions which took into

account the recommendations of the ILO and the opinions of the social partners. The Government was continuing its cooperation with the ILO and a tripartite seminar had been held in January on freedom of association, social dialogue and the implementation of the recommendations of the Commission of Inquiry. ILO specialists had participated in the formulation of the Action Plan that had been approved by the Council for the Improvement of the Legislation in the Social and Labour Sphere. The Council, the membership of which included representatives of independent trade unions, had held two sessions recently in which it had examined issues including the registration of trade unions, employment of the dismissed trade union activists and the prospects for the development of new legislation respecting trade unions. Several decisions had been taken. The procedures had been improved for the registration of primary-level trade unions and certain dismissed trade union activists had been reinstated. Substantive progress had therefore recently been achieved on the basis of social partnership. The Government had entered into sincere and constructive cooperation with the ILO as it had repeatedly demonstrated through its actions.

The Government member of Cuba noted that the activities carried out in 2008 with the ILO were of particular interest and that, in addition to the tripartite seminars that had been organized, a general agreement had been concluded for 2009 and 2010, which applied to all the trade unions and employers in the country, regardless of their affiliation. The tripartite seminar held in Minsk on the implementation of the recommendations of the Commission of Inquiry had been attended by the representatives of the Government, trade unions and employers, and had been monitored by a tripartite mission of the ILO, the ITUC and the IOE.

The National Council on Labour and Social Issues, which was a tripartite institution with broad representation of government bodies, employers and workers, had approved the action plan that had been developed by the Government and the ILO in consultation with the social partners for the implementation of the recommendations of the Commission of Inquiry. The Plan established a mechanism to protect trade union rights and entrusted the Council with a fundamental role in improving labour legislation. It should be emphasized that several trade union organizations had been registered and that, according to the Government, positive solutions were being sought for an organization that had encountered difficulties with its registration. Another set of activities had been carried out in the course of this year, which demonstrated the Government's concern to give effect to the recommendations of the Commission of Inquiry and reflected the concerted views of the employers and workers.

She considered that the Government had taken positive steps, both in practice and with a view to the preparation of legislation setting out the principles of Convention No. 87, and that a process was being undertaken for dialogue and for the establishment of a tripartite body accepted by all parties concerned, which should be emphasized in the conclusions of the Committee.

The Government member of China thanked the Government representative for the information provided. Since 2005, the Government had been taking effective measures to improve the implementation of the recommendations of the Commission of Inquiry, which had resulted in significant progress, which should be fully recognized by the Committee. While the ILO and the Government continued to cooperate and mutual trust and dialogue continued to be strengthened, the issues relating to the implementation of the Convention would be resolved.

The Government member of Canada thanked the Government representative for the information provided. Noting with appreciation the statements made on behalf of the European Union and the United States, he said that his Government was concerned at the Government's continued disregard for international appeals to respect human rights and democratic principles, including the rights of workers to form and join organizations of their own choosing. Although there had been some progress since the last Conference, including the convening of the Tripartite Council for the Improvement of Legislation in the Social and Labour Sphere and tripartite seminars had been organized, there were still many entrenched legal and bureaucratic obstacles preventing the registration of trade unions and the exercise of their legitimate activities, including the organization of meetings free from interference by the public authorities. His Government would continue to work with other ILO members to encourage reform in Belarus and he called upon the Government to continue to strengthen tripartite cooperation and to bring its law and practice into full conformity with the Convention. He urged the Government to fully implement the recommendations of the Commission of Inquiry and hoped that the ILO would continue to support the Government to bring about tangible results in practice.

An observer representing the International Trade Union Confederation (ITUC) recalled that Case No. 2090 had been under examination in the ILO for almost ten years. But for the first time there appeared to be the hope of light at the end of the tunnel. The previous year, the Conference Committee had reached a compromise with the Government, which had proved to be a good decision. The problem of trade union rights had come into being many years ago and the efforts of the Ministry of Labour on its own had not been sufficient to resolve it. While a plan of action to give effect to the ILO's recommendations had been developed by the Government jointly with the ILO, the ITUC and the social partners, and steps had been taken to implement it, the recommendations of the Commission of Inquiry were still not fully implemented. Unions and their members were still under pressure and anti-union discrimination still existed. The Government's intention to resolve the problem of activists dismissed for their trade union activities was important and it was also essential to remove the mechanisms and practices of anti-union discrimination and to guarantee that members of independent unions were not subject to pressure by the administration of enterprises. If it was important for the Government to start taking measures to overcome the refusal to register independent union organizations, it was even more important to remove the reasons for which such organizations disappeared. The requirement of previous authorization for the establishment of trade unions needed to be abolished.

He added that, in violation of the existing laws, employers refused to conclude collective agreements with independent unions in certain cases and put pressure on their members. Moreover, the Office of the Public Prosecutor and the courts ignored violations of the rights of independent trade unions. The existing legislation made it impossible in practice to organize meetings, marches, demonstrations, picketing and other actions to defend trade union rights. Real progress could only be achieved when ILO principles of freedom of association were fully implemented and workers could freely establish and join the organizations of their own choosing, without fear of reprisals. While considering that the Government was demonstrating a certain level of political will in developing an action plan with the social partners, he emphasized the importance of achieving tangible results in the near future.

The Worker member of China noted the information provided by the Government representative and indicated that he had followed closely the issue of the implementation of the Convention in Belarus and the progress that was being made. He therefore hoped that the Government would strengthen its cooperation with the ILO with a view to safeguarding trade union rights and achieving decent work for the workers of the country.

The Government representative of Belarus thanked all the speakers and emphasized that his Government was very open to dialogue and to discussing any issues raised. The interventions during the discussion would be examined and used to guide the action that would be taken in the future. The success of social partnership depended greatly on full trust being established between all the participants. Experience in the country had shown that many issues were less difficult to address because of the positive participation of the social partners, who had been fully involved in preparing and approving the action plan and who were continuing to consider the issues that arose and to take action on them together. He emphasized that all the participants in the Council for the Improvement of the Legislation in the Social and Labour Sphere participated as independent members and had the right to express their own views in full freedom. However, they had developed a common position and had all approved the Action Plan and were working together for its implementation. The Government was demonstrating its willingness to work with all parties and, on the basis of social partnership, to develop legislation for the implementation of Conventions Nos 87 and 98 and to address and resolve all outstanding problems in this respect. It could therefore be seen that work had been carried out steadily and logically on a step by step basis. The Government had held consultations at every stage and had therefore kept all its promises to the Conference Committee and to the social partners. It was also working on further proposals to be put to the social partners. It had worked in close cooperation with the ILO, which had contributed to the organization and financing of the tripartite seminar held in January, in which ILO experts had played a very active role. His Government greatly appreciated the support provided and hoped that it would be continued. He recalled that when the present case had been examined by the Conference Committee the previous year, that had been the first occasion on which it had not been set out in a special paragraph of the Committee's report. For the Government and the social partners this had provided a clear indication that the ILO supported the efforts that were being made to improve the situation and all partners had stepped up their efforts, achieving substantive progress in the implementation of the recommendations of the Commission of Inquiry. The Conference Committee therefore had it within its power to encourage all those involved to make yet further progress.

The Employer members indicated that the Government deserved credit for the rapid and constructive action taken since the last Conference and the step by step approach adopted to the improvement of the situation. However, they were not reassured that all the recommendations of the Commission of Inquiry would be implemented in the near future. At the very least, the Government should be called upon to provide a detailed report in time for the next session of the Committee of Experts, which should include a copy of the Action Plan. They therefore encouraged the Government to keep up its positive efforts and attitude and to continue taking action for the sustainable implementation of the Convention.

The Worker members indicated that there was no question of concluding that significant progress had been achieved, which would leave the impression that all the 2003 recommendations had been given effect. A mechanism had been established, as emphasized by many speakers, which constituted a first small step, but much remained to be done in practice. The Worker members hoped that the Government would take this measure and develop it in conformity with the Convention, where necessary with ILO technical assistance. Although little was needed for this mechanism to work well, what was lacking was of utmost importance. The Council for the Improvement of the Legislation in the Social and Labour Sphere needed to develop a road map setting out transparent procedures of which all trade unions without exception were informed and which included the following: the establishment of a timeframe for the investigation of complaints concerning the refusal of trade union registration and anti-union discrimination which offered guarantees of legal security and transparency; laying down rules concerning the timely processing of complaints; and compliance with tripartite procedures by ensuring the involvement of the increasingly independent social partners. They stated that the Government should be asked to provide a report on the operation of the Council in practice, in particular with regard to the items mentioned above, for examination by the Committee of Experts at its next session, including detailed statistics on the registration of trade unions and on cases of complaints for anti-union discrimination, requested previously.

Conclusions

The Committee took note of the written and oral information provided by the Government representative, the Deputy Prime Minister, on the recent steps his Government had taken to implement the recommendations of the Commission of Inquiry and the discussion that followed.

The Committee noted the detailed information provided by the Government representative in relation to the developments since the discussion of this case last year and observed with interest the cooperation with the ILO in this regard.

The Committee took note of the seminar on anti-union discrimination held in Minsk in June 2008 and welcomed the fact that it provided for an open and frank discussion of the trade union situation in Belarus. The Committee further welcomed the outcome of a tripartite seminar on the implementation of the Commission of Inquiry's recommendations organized jointly by the ILO and the Government of Belarus in January 2009. It welcomed in particular the plan of action to implement the recommendations of the Commission of Inquiry subsequently adopted by the tripartite National Council on Labour and Social Issues.

The Committee further noted with interest that pursuant to the plan of action, the Council for the Improvement of Legislation in the Social and Labour Sphere evolved into a fully tripartite body where trade unions could raise their concerns and that the Council's composition now included three representatives of the Congress of Democratic Trade Unions (CDTU). The Committee noted the detailed information provided by the Government on the two sittings of the Council at which it had discussed issues of trade union registration, dismissals of trade union members and the need for consultations with the social partners concerning further development of trade union legislation. The Committee understood that members of the Council had been invited to submit concrete proposals for legislative amendment by 1 July 2009 for the Council's consideration.

The Committee also noted with interest that the CDTU is now a party to the General Agreement for 2009–10 and that the Government had reduced by ten times the price of rent for trade unions irrespective of their affiliation, a matter which had given rise to an additional impediment for meeting the legal address requirement necessary for registration.

The Committee considered that the measures undertaken by the Government and the will demonstrated by the Ministry of Labour and Social Protection, now given further force in the statement by the Deputy Prime Minister, to address the outstanding recommendations of the Commission of Inquiry constituted certain progress which, if sustained and transformed into tangible advances towards freedom of association in practice, could become an important contribution towards the application of the Convention. The Committee expressed its concern, however, that these steps might remain only a matter of process and not give rise to substantive improvements. In this regard, the Committee noted with regret that there were as yet no concrete proposals to amend Presidential Decree No. 2 dealing with trade union registra-

tion, the Law on Mass Activities, and Presidential Decree No. 24 concerning the use of foreign gratuitous aid. The Committee considered that in light of the allegations that independent trade unions continued to experience difficulties in practice with registration and anti-union discrimination, the amendments requested by the Commission of Inquiry in this regard remained necessary.

In light of the continued commitment to social dialogue expressed by the Government, the Committee encouraged the Government to redouble its efforts to ensure full freedom of association in close cooperation with all the social partners and with the assistance of the ILO. In particular, the Committee requested the Government to prepare a clear, time-bound plan for the full implementation of all of the Commission of Inquiry's recommendations, including transparent procedures for the participation of all trade unions and aimed at the elimination of all remaining mechanisms and practices used to intimidate and persecute workers who wished to organize in independent trade unions. It requested the Government to furnish information on the progress made in this regard as well as on any further developments to the Committee of Experts at its meeting this year and expected that it would be in a position to note significant progress with respect to all remaining matters at its meeting next year.

COLOMBIA (ratification: 1976)

A Government representative said that the Government of Colombia valued the spaces for dialogue which made it possible to analyse the situation in the country in an objective manner, including its achievements and deficiencies, and propose actions intended to continue strengthening institutional capacities and public policies with a view to making progress in ensuring the respect for the rights and well-being of the entire population.

As in 2008, Colombia had agreed to provide information on the developments that had taken place in the past year and listen to the contributions that the delegations wished to propose. The Colombian Government expressed its gratitude for this opportunity and wished to provide an update on the progress made in applying Convention No. 87, which the Committee of Experts had referred to in its 2009 report as a case of progress. The Committee of Experts had indicated its satisfaction with the measures adopted by the Government on matters related to freedom of association, protection of leaders of trade unions and their affiliates, the fight against impunity and the investigation of human rights violations against trade unionists.

She added that the ILO Committee on Freedom of Association (CFA) had recognized the above in its examination of Case No. 1787, and had indicated that significant progress had been made in respect of violence. With regard to the recommendations made by the CFA, she indicated that her Government had submitted the relevant replies and the information requested.

The Government could not fail to recognize that the violence that had been affecting the country for more than four decades had had an impact on the trade union movement, which was why it had spared no efforts to strengthen the effectiveness of protection programmes covering the unionized as well as other vulnerable populations. The Government continued to work tirelessly to overcome the causes of violence, mainly drug trafficking and other activities connected to drug trafficking, and other forms of organized crime, by means of which the illegal armed groups financed themselves so as to commit terrorist acts.

In the past seven years, as a result of the Democratic Security Policy, the overall homicide rate among the Colombian population had been reduced by 44.1 per cent and the rate of homicides against trade unionists had fallen by 81 per cent. As of 3 June 2009, a total of 6,722 homicides had been committed in the country, 14 of which were of persons linked to the trade union movement. On this date in 2008, there had been 22 homicides of unionized persons; in 2002, there had been 116 assassinations of trade unionists.

According to trade union centres, there had been 17 violent deaths of trade unionists in 2009. It was appropriate to note that there were often discrepancies between the official statistics and those reported by workers' organizations. In the Government's view, working together to agree on methodologies to improve the measurement methods could only strengthen their abilities to diagnose and deal with a phenomenon to be eradicated. The speaker emphasized that the problem concerned human lives, and so deserved the Government's full attention and condemnation.

She proposed that, in the framework of the Tripartite Agreement and with ILO assistance and cooperation, workers, employers and the Government explore ways to make progress in reaching agreement on methodology.

With regard to the progress made in the investigation of cases of human rights violations against trade unionists, she indicated that since the conclusion of the Tripartite Agreement on Freedom of Association and Democracy, in the framework of the 95th Session of the International Labour Conference in June 2006, significant progress had been made, as was evidenced by the number of sentences imposed in the past three years.

The supplementary work by the Office of the Attorney-General, through the specialized sub-unit to address cases of violence against trade unionists and the Higher Council of the Judiciary, which established three permanent tribunals exclusively dedicated to investigating crimes against trade union members, had strengthened the actions of the Colombian State to combat impunity, making it possible to clarify facts and bring the perpetrators of these crimes to justice. Since 2002, significant progress had been made in investigating such cases. Up to now, 188 judgements had been delivered, 75 of which were related to crimes committed in 2008, and as a result, 291 persons had been convicted and 175 were in prison. With regard to homicides of unionists committed in 2009, three persons had already been arrested. The sentences given up to now for crimes committed in 2008, indicated that the deaths of unionized workers had been the result of the same factors as those resulting in deaths in the Colombian population as a whole, that is, general delinquency, theft or personal reasons.

The actions taken to combat impunity supplemented the measures adopted as part of the policy to protect and ensure workers' rights through the protection programme, by means of which security schemes were provided to populations that had felt threatened or vulnerable owing to the situation of violence the country had been experiencing. In 2009, a total of US$45 million had been budgeted in the national budget for the populations covered by this programme, including the unionized population.

With respect to labour standards, the Government followed the principles enshrined in the ILO Constitution in matters related to the adoption of the necessary measures to give full effect to ratified Conventions. In this respect, labour standards had to be applied both in law and in practice. To this end, Colombia had followed a sustained process of harmonization to bring its legislation into conformity with the spirit and letter of the international labour Conventions it had ratified, thus reaffirming its full commitment to fundamental principles and rights at work.

In 2008, for the sake of strengthening the struggle to end the violence that was affecting trade union organizations as well as the population as a whole, the Government had submitted a bill to Congress intended to increase the length of sentences and prescription for the murder of a trade union member. This bill increased the penalty for preventing or intervening in the exercise of the right to organize. The speaker indicated that the status of

the approval process of the bill was well under way with only one debate left, that in the Senate Plenary, before its final submission for presidential approval and subsequent application.

Furthermore, in 2008, Act No. 1210 was enacted, which granted judges the power to declare illegal strike actions or collective work stoppages that failed to respect the law. By virtue of this legislation, such a declaration fell now within the competence of the Labour Chamber of the Higher Court, and no longer that of an administrative authority. Likewise, the Substantive Labour Code had been amended, under which formerly a compulsory arbitration tribunal could be convened under the competency of the Ministry of Social Protection, 60 days after the beginning of a strike. Currently a request to submit a complaint to an arbitration tribunal had to come from both parties, employers and workers alike; this had solved another of the legislative discrepancies contradicting international labour standards, in accordance with the recommendations made by the Committee of Experts.

The Ministry of Social Protection had competent mechanisms for inspection, supervision and monitoring that made it possible for workers to lodge complaints throughout the entire national territory whenever they felt their labour rights were being violated.

With the help of the United States Agency for International Development (USAID), a preventative inspection strategy was being formulated to strengthen the functioning of the organic structure of the Territorial Administration of the Ministry of Social Protection, including in essential sectors of the economy, and to review the activities of the labour inspectors. In this respect, since the issuing of Decree No. 1294 of 2009, 212 new posts had been created in the Inspection and Monitoring System, of which 135 were labour inspectors. Among these posts, 95 would be filled in 2009 and 40 in 2010.

With respect to associated work cooperatives, Act No. 1233 had been enacted in 2008, stipulating the structural elements of social security contributions and creating special contributions under the responsibility of the Associated Work Cooperatives and Pre-cooperatives. The same Act prohibited the payment of wages below the minimum wage and the use of the minimum wage as a bargaining point in labour negotiations. Furthermore, Decree No. 535 of 2009, had been issued, which provided for the procedures and bodies to develop the consultation processes in state entities, giving priority to dialogue as a means to address working conditions in the public sector and to regulate employer–worker relations in public entities. This Decree had opened a new chapter in the right to collective bargaining for public employees in Colombia. This Decree had already brought concrete and satisfactory results, as consultation processes had taken place in the District of Bogota, in the Ministry of Social Protection and the Ministry of Education, and an agreement had been concluded with the Colombian Federation of Educators (FECODE).

With respect to registering trade unions, in 2008 the Constitutional Court had ordered the Ministry of Social Protection to accept the submission of new trade union organizations as well as amendments to their statutes. These orders were being fully met.

The Government emphasized the importance of social dialogue as a fundamental tool for strengthening labour relations, and reiterated its will and commitment to encourage existing tripartite spaces, improving their procedures and establishing the bases for concluding agreements and achieving tangible results in the medium term.

In 2009, regular meetings had been held with the National Consultation Commission on Labour and Wages Policies, under the leadership of the Minister of Social Protection, with a view to analysing the impact of the global economic and financial crisis on employment in the country.

The speaker underscored the work done by the ILO representative in Colombia in implementing the Tripartite Agreement, which had facilitated the reactivation of the Special Commission for the Handling of Conflicts Referred to the ILO (CETCOIT). In the Government's opinion, this was a valuable opportunity that had to be strengthened to help resolve labour conflicts involving the social partners in Colombia, prior to submitting them to the relevant bodies of the ILO. Equally important were the actions taken in the framework of the Inter-institutional Commission for Human Rights, in which the investigative bodies, the Government and trade unions participated to analyse and follow-up cases of violence against leaders of trade unions and their affiliates.

The Government was firmly committed to the consolidation and strengthening of these opportunities for dialogue and was ready to dedicate all the additional efforts required to ensure the achievement of better results. To this end, some of the cooperation projects that were being carried out in the framework of the Tripartite Agreement were envisaging the realization of an assessment of the situation in these opportunities for dialogue, with a view to strengthening them and thereby facilitating the conclusion of agreements.

The technical cooperation programme was an essential element in the development of the Tripartite Agreement and therefore the support of the ILO had been essential, through its headquarters in Geneva, its Regional Office in Lima and its permanent representative in Colombia. Since the establishment of the ILO representation in Bogota, the social partners had made continuous efforts to move the programme's activities forward and adequately follow-up the projects by means of periodic tripartite meetings. These projects had been financed for the most part by the Colombian Government, some of the resources having come from the assistance programmes of the governments of Canada and the United States. For purposes of continuing to implement the cooperation programme, the Government had already budgeted resources for the current year and was negotiating additional resources for 2010.

The speaker reiterated that the Government was willing to dialogue, with an indelible spirit of openness and an unwavering commitment to continue making efforts to work every day for the improvement of living conditions for the entire population and to guarantee respect for the rights of all its citizens, including unionized workers. In this spirit, it appreciated the suggestions made in a constructive manner and which helped to keep reinforcing the institutions and policies intended to achieve these goals.

In conclusion, she indicated that the Government appreciated the Committee of Experts having recognized Colombia as a case of progress. This encouraged her Government to continue to move forward along the path drawn by the signing of the Tripartite Agreement and to continue to seek agreement, notwithstanding the conceptual differences that might occur between the social partners.

The Worker members thanked the representative of the Government of Colombia for the information provided. They recalled that in 2008 the Committee on the Application of Standards had concluded its consideration of this case by expressing its concern about the increasing acts of violence against trade unionists. The Committee had asked the Government to continue to strengthen existing measures of protection and ensure that investigations of the murders of trade unionists could be carried out quickly. In addition, an increase in the resources necessary to fight impunity had been required, including, in particular, the appointment of additional judges specialized in treating cases of violence committed against trade unionists. All these measures were seen as essential for the trade union movement to carry out its activities and develop in a climate free of violence. The Committee had also noted the Government's statement that dialogue was

continuing on several topics, such as essential public services, cooperatives, and the strengthening of the inspectorate. It had expressed the hope that various legal provisions would be adopted, in accordance with the Convention, so as not to deprive workers of freedom of association and collective bargaining and to guarantee the right to establish organizations of their choice, including in the public sector, without prior authorization, and the right to become affiliated to these organizations. Finally, the Committee had considered that the strengthening of the ILO presence in Colombia was needed to facilitate the effective implementation of the Tripartite Agreement of 2006, and had requested a detailed report on all the issues mentioned above for the session of the Committee of Experts in November–December 2008.

The Worker members noted that in the last report of the Committee of Experts, Colombia appeared as a case of progress relating to the application of Convention No. 87. In 2008, the Government of Colombia stated in the Committee that "talking about a case in progress required an objective analysis to be carried out in order to look for mechanisms which would allow progress to be made on the subject that should interest and bring together everyone: the improvement of the labour conditions in Colombia. This exercise made it necessary to recall and face the past, look at and analyse the present and project into the future the efforts that should continue to be made ...". The Worker members could not but agree with this statement. One year after these promises and three years after the conclusion of the Tripartite Agreement and the high-level mission, it was time to take stock of the development of the situation that had lasted for more than 20 years. Yet, this year again, one had to speak of murders, impunity and associated work cooperatives, as well as of the activities of the ILO Office in Colombia, which started in 2007, but were currently stalled since the ILO representative was called back to ILO headquarters. At this stage, the Worker members indicated that they would focus on a number of points raised in the report of the Committee of Experts.

Regarding trade union rights and civil and political liberties, it was true that in 2007, as part of its programme to protect persons under threat, the Government allocated US$13 million, on a total budget of US$40 million, to protect members of the trade union movement, representing 20 per cent of the beneficiaries of this programme. According to the report of the Committee of Experts in 2008, the budget was estimated at US$45 million and in June 2008, 1,466 trade unionists had benefited, or 18 per cent of the beneficiaries. In addition, a system of theoretically mandatory reporting intended for the Administrative Department of Security was put in place relating to the risks faced by trade unionists and their protection and a virtual network had to be established to manage the risk alerts in real time. However, the report of the Committee of Experts noted also that the number of murders of union leaders and union members had increased. Colombia remained one of the most dangerous countries for those who claimed the free exercise of the right of association and this right was thwarted by both public authorities and by some employers. Forty-eight trade unionists were murdered in 2008, and there were already 17 murders of trade unionists reported between 1 January and 12 May 2009. The Worker members urged the Government and employers to do everything possible to stop all forms of persecution against trade unions and their members. Effective social dialogue with free and responsible trade unions was essential to lift the country out of economic crisis and a development factor for sustainable economic growth. This had been recognized by many speakers during the discussions that took place last week. The Worker members underlined that Colombia could not be an exception on this point.

As for the fight against impunity, the three national trade union centres recognized the efforts of the Attorney-General's Office to advance the investigation of cases of fundamental rights violations of trade unionists. However, although a sub-unit was created to prosecute and punish homicides against trade unionists since 1986, a slowdown in investigations had been observed. In addition, the motivation of certain judgements was ambiguous and created confusion between the real nature of the acts that were perpetrated, which were related to the exercise of freedom of association, and crimes of passion or common law. Criminal investigations in respect of acts against freedom to organize and freedom of association as referred to in section 200 of the Penal Code, showed that this law was poorly applied and did not produce the desired results. While some positive results had been recorded on the level of the judiciary and the Office of the Attorney-General, the Worker members regretted that the rate of impunity in cases of violations of the rights of trade union leaders and workers was still 96 per cent. According to the information available between 2008–09, the Attorney-General's office recorded no significant progress in ongoing criminal investigations. Of the 2,707 murders reported by the trade union organizations, only 1,119 had been subject of police investigation and 645 were the subject of legal proceedings. This meant that in half of the cases, no physical perpetrator had been identified, not to mention the persons behind the assassination.

The Committee of Experts noted the establishment of the Inter-Institutional Commission on the Human Rights of Workers, which met on 29 July 2008. The Worker members did not dispute that workers' representatives had participated in the work of this Commission, but regretted that the implementation of the planned actions took too long. One could not contend oneself with purely cosmetic answers, in the face of the real problems of trade unionism in Colombia. The answer lay in effective compliance with social dialogue in practice through its two basic components: freedom of association and the right to collective bargaining.

The report of the Committee of Experts did not raise many points regarding workers' cooperatives and other forms of outsourcing that undermined the right to decent work. In 2006, the Government passed a legislative decree banning the use of cooperatives as intermediate or agencies for temporary work, and today, new laws on social security and minimum wage were announced. When workers performed their tasks, as part of a relationship of subordination, which fell within the ordinary framework of enterprise activities, they should be treated as employees under a genuine employment relationship and thus had to be accorded the right to join a trade union. In reality however, constant violations of the provisions of Conventions Nos 87 and 98 de facto reinforced the activities of cooperatives.

The Worker members also denounced practices already reported in 2008 and that were ongoing, such as the collective pacts, or the voluntary benefit plans *(planes de beneficio voluntario)* by which employers provided certain benefits, such as a slight wage increase to workers who renounced the right to unionize or enjoy collective bargaining coverage. The Colombian Constitution and national legislation referred to the principle of dialogue and consultation to promote good relations between employers and workers, to resolve collective labour disputes, and to reach agreement on policies on wages and conditions of work. However, despite these legislative moorings, social dialogue was not effective and the proposed reforms were without consulting the unions. Accordingly, the Worker members urged the Government to prove its good will by implementing an effective social dialogue in both the public and the private sector.

Regarding legislative matters, the Committee of Experts noted in its latest report that it had been commenting on

the application of Articles 2, 3 and 6 of Convention No. 87 for several years without any real result. It, however, noted with satisfaction the developments on a very limited point concerning Article 3, paragraph 2, of the Convention – that the law entrusts to the judicial authority exclusively, as part of a preferential procedure, the right to declare a strike illegal. The three trade union centres of Colombia welcomed with interest this legislative change and hoped that, in this area, the jurisprudence of the courts would follow that of the CFA.

As regards the remaining matters, the comments of the Committee of Experts confirmed issues already raised in the past that have remained unanswered to this day. According to the Worker members, legislative changes had certainly been made, but only with respect to an isolated point; furthermore they had yet to be proven as far as their practical application was concerned. They therefore questioned whether the inclusion of this case in the list of "cases of progress" was justified, in relation to other cases included in that list and the criteria set by the Committee of Experts in 2005. Indeed, one was still far from saying "the problem is solved" within the meaning of these criteria. In the specific context of Colombia, a legislative amendment cannot be assessed outside the context established by the killings, human rights abuses and persistent impunity. This case was not self-evidently a case of progress; positive developments had occurred, but the Worker members remained very concerned.

The Employer members commended the Government for choosing to be the first to appear before the Committee this year and for the statement delivered by the Deputy Minister of Social Protection. They noted the information provided on the decline of the overall number of murders and especially the murders of trade unionists. One murder was a murder too much, and although there had been substantial improvements, people from all walks of life continued to face risks. The Government had provided information on the increase of prosecutions, and the adoption of laws, and judicial decisions concerning cooperatives, the registration of trade unions and the resolution of disputes where there was a collective bargaining impasse. These changes appeared recent and the Committee of Experts, in its fact-finding role, would have to give an appreciation of these legal developments which appeared very positive. The Government had also given positive indications on social dialogue.

This case was the only one on the list of cases where the Committee of Experts had expressed its satisfaction on any aspect of the case. Progress was defined in the Merriam-Webster Dictionary as a forward or onward movement (as to an objective or to a goal) or as a gradual betterment, especially the progressive development of humankind. Similarly, the Cambridge Dictionary defined progress to mean advancement to an improved or more developed state, or to a forward position. Although there was still much to do to bring Colombia into full compliance with the Convention, the Government had taken steady, meaningful positive steps over the past decade.

Over the years, the Employer members had taken a principled approach to addressing this case. Until 2005, this case had been discussed for 25 straight years without interruption in the context of the longest running civil war. During those 25 years, limited progress had been made. In February 2000, a direct contacts mission had been sent to Colombia followed by the Governing Body appointing a Special Representative of the Director-General in 2001 and authorizing a technical cooperation programme in 2003. In 2005, an historic Tripartite Agreement had been reached at the ILO Conference and this Committee had given the Colombia tripartite delegation a standing ovation. At the 2005 session of the International Labour Conference, Colombia had agreed to accept a High-level tripartite visit of the Chairperson of the CFA and the Employer and Worker Vice-Chairpersons of this Committee. They had been allowed full access and transparency during this visit including a meeting with the President. On 1 June 2006, a Tripartite Agreement on Freedom of Association and Democracy had been signed in Geneva with the purpose of strengthening protection of fundamental rights – in particular, protection for trade union leaders, trade union freedoms, freedom of association and promotion of decent work. To facilitate the implementation of this agreement, the Office had established a permanent office in Bogota. During the 2007 session of the International Labour Conference, a high-level mission had been established to identify the additional needs in order to guarantee the effective implementation of the Agreement and the technical cooperation programme in Colombia. The high-level mission had visited Bogota in November 2007 and made a very positive report to which there had been no opposition in the Governing Body.

The main issues raised by the Committee of Experts in this case concerned the situation of violence and impunity as well as certain legal and legislative matters against the background of several decades of continuous civil war. Since 2001, the level of violence against trade unionists had declined substantially along with the overall rate of homicides. It was important to note that the targets were not only trade unionists but also teachers, judges and other prominent personalities in society. Last year, this Committee had been concerned about the increase in trade union violence in 2008. The Committee of Experts noted in its latest report that the protection budget had increased by US$43 million, with 30 per cent of it going exclusively to trade union member protection. The CFA in its 353rd Report in Case No. 1787, had said that "With regard to acts of violence in particular, the Committee observes that considerable progress has been made in combating violence." The Committee of Experts this year and last year noted that the Colombian central unions acknowledged the increased efforts of the Attorney-General to secure prosecutions and convictions. From just one verdict in 2000, there had been 76 in 2008. In line with the Committee of Experts' comments, the Government should continue these efforts as a matter of urgency through the systematic work of prosecutors and judges. The Employer members expressed the hope that these measures would lead to improvements in tackling the situation of impunity.

With regard to the legislative matters raised by the Committee of Experts, one important issue was the inappropriate use of cooperatives, an issue that had been focused upon by the high-level tripartite visit to Colombia in 2005. As the Committee of Experts pointed out, employees in such circumstances should be treated as regular employees with the same terms and conditions of employment and eligibility to join a trade union. The Employer members took note of the proposed 2007 Decree intended to level the playing field on this issue as mentioned by the Government, and asked that it be enacted expeditiously.

With regard to the comments made by the Committee of Experts concerning obstacles to the registration of trade unions and their activities, it was understandable that in the current climate of unrest, the Government might wish to ensure that trade union functions did not go beyond normal trade union activities; however, Article 2 of the Convention clearly required that workers' and employers' organizations should be able to establish themselves without previous authorization. The Government had recognized this today and changes had been made.

Moreover, keeping in mind that the Convention provided no express right to strike, the Employer members took note of the legislation mentioned today by the Government representative, which would allow the parties to establish their own dispute settlement process in lieu of the current compulsory arbitration process. Furthermore, substantial resources should be allocated to the judiciary

and labour tribunals as well as to the strengthening of labour inspection services. Finally, active steps should be taken to resolve the other issues raised by the Committee of Experts.

In conclusion, the Employer members expressed the hope that the Government would continue to take steps to improve the situation as it had done in the past.

The Government member of the Czech Republic speaking on behalf of the member states of the European Union as well as Norway and Switzerland, stated that violence against trade unionists in Colombia remained a significant concern. In spite of the continued efforts of the Government of Colombia, 17 trade unionists had been murdered since the beginning of this year. Since violence could not be overcome without fighting impunity, the Government should be encouraged again to intensify the investigative activities relating to acts of human rights violations of trade union members. In that respect, the speaker welcomed the increase in size of the special sub-unit for cases of trade unionists within the Office of the Attorney General as mentioned in the report of the Committee of Experts. Although the number of cases of violence against trade union members under investigation compared favourably to the investigation of cases of other victims of violence, the Government should be urged to further increase the efforts being made to fight impunity effectively.

Although the efforts of the Government to improve the situation should be acknowledged, violence still prevented the workers' and employers' organizations from exercising their activities in full freedom. Therefore, the speaker once again expressed support for the protection programme for trade unionists and encouraged the Government to ensure that all trade unionists who were at risk enjoyed adequate protective measures which commanded their trust.

While noting with interest the recent improvements in the legislation, namely the amendment of provisions regarding the body responsible for issuing decisions on the legality of a strike adopted last August, the speaker urged the Government, like the Committee of Experts, to take without delay all necessary steps to amend other legislative provisions commented in the report of the Committee of Experts in order to bring them into line with the provisions of the Convention. In this light, the importance of enhanced cooperation between the Government and the social partners should be stressed. Close cooperation with the ILO and its representative office in Bogota were crucial.

The speaker therefore reiterated the request to the Director-General to provide an assessment of the role of the ILO's presence in Bogota in support of promoting labour relations in Colombia. Finally, the speaker expressed his full support for the work of the ILO and its permanent representation in Bogota in helping to ensure respect for ILO fundamental Conventions Nos 87 and 98 and promote labour relations, the role of trade unions, social dialogue and the technical cooperation programme in Colombia in line with the Tripartite Agreement.

A Worker member of Colombia said that, over the last 20 years, the Committee of Experts had made 19 observations on the application of Convention No. 87 in Colombia and that the case had come before the Conference Committee on 15 occasions. This meant two things: the Government continued to violate Convention No. 87 and the situation had not changed, despite the efforts of the ILO. In all cases, the Government had made commitments and promises but had not delivered. The same had occurred with the 137 cases presented to the CFA. In practically all of them, the Government had not complied with the recommendations made.

The matter at hand was a case of serious violations that compromised the reliability of the State in terms of what it had promised: to bring legislation and practice into line with international labour agreements.

The Government, in its statement, had referred to certain measures taken with regard to investigating crimes against trade unionists, regulating strikes, associated work cooperatives and consultations with public employees. None of these measures followed the recommendations made by the ILO, nor did they respond to the serious situation of exclusion, stigmatization and violence against trade unions. They simply gave the appearance of compliance.

The speaker underlined that this systematic avoidance of international commitments had resulted in the following situation: In Colombia there were almost 18 million workers, of whom barely 4 per cent were union members. Only 1.2 per cent had negotiated their working conditions in the previous year and it had only just proved possible to hold strikes on two occasions. From 2002 to 2008, the trade union movement had lost more than 120,000 members. The Ministry of Social Protection had refused to register 253 new trade unions. There had been a drop of 20 per cent in collective agreements and 40 per cent in collective bargaining coverage.

The number of associated work cooperatives had increased five-fold, despite the many observations of the Committee of Experts and the Conference Committee, leaving more than 500,000 workers without the rights to associate, bargain or strike and in precarious labour conditions. Community mothers were also not recognized as workers.

Trade unionism was portrayed as the enemy of the State and enterprise. The Government continued to make hostile statements linking trade unions to armed groups. It had recently been discovered that the Single Confederation of Workers of Colombia (CUT), the Confederation of Workers of Colombia (CTC), magistrates from the higher courts, some of whom were participating in the Conference, and other persons and organizations had had their communications illegally intercepted during the last five years by the President's intelligence organization (DAS). It had been proven that this same organization had given paramilitaries a list of 22 trade unionists to be assassinated, for which its ex-director, Jorge Noguera, was being tried on four counts of murder. Paramilitary groups had been mainly responsible for the murders, or in some cases guerrillas. In addition, between 1986 and 2008, 41 cases of extrajudicial killings of trade unionists, presumed to have been carried out by the authorities, had been reported, of which 21 had occurred under the present Government.

In the last 23 years, more than 10,000 acts of violence against trade unionists had been committed, including 2,709 murders, 498 under the present Government. Between 2003 and 2007, there had been a 60 per cent drop in murders, but 2008 had seen an increase of 72 per cent in acts of violence and 25 per cent in murders, from 39 in 2007 to 49 in 2008. So far in 2009, 18 trade unionists had been assassinated. The climate of insecurity surrounding trade unionism was such that more than 1,500 officials were under protection. All these figures contradicted the Government's argument that anti-union violence was a problem that had been overcome and was under control.

The speaker added that, despite the creation of a special unit of magistrates and judges, efforts to investigate and prosecute such crimes were poor. Of the 2,709 murders that had taken place since 1986, the Attorney-General's Office was investigating only 40 per cent. Guilty verdicts had been handed down in 118 murder cases. The impunity rate was 95 per cent, while other crimes against trade unionists showed an impunity rate of 99 per cent. The rulings handed down did not allow the truth to come out. The trade union movement had vehemently insisted that all cases be investigated, that there be changes in the investigation methods used, and that victims' rights to truth,

justice and compensation be guaranteed by statute. At the current rate of passing sentences, it would take 37 years for justice to overcome impunity, always supposing that no more murders occurred and that the special investigation and prosecution unit remained in place.

This situation could be overcome if social dialogue were of any use. Even with a Permanent Commission for Social Partnership, however, it was impossible to see any results, because of lack of political will on the part of the Government. It had not been possible to agree on an agenda for applying Convention No. 87. Furthermore, the Government had not put the Acts on strikes and regulation of cooperatives or the decree on social partnership with public workers through a process of social dialogue.

Lastly, the speaker requested the Committee to adopt a special paragraph, which, on that occasion, as well as detailing serious non-compliance with regard to Convention No. 87, would urge the Government to agree and adopt with the social partners immediately or within no more than one year, the following policies and measures:

– recognizing the legitimacy and role of trade unionism in a democratic society;
– preventing acts of anti-union violence and fully investigating such crimes;
– compensating trade unions and unionist victims so as to restore trade union freedoms;
– fully reforming the Substantive Labour Code, in accordance with international labour Conventions, ILO recommendations and the Constitution;
– taking action to comply with the recommendations of the CFA;
– establishing a Ministry of Labour and strengthening the labour inspection services;
– setting up a national plan for the promotion of decent work;
– evaluating and strengthening the ILO's permanent representation in Colombia.

The Government member of the United States indicated that the application of the Convention by Colombia had been an issue of long-standing, and at times grave concern in this Committee and the other supervisory bodies of the ILO. Since the signature of the Tripartite Agreement on Freedom of Association and Democracy by the Government and its social partners in the presence of this Committee in 2006, and thanks in large part to the assistance of the ILO, important initial steps forward had been taken. As the CFA had noted in March 2009, the Government had made progress in combating violence against trade union members and officials. In particular, the Government's efforts to protect at-risk individuals, and to investigate, prosecute and convict perpetrators of violence should be noted. In addition, there had been recent progress in resolving a number of legislative issues raised by the Committee of Experts, some of which had been commented upon for many years.

The Government's cooperation with the ILO should be appreciated. The United States had contributed significantly to promoting freedom of association in Colombia, and the US President had pledged that the United States would continue to support Colombia's efforts to improve its security and prosperity.

Clearly, however, the situation of Colombian trade union officials and members, and the trade union movement in general, continued to be extremely serious. Violence – and fear of violence – should be eradicated so that workers' and employers' organizations could exercise their activities in full freedom, in line with the requirements of the Convention.

The speaker recognized that the Government of Colombia was aware of the enormous challenges that remained. She trusted that, with the continued assistance of the ILO and through open and active dialogue with its social partners, the Colombian Government would make the necessary efforts to implement fully its commitments under the Tripartite Agreement on Freedom of Association and Democracy and its obligations under the Convention.

The Employer member of Colombia indicated that on the basis of the written document that he had prepared to address the Committee it would be difficult to reply to the new elements that had been raised by the Workers and that he preferred to improvise his intervention in reply to them.

It was the first time in 15 years' participation in the Committee that he had heard the spokesperson for the Worker members raise a series of questions concerning a case of progress reported by the Committee of Experts, and curiously this had been done when the action taken on Convention No. 87 by Colombia had been noted with satisfaction.

He quoted from paragraph 52 of the General Report of the Committee of Experts in which it was indicated that since 1964 the Committee had been expressing satisfaction in cases in which measures had been taken through either the adoption of an amendment to the legislation, or a change in national policy or practice. He recalled in this respect that Colombia had indeed introduced changes in all these areas, as indicated in the written document submitted for detailed analysis by the Office.

The Office had examined the situation in Colombia on numerous occasions through direct contact missions, high-level missions and representatives of the Director-General, on all of which reports had been submitted to the Governing Body Committee on Technical Cooperation. For the past two years, the reports had described the positive progress achieved since the conclusion of the Tripartite Agreement in 2006.

He recognized that there had existed in Colombia a problem of violence for over 50 years, which employers were making efforts to overcome. The employers wanted the country to project itself to the outside world and its products and services to gain international recognition, for which reason they were promoting the agenda of the Global Compact. The National Association of Colombian Employers (ANDI) had promoted the establishment of a Latin American Regional Centre to support the Global Compact, which was already in operation in Colombia.

He emphasized that employers were not behind the deaths of trade unionists and that trade unions were respected. Respect for trade union rights was clearly set out in the Tripartite Agreement of 2006, which was being implemented. He emphasized that it was necessary to identify the reasons for the violence against trade unionists. For a year and a half, eight North American and European governments had been wanting to develop a programme with various Colombian investigators to examine the reasons for this violence and from the outset the employers had indicated their acceptance of the study, although it had been opposed by sectors of the workers.

A change in attitude was required to prevent the case of Colombia being examined every year as if there were no improvement. He therefore called for a change of attitude by the Workers so that positive proposals could be developed. The same applied to the Office so that the appropriate progress could be noted.

He indicated that there had been significant recent changes in case law in favour of workers' rights. The Constitutional Court had ruled that there could be no restriction by the Government on trade union registration, as its role was confined to the certification of trade union registration. Legal verification could only be carried out by the courts. In relation to the right to strike, a law had recently established that recognition of the legality or illegality of strikes was the responsibility of the courts, not the Government. There was a legal void concerning the suspension of cases that were before the courts. The previous year there had been a stoppage in the judicial authorities for 40 days and it had not yet been possible to determine whether it had been lawful because the courts

had ruled that they were not competent to make such a determination. In other sectors there had been delays over the past year in confirming whether work stoppages were in conformity with the law. The cases in question concerned sugar cane cutters who had impeded the access of unionized workers to the premises of the enterprises and continual strikes in coal transport. In terms of strikes, the country was close to anarchy, which the employers were tolerating to show the world their attitude of respect for trade union rights. However, they called on the workers not to abuse their right to withdraw their labour.

Finally, he indicated that the conclusions should call for all the parties to change their attitudes so as to achieve constructive social dialogue; for the programme of investigation and prosecution of crimes against trade unionists to be pursued; for additional resources to be allocated to the programme and for the protection of trade unionists; and for technical cooperation activities for trade unionists to continue. Moreover, there should be no abuse of legal mechanisms in relation to matters that lay beyond the scope of Conventions Nos 87 and 98. He emphasized the importance of the conclusions acknowledging the progress achieved in Colombia.

With respect to strikes, he underscored that the judiciary determined when they could be called off; the Government could not do so. He added that there was a legal vacuum with regard to the cessation of activity. There had been two work stoppages that lacked a ruling on their legality: the case of sugar cane cutters in Valle del Cauca, and the case of the transportation of coal. The country was close to anarchy, and therefore needed to change in this regard. It required, in effect, that all parties were involved in the change.

Lastly, the speaker requested that the conclusions called for the following: encouraging the social partners, deepening recourse to judicial measures, gathering additional resources for union activities, and calling on the social partners not to abuse legal procedures for matters that went beyond Conventions Nos 87 and 98. He insisted on the importance of recognizing the progress made.

Another Worker member of Colombia thanked the ILO for its continued interest in seeking solutions to the conflict the Colombian trade union movement had been experiencing for more than 30 years, which was a labour as well as a humanitarian conflict. The right to life had to remain the main objective; the situation of the teachers affiliated to the FECODE and the prison guards of the ASEINPEC and other trade unions were too serious to ignore.

The speaker recognized that some progress had been made in the last year on important issues such as the determination of the legality of a strike, which now was under the competence of the judges and not the Government, the use of oral proceedings in court, and the Constitutional Court ruling prohibiting the Government from interfering in the registration of new trade union organizations, the entering of reforms in the statutes or in elections of the administrative boards. In this context, he emphasized the tremendous work done by the Constitutional Court, which had played a determining role in the recognition and application of international conventions at the national level.

Nevertheless, the speaker regretted to say that in matters of freedom of association the situation of the working class was not ideal, owing to the anti-union climate that had been deteriorating over the years. With regard to the right to organize, certain practices that violated Convention No. 87 had continued, which was why most of the time trade unions had to be established clandestinely, since certain employers, when suspecting that a union was being formed, proceeded to dismiss the persons organizing them. This was exacerbated by contractual agreements with tertiary parties which made the situation of workers precarious and prevented them from exercising their right to freedom of association.

The right to collective bargaining was increasingly being affected by the low rate of unionization and by anti-union practices to impose collective contracts in enterprises, such as benefit plans, which were the antithesis of the right to negotiation and led to a situation of chaos in practice. One such example was the case of the founding of a trade union in the multinational TELMEX, where the enterprise, with over 3,000 workers, at noting that a trade union was being formed, proceeded to impose a collective contract so as to preclude a process of negotiation involving all the workers.

The speaker also indicated that Act No. 411 of 1997, by which ILO Convention No. 151 was ratified, and which granted the right to collective bargaining for public servants, continued to lack the needed regulations, without which these workers were still not able to fully exercise this right.

The speaker recalled that the Tripartite Agreement on Freedom of Association and Democracy had been adopted in the ILO on 1 June 2006, with the conviction that it would be possible to find a solution to the situation of labour conflicts in the country. Three years later, one could note that the speed with which this Agreement was being implemented was far too slow, which did not totally disqualify it. Nevertheless, it would be gratifying if the Government and the employers would indicate in all honesty whether they truly intended to implement it as required, or whether they would admit before the international community that it had only been a strategy to avoid appearing in the list, but did not represent a genuine intention to initiate a process of change. The speaker indicated that the repetitive nature of these discussions was a nuisance for the Colombian trade union movement, as was the adoption of all kinds of measures from this Committee, without succeeding in finding any definitive solution to the conflicts affecting the country. He also reiterated that Colombia was hoping that the trade union movement would be recognized once and for all in accordance with the constitutional mandate and international labour standards.

Finally, he emphasized that democracy was not complete without trade unions that were sufficiently representative and he urged the employers and the Government, in conjunction with the confederations, to take on the challenge to strengthen, develop, implement and enforce with political will the Tripartite Agreement of 2006, so that the country would as soon as possible become an example of full application of the Political Constitution of Colombia, the ILO Conventions and Recommendations, as well as the commitments taken before the international community.

In conclusion, he stated that the presence of an ILO Office in Colombia, as well as of a representative of the Director-General, in addition to the technical cooperation programme, would be essential for the tasks proposed to succeed.

The Government member of Peru welcomed the information provided by the Government representative of Colombia, which would prove essential to understanding the situation in the country. He noted that the information communicated by the Government emphasized progress made towards ensuring full compliance with freedom of association. Such significant progress could be seen in the fall in the murder rate of trade union members, in the increase in the number of convictions related to cases of violence, and in the increase in efforts to harmonize regulations with international conventions. The path that the Government of Colombia had taken showed its political willingness to guarantee freedom of association. In concluding, he expressed the full support of his Government.

Another Worker member of Colombia stated that the Government persisted in not implementing the decisions

of the supervisory bodies, the Committee of Experts and the CFA, which represented a systematic violation of ratified ILO Conventions and Convention No. 87.

As regards unionization, he referred to the existing practice of stigmatizing union activity. He noted that the legislation faced obstacles caused by the forms of labour contracts: civil and commercial contracts and the Associated Work Cooperatives (CTA) fraudulently concealed actual labour contracts, through which employers and governmental entities evaded their social responsibility to pay social security contributions. What made it even worse was that this changed the concept of wage for that of "compensation", allowing them to deny other employee benefits and thereby reducing the income of these workers. This precarious employment increased informal employment, which was recorded at 58 per cent of the economically active population of 20 million and increased poverty above 50 per cent of the population of 44 million inhabitants.

Act No. 1233/2008 sought to regulate the employment relationship; however, this objective had not been attained. On the contrary, the law had contributed to strengthening the CTA in the system of labour exploitation, which was growing in industry, agribusiness, services and government entities. This form of labour contract prevented unionization and the exercise of collective bargaining.

It was important that the Committee ensured the follow-up of the decision taken at its 2006 session, which endorsed the Tripartite Agreement on Freedom of Association and Democracy signed by employers, the Government and workers, and envisaged the appointment of an ILO representation in Colombia. The Committee supported the structure of social dialogue towards building a culture of equitable agreement.

The speaker stated that after three years there were no decisions of the Government to promote the implementation of the various dimensions of the Agreement; freedom of association, collective bargaining, anti-union violence and impunity.

He regretted that despite the interest of the ILO Director-General or the ILO representative, the ILO representation had not been successful in its efforts and objectives in the Special Commission for the Handling of Conflicts Referred to the ILO as contemplated by the recommendations of the CFA, due to the denial of the district and regional authorities and national entities.

He observed that the Tripartite Agreement on Freedom of Association and Democracy, should be a body that promoted results and that the ILO should reaffirm the importance of social dialogue and tripartism.

He asked the Committee to promote:

– the continuity of the ILO representation in Colombia;
– the immediate review of the Tripartite Agreement on Freedom of Association and Democracy by employers, Government and workers, with the assistance and cooperation of the ILO;
– the ongoing monitoring of developments regarding the Agreement through reports and evaluation at each session of the Governing Body.

Finally, he underlined that the effectiveness of social dialogue and consultation depended on the commitment and willingness to obtain equitable results. Therefore, he pointed out that it was unacceptable that the Government considered that it complied with its obligations in the framework of the ILO, in view of the fact that the meetings produced no result and were held in the absence of authorities legally bound to participate.

The Employer member of Argentina, in his capacity as Vice-President of the International Organization of Employers (IOE) and Chairperson of the Employers' group of the Governing Body, said that the Committee of Experts, by noting with satisfaction in its report, had recognized the progress made in Colombia. He emphasized that it was the only case of progress on the list of cases to be examined and that, since the Tripartite Agreement on Freedom of Association and Democracy had been signed during the Conference in 2006, the case had not been analysed by the Committee.

He noted that as a result of the Agreement, progress had been made in the battle against impunity and violence towards trade union members. The progress included the creation of a special investigative unit within the Office of the Attorney-General for acts committed against trade union members; the appointment of judges specializing in cases of crime against union members; the allocation of financial resources for those judges to function permanently; the pronouncement of 190 convictions, the majority in the previous two years; 292 arrests made regarding the crimes in question; the increase in the number of protection schemes for union members and the decrease in acts of violence against them.

He stated that there had been a full development, with the assistance and coordination of the ILO representative, of the technical cooperation programme offered by the ILO with resources pledged by the Government of Colombia, with regard to social dialogue, young people, women and the strengthening of local communities. Rulings had been passed in the higher courts that gave constitutional protection to union members with regard to registering trade unions, with decisions to be taken by judges on strikes of high political significance, etc. He also stressed that new laws had been prepared to prevent abuse in labour subcontracting, through the granting of unpaid leave upon the death of a relative and through determining the illegality of strikes.

He stressed that he had come to express satisfaction and to testify to the effectiveness of the decision which led to the tripartite technical cooperation programme and its results, which is not only a case of progress, but also a case of special satisfaction for the ILO. At a time when the complex global crisis and its impacts were weighing down on countries, Colombia had continued in its efforts to overcome the problems which were well known and which had often been debated in the Committee. The problems had not disappeared and would require more action; the employers would continue to support the technical assistance programmes. When the supervisory mechanisms could not only express concern but also note positive progress, the country gained in both external and internal prestige. Finally, he urged that the Committee's conclusions reflected the satisfaction produced by the progress made and hoped that progress would continue to be made in the future.

The Government member of Spain, after noting that the Spanish delegation aligned itself with the statement made on behalf of the European Union, stated that his country had followed the political and social situation in Colombia with great interest. Spanish trade unions maintained close collaboration with their Colombian counterparts. Spanish cooperation with Colombia was both preferential and a priority; programmes had been established in Spain to receive Colombian human rights defenders, including many trade union leaders.

The difficulties that faced the Government of Colombia in normalizing political life, including industrial relations, were well-known. The policy of democratic security, established at the beginning of the current Government's term of office, had succeeded in reducing incidences of violence in all areas, including those related to the world of work. The figures were much improved from previous decades, although there was no doubt that all incidences of violence needed to be eradicated.

As many other speakers had done, he welcomed the sub-unit of the Attorney-General's Office responsible for investigating violations of trade union members' human rights. A reduction in the rate of impunity had been achieved, thanks to the work of the prosecutors.

There had also been some progress with regard to amendments to legislation on trade unions. It was again a work in progress, but it was important that those advances had been made regarding labour legislation and further advances should follow. Consequently, it could not be said that the Government had done nothing in that regard.

He concluded by appealing for social dialogue. The social partners in Colombia should continue down the path of tripartite agreements, such as those signed recently between the Government and the teachers' unions, as happened with the agreements signed in 2006. As had happened in Spain, agreements between the Government, employers and workers would allow industrial relations to change. Whatever agreement was reached in Colombia, even if initially only small, valuable results could be achieved beyond the actual agreement. For that reason, the social and industrial partners in Colombia were called upon to continue on the path of social dialogue and negotiation, which was, by definition, the path of reconciliation.

The Worker member of Spain said that the case of Colombia was a paradigm of the systematic violation of fundamental human rights. The deaths, disappearances, threats and other acts of extreme violence could all be expressed objectively in figures; what was more difficult to quantify was the great damage to the social fabric that had been caused by such anti-union violence. The resulting atmosphere of fear had adverse consequences on trade union activity.

One of the most subtle forms of intimidation was the deterioration of the labour relationship through the promotion of associated work cooperatives and other forms of subcontracting, such as service contracts and civil or commercial contracts that concealed indisputable labour relations. This meant additional difficulties for practising freedom of association and other fundamental social rights.

The Committee of Experts had, over many years, dedicated special attention to Colombia regarding its promotion and abusive use of several forms of contracting in order to avoid labour legislation and prevent the right to organize and collective bargaining. Judging by what had been expressed by the Committee, it did not seem that the labour authorities had been sufficiently vigilant in ensuring that the cooperatives were not used to conceal the labour relationship, which the ILO Promotion of Cooperatives Recommendation, 2002 (No. 193) specifically defended. The unknown number of cooperatives – some operated, to a certain degree, outside the law – made it difficult for the Ministry of Social Protection to carry out the monitoring needed in order to prevent labour intermediation.

During recent years, several examples had been given on how some enterprises dismissed workers in order to then create an associated work cooperative with those workers under similar terms of dependence. But, above all, attention should be drawn to the fact that the Government, even after having approved Law No. 1233 on associated work cooperatives the previous year, had continued to ignore the numerous criteria of the CFA with regard to Article 2 of Convention No. 87, in which the notion of a worker included both the dependent as well as independent, and concluded that workers associated with cooperatives should have the right to establish unions as well as to associate themselves with those unions. Without the right to organize, it would be difficult, if not impossible, for workers to benefit from rights such as social protection, occupational safety and health, a decent salary and appropriate working hours.

In addition to transferring costs from enterprises to workers, by taking on 100 per cent of the costs relating to social security, they were denied fundamental rights, which turned their labour relationship into an updated form of slavery. The worldwide trade union movement valued the fight by the Columbian trade union movement to condemn, at a global level, that form of semi-slavery.

The ILO Director-General, in his report to the current Conference, had reiterated that respect for fundamental labour standards was a sine qua non, in achieving both social justice as well as balanced economic development. The main consequences of that form of capitalism without regulations, which had led to the current crisis, had been the spread of labour insecurity and the unacceptable increase in social inequalities, which was why the centrality of labour, as well as its quality, should be defended in political and economic decisions, with the aim that decent work would be the source of rights and economic progress. To conclude, he proposed that a special paragraph be adopted urging the Government of Colombia to bring its legislation into conformity with the Convention.

The Government member of Canada acknowledged the difficult situation concerning labour rights in Colombia. He was encouraged, however, by the political will demonstrated by the Government to address violence against trade unionists and protect workers' rights, as reflected in such measures taken as the establishment of a sub-unit of the Attorney-General's human rights unit to pursue anti-union crimes, and the development of new legislation to strengthen labour protection provisions. The Government had also been working closely with the ILO representation office in Bogota to implement the Tripartite Agreement, which includes a labour-related technical assistance to which the Government had committed over US$4 million.

He stated, however, that serious challenges remained as far as ensuring the safety of trade unionists was concerned, and encouraged the Government to increase its efforts to eliminate anti-union violence, bring prosecutions of anti-union crimes to a conclusion, and improve the enabling conditions for effective social dialogue. He expressed his Government's support for the strengthening and enforcing of labour legislation for workers' benefit, including through the provision of technical assistance in the areas of enforcement of labour rights, social dialogue, occupational safety and health, and modernization of labour inspection systems.

The Employer member of Spain stated that, although it was agreed that violence, murders of trade unionists and problems with the effective application of the principle of legal protection of constitutional rights persisted, it was not true that no efforts had been made. Progress had been seen in the fall in the number of people who had been attacked or murdered, in the increase in the number of people convicted of acts of violence against trade unionists, in the increase in budgetary allocation for protection of trade unionists, etc. In addition, the Government's willingness to collaborate with the ILO, as demonstrated by the numerous missions that had been undertaken to the country, should be highlighted.

One of the benefits of such discussions was their capacity to incentivize and stimulate governments by recognizing progress achieved, without denying or detracting from the gravity of the problem, which was particularly worrying in this case.

The Government member of Senegal recalled that at the historic signing of the Tripartite Agreement three years ago, the situation in the country was marked by murders of union leaders and attacks on workers' rights. Unfortunately deep antagonisms still persisted, and one could only be sceptical of the Government's willingness to turn the dark pages of its social history. The Committee had witnessed the conclusion of the Tripartite Agreement, which concerned the right of association and democracy to strengthen the defence of the human rights of workers, their organizations and their leaders; freedom of association; freedom of expression; collective bargaining; free enterprise for employers; and the promotion of decent work. The conclusion of this agreement should contribute

to an improvement in the disastrous situation the country found itself in as regards anti-union violence; however, the persistence of violence and impunity, as well as the Government's inability to ensure the effective implementation of this agreement, remained matters of concern. He encouraged the Government to join forces to support the Tripartite Agreement, and intensify its efforts in the fight against those responsible for the murder of trade unionists, instead of hewing to an apparent passivity. The sooner the Government did so, the more significant the ILO's support would become, and the greater the opportunities for a better future for union leaders in the country. Conversely, the future remained bleak as long as the Tripartite Agreement was not fully implemented. The technical cooperation programme offered a glimmer of hope, and it was true that the Attorney-General was active, but the problem of the characterization of the facts in criminal proceedings remained unresolved. The Government was bound by Convention No. 87 and the Tripartite Agreement, and should therefore keep its commitments.

The Government member of Brazil stated that, as one from a neighbouring country, she recognized the great challenges facing the Government of Colombia in the area of labour and, at the same time, recognized the numerous efforts made by successive Colombian Governments to overcome these challenges. Given that one of the functions of the Committee was to promote the greatest possible number of ratifications of ILO Conventions, she had to congratulate the Government of Colombia for having exceeded the regional average for Conventions ratified: 60 Conventions, including Conventions on fundamental rights. The speaker recalled that Brazil and Colombia were both founding Members of the ILO and stated that, in the 90 years the Organization had existed, progress had been made. She expressed the desire for the complexities of individual countries and the seriousness and transparency with which each of them addressed their challenges to be taken into account in the work of the Committee.

The Employer member of Brazil said that the case of Colombia remained significant for the length of time it had persisted and its complexity, as well as for the actions of the ILO. The ILO had sponsored the Tripartite Agreement of 2006, which was of historic importance, and had also decided to establish a special office in Bogota; the Committee was therefore discussing not only the actions taken by the Government, but those of the ILO as well.

The Committee of Experts, the Employers' group and the Workers' group recognized two facts: that the problems to be solved were many and serious, not only with respect to trade unions; and that much progress had been made since the signing of the Tripartite Agreement. He expressed satisfaction at the progress achieved, although he recognized that much remained to be done. He underlined that, since the case displayed progress, that fact should be highlighted in the conclusions. Stating that the region sometimes witnessed disillusionment with United Nations bodies and other multilateral organizations, he underlined the importance of the Committee's conclusions showing that in this case there had been no retrograde steps, but rather advances and progress.

The Government member of Mexico said that the report of the Committee of Experts showed that the situation in Colombia continued to be difficult, although it had also indicated some progress in the efforts made by the Government. For example, although the Committee noted with deep concern the rise in the number of trade union leaders and members who had been murdered, it also recognized all the measures taken by the Government, in particular the increase in funds allocated for the protection of union leaders and members.

Furthermore, although the Committee of Experts expressed regret at the fact that the number of convictions for violations of trade unionists' human rights continued to fall, it also noted all the measures taken by the Government, in particular efforts made to pursue investigations of violations of the human rights of trade unionists. The Committee had underlined that these efforts had been recognized by international organizations.

The Committee of Experts noted with satisfaction that Act No. 1210 amended section 451 of the Substantive Labour Code, such that the legality or illegality of a collective work suspension or stoppage would be declared by the judicial authorities in a priority procedure. The speaker considered that such efforts should be recognized, while at the same time urging the Government of Colombia to continue working to guarantee full compliance with Convention No. 87.

The Worker member of Norway, speaking on behalf of the Nordic trade union organizations, recalled that the Committee had repeatedly noted that freedom of association could only be exercised in a climate free from fear. In Colombia, fear was consistently used in concerted attempts to destroy the trade union movement, there was no trade union liberty and the state of impunity was truly shocking.

She questioned the considerable progress the Government claimed to have made in bringing the guilty to justice, as long as the number of killings remained high and was even again increasing. Of the 2,709 killings, only 1,119 cases were being investigated and half of those were in the preliminary stage. Less than four per cent of the guilty had been punished. In the case of death threats and kidnappings, the rates of impunity were 99.9 per cent and 93.7 per cent, respectively. There was 100 per cent impunity in cases of forced disappearances, torture and harassment by the authorities.

Although it was true that the Attorney-General's Office and the Supreme Judicial Council created an Attorney-General's sub-unit to investigate and punish the homicides committed since 1986 and that this unit did produce some results at first, its work had stalled. With the exception of the homicides committed after June 2006, where confessions had been attained, neither the motives nor the intellectual authors had been established. The criminal investigations of acts against the right to freedom of association and union freedoms had not produced a single conviction against actions by the Government and employers.

The Government's claims that the violence against unionists was simply a product of the armed conflict in Colombia, and that paramilitary groups ceased to exist after the implementation of the law "Justice and Peace", were difficult to believe. Violence against unionists was an organized, focused and continuing effort to destroy the union movement by creating fear. It was not surprising that only four per cent of Colombian workers were organized in a union. One could almost be surprised that four per cent of workers were so courageous that they were willing to put their life at risk in order to stand together with their fellow workers in a just cause.

The authorities implied publicly that the union movement had ties to armed groups, thus making unionists a legitimate target. In May 2009, *El Tiempo* newspaper reported that the monitoring of assassinated unionists was revealed in the file against former director J. Noguera of the Government's Security Department (DAS). Trade union leaders were convinced their telephones were being tapped. DAS was also responsible for harassing the adviser for Latin America in her own organization, LO-Norway – simply because she was in charge of bonds of solidarity between her organization and the CUT.

She underlined the necessity of confronting the serious violations committed against union members and leaders with a comprehensive and substantial prevention and protection policy. To this end, it was necessary to publicly recognize the legitimacy and democratic nature of union activity and to put an end to statements by the national Government that accused unionists of collaborating with

guerrilla groups. The Government had to urgently investigate crimes against union members and identify the intellectual authors so that their links to murders of union leaders and members did not go unpunished.

It was therefore important that the ILO monitored the situation in Colombia and confronted the Government with the serious violations committed against trade union members and leaders. Although the Government publicly announced that Colombia would be discussed as a case of progress, in the face of the increasing number of murders of unionists, the consistent violation of union rights and the almost complete impunity of perpetrators, she expressed the hope that this Committee would not, in good conscience, let this continue without protesting.

The Government member of Nigeria stressed that violence committed against any persons, including trade unionists, was to be deplored. Such violence was capable of driving trade unionists underground and silencing their voices; as made clear by the various worker members who had participated in this discussion, the situation was indeed grave. She stated that it was nevertheless also necessary to recognize the efforts made by the Government, which demonstrated an acknowledgement of the severity of the problems at hand and a willingness to address them. More could have and should still be done by the Government, but there was no doubt that progress had been achieved. She urged the Government to avail itself of the support pledged by the United States, Canada, and the ILO in ameliorating the serious situation still prevailing in the country.

The Worker member of the United States noted that nothing was more essential to Convention No. 87 than the physical integrity of employers and workers. Tragically in 2009, Colombia remained the most dangerous place for workers, accounting for more than 60 per cent of all trade union assassinations worldwide.

While the epicentre at today's debate had been the question of progress, he submitted that there had not been, there was not, and there would never be real progress in this case, unless and until the impunity crisis would be directly, authentically and honestly resolved. This entailed the effective convictions of all the intellectual, as well as the material authors of the violence, achieving the investigative, prosecutorial and judicial capacity to do so; and ensuring that the terms of the convictions were significant and durable. Due to the lack of these essential elements, today one found: (1) that the rate of trade union assassinations jumped 25.6 per cent between 2007 and 2008; (2) already in 2009 at least 17 unionists had been murdered; (3) the impunity rate for murders of the Colombian unionists for the last 23 years was at 96.6 per cent; and (4) considering the acts of violence against Colombian unionists since 1986, including not only homicides, but abductions, assaults and torture, the impunity rate soared at 99.9 per cent.

This was the stark and hard reality that this Committee had to honestly and seriously address, and it existed even in the face of the Government's reports to the Committee of Experts, the budgeting at US$45 million for protective measures, the establishment of three special tribunals tasked with processing the backlog of cases, the monetary rewards of up to US$250,000 for information and the increase of up to 2,166 officials in the Attorney-General's Office. But these measures did not solve the problem and it was no mystery why.

The dominant presumptions in the investigative and prosecutorial system were fundamentally flawed, as documented by the National Union School (ENS) and the Colombian Commission of Jurists. In many cases, the Attorney-General's Office assumed the pretext of the perpetrators, namely that the trade union victim was a guerrilla, linked to the guerrillas or used some other false motive, and the case was disposed of accordingly.

Notwithstanding the millions of dollars invested in the Attorney-General's Office, of the 2,700 unionists murdered in the last 23 years, the special sub-unit had only 1,119 effective files, or 41.3 per cent of the total number of murders, and of these 1,119 files, 645 cases, or 58 per cent, were at the preliminary stage, meaning that there was not even a suspect. Considering the current capacity and the average of 70 sentences a year, it would take the system 37 years to overcome the impunity rates cited and this only on the assumption that there would be no assassinations starting today.

Finally, in approximately 45 per cent of the sentences to date, the defendant was tried in absentia or otherwise not in custody, and the vast majority involved the material, but not the intellectual authors. Scores of the paramilitaries who enrolled under the Justice and Peace Law had abandoned the voluntary deposition process, calculating that the failed justice system would never hold them criminally liable. This meant that they were reorganizing themselves into new gangs of anti-union assassins such as the *Nueva Generación Aguilas Metros de Santander* or the *Commando Carlos Castaño Vive*.

The climate of impunity would persist if the mixed messages at the top continued, for example the incontrovertible evidence of elements in the DAS having directly collaborated with the paramilitary assassins of trade unionists, or President Uribe having publicly characterized the recent strike at the sugar cane cutters in the Valle de Cauca as having been mobilized by the FARC. All this reminded the speaker of the ironic words of George Bernard Shaw that progress was impossible without real change and those who could not change their minds about change, could not change anything.

The Government representative of Colombia reiterated his appreciation for the interest with which concerns had been raised and recommendations made with regard to labour rights in Colombia. The Government acknowledged the report submitted by the Committee of Experts, which defined the Colombian case as one in which progress had been made, and which would continue down the path established taking into account the Committee's opinions and recommendations.

The Government was firmly convinced that, working together with the ILO and with understanding and cooperation from the international community and enhanced social dialogue between workers, employers, the national Government and regional and local governments, it would be possible to make further progress towards guaranteeing the rights of the working population. In this purpose, he was sure that the Government would be accompanied by the judiciary and the legislature.

In the spirit of collaboration between the branches of Government and anxious to pursue the path of progress, the Government was now followed by the judges of the Supreme Court, the Constitutional Court, the State Council and the Supreme Judicial Council, who have taken note of the suggestions advanced. The speaker stated that, during his visit to Geneva, efforts had been made that had resulted in the negotiation of an agreement between the Labour Chamber of the Supreme Court of Justice and the International Labour Standards Department of the ILO, to be signed in the next few days, which would undoubtedly lead to stronger collaboration and new opportunities to continue improving the role of the functions of state institutions.

The Government shared the continuing concern of the international community at the violent situation in Colombia, despite the significant progress made thanks to the democratic security policy. Criminal and terrorist activities, the main perpetrators of which were illegal armed groups that were increasingly involved in the drugs trade, continued to threaten Colombian society. Violence and crime affected trade union activities through such serious occurrences as trade unionists being murdered or receiv-

ing death threats, but also affected economic activity through entrepreneurs being kidnapped, threatened or murdered.

The speaker echoed the views of various delegations that the problem would remain until Colombia was free of all acts of violence, intolerance and impunity and not a single trade unionist, entrepreneur, journalist, defender of human rights, indigenous person, judge or citizen fell victim to violence. This conviction obliged the Government to take more action, given that security, which was bound up with the fundamental rights to life, liberty and well-being, should be a state policy.

He reiterated his invitation to the international community to continue demanding that illegal armed groups end the absurd violence through which they victimized the Colombian people; to cease inhumane practices such as kidnapping, the use of anti-personnel mines and terrorist acts against the civil population; and to free unconditionally all those whom they had kidnapped. The existence of illegal armed groups could not be justified, whatever their nature or persuasion.

With a view to ending violence and protecting the lives of trade unionists, human rights defenders, entrepreneurs, public servants and other citizens, it was crucial to make progress in fighting impunity, so that no crime passed without investigation or sanction. In any State, crimes that remained unpunished by the judicial authorities became an incentive for criminals to commit new acts of violence. He therefore also reiterated that the Colombian State, together with civil society, should not cease in its efforts to fight impunity and, to that end, to prosecute and punish any criminal practice, whoever its perpetrator.

In that regard, it was very important that the Government, in conjunction with the judicial branch, represented by the Attorney-General's Office, the Higher Judicial Council and the higher courts, should continue to strengthen the special group of magistrates and judges dedicated to investigating cases relating to the murder of trade unionists, which had been created within the framework of the Tripartite Agreement and had led to a qualitative and quantitative improvement in the handing down of sentences by judges, increasing from 12 sentences until 2002 to 190 to date, of which 151 had been given since the signing of the Tripartite Agreement in 2006.

The Government shared the concerns expressed by various delegations to the effect that there were still few investigations and sentences, compared with the number of complaints of murders of trade unionists made over the last 30 years. Today Colombia had become a focus of attention and the progress achieved so far could only serve to stimulate new efforts by the authorities in the fight against violence and to defend trade union activity.

Along with the fight against impunity and violence, in the next few months of 2009 the Government would initiate a programme of economic compensation to victims of violence from an initial fund of more than US$50 million.

In relation to the concerns raised regarding the development of the Tripartite Agreement, the results of the ILO high-level mission, the commitments made by the Ministry of Social Protection during Colombia's voluntary statement to the Conference Committee in 2008 and the technical cooperation programmes supported by the ILO, the speaker stated that, despite gaps, difficulties and challenges to be confronted by the various social actors, it was undeniable that the result of efforts made during the last few years had been positive.

It was important to take more definite steps regarding the ILO's presence in Colombia and related technical cooperation programmes, for example, on employment and vocational training, social security, and signing agreements with the judicial and state authorities to strengthen the fight against impunity and with regional and local authorities on decent work and social dialogue.

With regard to labour rights and guarantees, the speaker underlined the positive results observed since the signing of the Tripartite Agreement, which were the goal of trade union struggles. Among others, he drew attention to the new Strikes Act, which took the power to classify strikes away from the national Government and had been complemented by a recent ruling of the Constitutional Court strengthening protection for that right. He also highlighted a ruling of the Constitutional Court on the autonomy of workers to establish trade unions and their right to be registered by the Ministry of Social Protection without any kind of interference or restriction.

Such achievements demonstrated that, with more dialogue among the social actors in the world of work, more flexible positions and more prudence in making statements, as well as a more objective and realistic approach to the achievements needed, progress could continue in signing and implementing labour agreements. To that end, the fear of agreeing with others should be broken down.

Examples of this were the agreements recently obtained by oil workers regarding closer and more fruitful labour relations; the banana workers' agreement that had allowed a strike in that sector to be brought to an end and that committed workers and entrepreneurs to asking for a better deal from countries that bought Colombian bananas, in terms of both quotas and prices; and the agreement between the Colombian Federation of Educators and the National Ministry of Education, which covered the development of social dialogue and consultation in the public sector, setting out which areas were the subject of agreement and which were not.

The Government, headed by the President of the Republic and the Minister of Social Protection, intended to strengthen a national education and awareness-raising programme on social dialogue, along with policies on labour inspection and mediation, to enable further progress to be made towards better understanding. In that regard, it was hoped that, through the development of the Tripartite Agreement, the ILO, with the cooperation of friendly governments and countries, could promote the development of a wide programme to strengthen the culture and best practices associated with social dialogue, mediation and labour inspection.

The speaker highlighted the constructive spirit that had characterized the Committee of Experts on the Application of Conventions and Recommendations, the Employers' and Workers' group spokespersons, as well as the interventions made by Worker, Employer and Government members on application of and compliance with Convention No. 87 in Colombia.

The speaker reiterated that such dialogue, rooted in a spirit of collaboration, would enable remaining weaknesses and challenges to be overcome and efforts to be improved towards guaranteeing the rights of workers.

In that regard, the speaker invited the Chairperson and the Worker and Employer spokespersons to make the conclusions of the Committee's important examination of the case of Colombia a valuable tool that would enable all social actors in the world of work to contribute to turning the aspirations of the Colombian people – to have a better country, where social dialogue was an expression of the new labour culture and the understanding that Colombia deserved and needed – into a reality.

Before addressing the question of conclusions of this case, **the Worker members** wished to underline three important points. First, in its report, the Committee of Experts had expressed its satisfaction on a specific point, namely the amendment of section 451 of the Labour Code as a result of the adoption of Act No. 1210 under which the legality or illegality of a collective work suspension or stoppage had to be declared by the judicial authorities in a priority procedure. On each of the remaining points raised, the Committee of Experts requested the Government to act. Second, the trade unions in Colombia ac-

knowledged the efforts made by the Attorney-General's Office and the judiciary, whose attitude had evolved towards a greater sensitivity on these issues, but this could not be said for the Government. Finally, the notion of progress in the framework of the ILO had to meet specific criteria that were set by the Committee of Experts for reasons of legal certainty. The case of Colombia was not a case of progress, given the overall context of this country and in particular the prevailing violence. Too many things remained to be done, as different speakers emphasized. This was not about questioning the comments of the Committee of Experts, as demonstrated by this excerpt from the observation on the application of Convention No. 87 by Colombia: "while appreciating all the measures adopted by the Government, and particularly the increase in funding for the protection of trade union leaders and members, the Committee notes with deep concern the rise in the number of trade union leaders and members who have been murdered".

This said, the Workers recommended the adoption of conclusions based on four points. The first was the strengthening of the Tripartite Agreement signed on 1 June 2006. The implementation of this Agreement had so far not produced the expected results relating to the four priorities it established. All parties had to reaffirm their commitment to implement this Tripartite Agreement, regardless of the existence of divergent views on certain points. This required that legislation be amended in respect of social dialogue and be brought into conformity with the provisions of ILO standards. In addition, a new permanent representative of the ILO in Colombia should be designated as soon as possible, who had to have legal and communication skills and demonstrate a strong commitment to promoting the principles underlying ILO action. In addition, social dialogue had to be strengthened, which required the actual establishment of structures beyond mere technical assistance. In this regard, the Worker members referred to the experience in Africa for the promotion of social dialogue and suggested that a similar exercise be conducted in Colombia. Finally, the fight against impunity had absolutely to be strengthened and it was the commitment of the legislature, and it alone, that would permit the creation of a climate of security, as only the law permitted the finding of permanent and democratic solutions sheltered from change and partisan influence.

The Employer members thanked the Government representative for the additional information provided and the commitments made, in particular, with regard to the fund of US$50 million for victims of violence. They noted that the overall high level and measured quality of the discussion had been in keeping with the progress that had been made over a period of years. Most of the Committee's members recognized the progress made. The ability of this Committee to make findings of progress was not limited by the determinations made by the Committee of Experts. This Committee had found in many cases in the past that progress had been made without it being noted by the Committee of Experts. The observations made by the Committee of Experts were of a legal nature while progress in this case had a broader and more pragmatic context. Reference should be made in this regard to the language used by the CFA in Case No. 1787 with respect to progress in fighting impunity. Nobody could deny that there had been improvements in this case in very difficult circumstances. It was indisputable that since 2000, the Government had been taking increasingly strict measures. Overall, it was undeniable that the Government had taken forward steps to end impunity in the country and introduced significant legislative changes.

Prior to 2005, a strategy was followed seeking to punish the Government by words. As from 2005, there had been a clearly different approach involving technical cooperation, legislative and judicial change and social dialogue. The Employer members had listened carefully to the debate especially the leaders of the trade union movement from Colombia and the importance they attached to the 2006 Tripartite Agreement on Freedom of Association and Democracy. The Employer members noted that many of the elements of the 2006 Agreement were in place with more to do. These included: (i) the ILO's technical cooperation programme and Bogota office; the USAID Programme on Fundamental Rights at Work; Sweden's bipartite technical cooperation programme; and the Committee for the prior analysis of the cases presented to the CFA; (ii) the increase in investigations, indictments and convictions; and the enhanced protection schemes for trade unionists; (iii) the tripartite National Consultation Commission on Labour and Wages Policies; and (iv) the changes in the legal framework, many of which had been mentioned during the discussion.

Moreover, the Employer members highlighted the commitments made on the part of the Colombian employers by the Employer member of Colombia as well as the invitation made to embark on a constructive attitude to resolve longstanding issues, to assign additional funds to different programmes and institutions in order to continue to achieve compliance with the Convention, and to continue to achieve progress through social dialogue. Furthermore, they stressed their determination to resolve this case.

In conclusion, the Employer members noted that the steps taken in line with the 2006 Tripartite Agreement on Freedom of Association and Democracy had led to positive developments and progress in the fight against impunity and human rights protection for trade union members and had led to several positive legislative developments. The Committee should express its support for continued action by the Government so as to take full advantage of ILO technical assistance and rely on social dialogue as the appropriate means to obtain further progress. The steadfast commitment of the social partners should be underlined as a key element in this process. The Committee should emphasize the importance of full and meaningful social dialogue in ensuring a long-lasting environment for freedom of association. The strengthening of the ILO representation in Colombia was needed to facilitate the effective implementation of the Tripartite Agreement. The Committee of Experts should note with considerable interest steps taken by the Government to amend its legislation and recent Constitutional Court rulings in line with Convention No. 87 principles. As regards other issues where the Committee of Experts had said that the Government should continue to take all the necessary measures to guarantee the right to life and safety of trade union leaders and members so as to allow the due exercise of the rights guaranteed by the Convention, the Committee should request the Government to address such issues in consultation with the social partners as well as to provide a detailed report on the above matters for examination at the forthcoming session of the Committee of Experts.

Conclusions

The Committee took note of the statement of the Government representative and of the discussion that took place thereafter. The Committee observed the importance placed by all speakers on the 2006 Tripartite Agreement on Freedom of Association and Democracy and the calls for a strengthened commitment from all parties to its full and effective implementation.

The Committee noted that the Committee of Experts' comments concerned acts of violence against numerous trade unionists which included murders, disappearances, death threats and a disconcerting situation of impunity.

The Committee noted the Government's indication that it was continuing to work to overcome the factors which gave rise to violence and that, due to the policy of democratic security, the homicide rate had been reduced, in particular

with respect to trade unionists. Moreover, the State's activity in combating impunity had been reinforced, including through an increase in financial and human resources, resulting in an increase in convictions for cases of anti-union violence. The Government further referred to a draft law to extend the period for statutory limitation in relation to homicides against trade unionists and to increased sanctions for disrupting or impeding the exercise of the right to organize which was before the Parliament. The Government also provided information in relation to labour matters, including: the adoption of laws to transfer the authority to declare a strike illegal and with respect to compulsory arbitration; as regards measures to strengthen the inspection services and monitoring; on steps taken with respect to associated work cooperatives; and on the consultation and dialogue relating to conditions of work in the public administration.

The Committee expressed its appreciation for the positive steps taken by the Government to strengthen the public prosecutor's office and the resulting progress made in combating violence and the prevailing situation of impunity. It further welcomed the recent information relating to the creation of a compensation fund for victims of violence. The Committee observed the concerns raised that the number of convictions remained very low and that the sentences that had been handed down concerned only the direct perpetrators of the violence, but not the actual instigators. The Committee observed that more measures were needed and expressed the hope that the Government would ensure that the judiciary was invested with all the necessary powers to this end and that further resources would continue to be made available for the bolstered protection of threatened trade unionists, coupled with a clear message at the highest level of the important role played in society by trade unions and that anti-union violence would not be tolerated. The Committee recalled the need to ensure that all investigations against acts of violence against trade union leaders and members were carried out rapidly and efficiently. The Committee underlined that the trade union movement could only exist in a climate free from violence and urged the Government to put an end to the current situation of violence and impunity through the continued implementation and innovation of effective measures and policies.

As regards the legislative questions pending referred to by the Committee of Experts regarding the right to organize of workers in cooperatives, the registration of trade unions, compulsory arbitration, restrictions on federations and other restrictions, the Committee noted that progress had been made in the adoption of new legislation granting the judicial authority the competence to declare the illegality of a strike, which had been previously assigned to the administrative authority. It further observed with interest the Constitutional Court judgement which appeared to ensure a simplified registration process for an improved application of Article 2 of the Convention. The Committee noted, however, the concerns raised in relation to the increased use of cooperatives, service contracts and civil or commercial contracts in a manner which placed obstacles in the way of freedom of association rights of the workers affected by such contracts, as well as the allegations of a generalized anti-union climate.

The Committee expressed the firm hope that the Government would adopt the necessary measures to bring the legislation and practice into conformity with the Convention in full consultation with the social partners. Observing the commitment expressed by the Government and the social partners in relation to the strengthening of social dialogue within the country, the Committee emphasized the importance of ensuring that this dialogue was thorough and meaningful and encouraged all parties to make concerted efforts so that the existing national tripartite mechanisms could provide a regular forum which inspired the confidence of all concerned. It invited the Government to continue receiving ILO assistance in this regard, as well as with respect to all pending matters. It called upon the Office to review internal administrative matters with a view to continuing the ILO representation in the country and strengthening technical cooperation with a view to the meaningful implementation of the 2006 tripartite agreement. The Committee requested it to report on the steps taken in this regard in its next report to the Committee of Experts due this year.

ETHIOPIA (ratification: 1963)

A Government representative stated that the Government had always been ready and willing to cooperate with the supervisory bodies of the ILO on the implementation of ratified Conventions. In this regard, the Government had provided a series of submissions over the years to the Committee on Freedom of Association, the Committee of Experts, and to the Conference Committee; those submissions incorporated adequate and comprehensive information on the implementation of Convention No. 87.

He noted that the present discussion came at a time when the report by the ILO direct contacts mission to Ethiopia had already been issued. The Government had agreed to receive the direct contacts mission following a recommendation made by the Conference Committee, and a decision of the 2007 International Labour Conference. The mission was successfully undertaken in October 2008 and, as the mission report clearly indicated, the relevant authorities fully cooperated by providing the requested information. As the mission report's recommendations were being seriously considered by the Government, he expressed disappointment that the Committee had not allowed for sufficient time for this process to unfold before scheduling the present discussion.

He stated that the Committee on Freedom of Association Case No. 2516 was first examined some time ago, and had been previously considered by this Committee. The case, he recalled, involved a dispute between two groups of individuals, each claiming to be the legitimate representative of the Ethiopian Teachers Association (ETA), which had been in existence since 1949. This dispute was the subject of a long-standing legal battle involving many judicial institutions, from the First Instance Court to the Cassation Division of the Federal Supreme Court. A group of former teachers, supported and financed by external actors, had challenged the legal status of the then new leadership of the ETA. This new leadership had been established following a change of government in Ethiopia and the subsequent introduction of a federal arrangement, under which teachers from all corners of the country were represented. The group, led by some senior supporters of the former military regime, was opposed to the ETA's reorganization due to a purely political aversion to the country's new political system. Whereas a diverse political opinion within an organization was acceptable, and even supported, this group rejected the legally constituted body and chose not to surrender the ETA premises and property under its possession. A legal process was thus triggered over the legality of representation, and the handing over of premises and property.

The Government had consistently maintained that the domestic legal process should be allowed to run its course. Furthermore, it was not involved in this legal dispute. In any event, the ETA was now operating freely throughout the country with over 260,000 members. The Government did not interfere in the ETA's internal affairs and activities. Noting that the dispute had been disposed of by a decision of the Cassation Division of the Federal Supreme Court, he expressed the expectation that Education International (EI) and the ITUC would show respect for the integrity of this judicial process and refrain from recycling already resolved allegations. There was no sound procedural basis for presenting new allegations by linking them with Case No. 2516.

He regretted that further allegations had been added to the present case to sustain a confrontational approach. A

close scrutiny of those submissions clearly showed that the "new" information was being used as a tactic for maintaining the issue on the Conference Committee's agenda, long after the dispute underlying the complaint had been legally resolved. The new allegations were intended by the claimants to intervene in and influence an ongoing legal dispute initiated by a group of individuals, who were experiencing difficulty in getting a new organization registered under the name "Ethiopian National Association of Teachers". Without prejudice to the outcome of that dispute, the Government wished to state that individuals and workers in Ethiopia were free to form their associations based on the applicable national laws. As the complainants themselves indicated, their complaint had been brought before the Federal Office of the Ombudsperson – a duly established constitutional organ. The Government thus found it unacceptable that a case which was being considered by a constitutionally established organ had been brought before this Committee.

Representatives of the complainant group had also filed a civil action against the Ministry of Justice on the grounds that it failed to register them. The Federal First Instance Court dismissed the case on 29 April 2009, on the grounds that the Ministry of Justice was not the proper defendant for the case, as the Government body responsible for registering associations was the Charities and Societies Agency. An English language translation of any decision, once issued, would be submitted to the CFA. He reiterated that the national judicial and quasi-judicial processes should be allowed to adjudicate such cases, as the Government continued its full cooperation with the ILO supervisory bodies.

With regard to other cases that were referred to in the 353rd Report of the Committee on Freedom of Association, he assured the Committee that the Government would provide detailed information refuting the numerous allegations contained in that report. Some of those allegations included the arbitrary arrest and dismissal of teachers for engaging in their association's activities. The legal measures taken against the individuals mentioned in the Committee on Freedom of Association report, however, were taken in full compliance with the requirements of due process of law, and the Committee on Freedom of Association would be provided with the English language translation of the decision concerning those teachers' convictions for criminal activities, which had no connection whatsoever with their trade union activities. He reiterated that, as the cases demonstrated that tangible progress was being made, it was inappropriate for this matter to have been discussed before further examination by the ILO supervisory bodies.

In spite of the ongoing challenge of convincing all those involved to avoid unnecessarily politicizing the present case, the Government remained committed to cooperating with the ILO supervisory system on effective compliance with all ratified Conventions, and to engaging in constructive dialogue on all outstanding issues. The direct contacts mission had charted a positive approach for dialogue and cooperation, and the Government was studying the recommendations outlined in the mission report, which contained a number of positive elements.

The Employer members indicated that the case of Ethiopia's violation of Convention No. 87 had been addressed by the Committee no fewer than ten times. The last time that the right of teachers to organize had been discussed was in 2007.

One of the fundamental problems continued to be the serious situation relating to the events that had occurred in 2005: the failure to clarify the incidents relating to the arrest of trade unionists of this association, their probable torture and mistreatment, as well as the continued intimidation and interference, which apparently had led to the closure of the trade union offices, the confiscation of documents, and the freezing of financial assets and the appearance of another trade union organization with the same name.

At that time, it had been alleged that the trade union leader had been arrested for reasons owing to his political activities and not his trade union activities. In 2007, the Government had been requested to provide detailed information on the matter, as well as on the level of affiliation and the conditions under which the new trade union organization (ETA), in the educational sector had been constituted, so as to verify the truth of the matter. As the Government had not provided any information on the investigation made, it was not possible to ascertain whether one had actually been done. The Employer members agreed with the Committee of Experts on the importance of a full and independent investigation of the matter.

The second issue was the need to ensure the legality of the new teachers' association. To this end, a direct contacts mission had visited the country in 2008. A ruling had already been handed down by the Supreme Court relating to the executive body of the ETA and, following its decision, a group of teachers had submitted a registration request to the Ministry of Justice, which, apparently, had been delayed on the grounds that prior consultation with the Ministry of Education was required. Such a consultation was inappropriate. On the one hand, the prolonged delay in authorization appeared to indicate a lack of will and not a mere procedural issue, and on the other hand, requiring the intervention of a Government body, on which the teachers' group depended, was totally inappropriate, in light of the requirements of the Convention.

With regard to the revision of the legislation respecting the public service, there was agreement on the fact that freedom of association and the right to collective bargaining included teachers, together with other categories of workers in the public service. An area in which there was no consensus with the Committee of Experts was on the matter of the exercise of the right to strike, as this was considered to be out of the scope of the Convention.

The issue of the "Labour Proclamation" and its adaptation to the Convention went a long way back. This legislation had been amended in 2003, repealing the denial to teachers of the right to organize, but only in the private sector. Moreover, the possibility of annulling the registration certificate of organizations prohibited under this legislation was maintained.

Considering the seriousness and persistence of the situation, they maintained that it was essential to know whether the Government was able to demonstrate the additional level of commitment needed in order to follow-up this case with the practical measures needed for its resolution.

The Worker members regretted that the Committee had to consider this case for the tenth time in 22 years. For several years, the Committee of Experts had made comments demanding to bring national legislation into conformity with the requirements of Convention No. 87. Despite the affirmation the Government had made before this Committee, the revision of the Proclamation on the public service to grant the right of freedom of association to public employees, such as judges, prosecutors and other categories of workers had not been undertaken. Although the 1993 Proclamation had been modified in 2003, teachers employed in the public services, who represented more than 200,000 civil servants in Ethiopia, were still deprived of the right to establish trade unions and join the National Trade Union Confederation (CETU). This constituted a violation of the Convention.

The Worker members also stressed that the recommendation of the Committee of Experts could be understood in such a way that air and urban transports were no longer to be seen as essential services. Besides, the 1993 Proclamation enabled the administration to dissolve trade unions and required them to obtain an authorization prior to their establishment. This also constituted a violation of

the Convention. Since the last examination of this case by the Conference Committee in 2007, the situation had not improved in favour of the right of freedom of association. Even the ILO direct contacts mission, which the Government delayed until October 2008, was not able to solve the situation.

The Committee of Experts and the Committee on Freedom of Association had also examined the question of systematic harassment, the victim of which was the ETA. As a matter of fact, two ETAs existed and the conflict between these organizations dated back to 1993. In that year, following a vote by its general assembly, the ETA, which had been founded in 1949, opposed the Government's reform of the educational system. Several days later, the minority group, which had lost the vote, sued the ETA to claim its assets and its affiliates and the usage of its name. The Ministry of Justice had accepted this and registered it as a professional association of teachers also under the name of the ETA. For 15 years, the organizations were fighting a legal battle to determine which ETA was legitimate. Since then, the most recent organization had been able to make use of all facilities, while the members of the other organization had been victims of harassment, discrimination and other violations of fundamental human rights. In 1997, the deputy secretary-general of the original ETA had been assassinated in broad daylight but the Government had not investigated the crime. In 2007, representatives of the independent ETA were arrested and tortured. Documents proving these facts had been submitted to the UN Special Rapporteur on Torture. The authorities claimed that the imprisoned trade union members were held because of alleged terrorist activities, which had never been proven. In June 2008, the highest judicial instance of the country had ruled in favour of the new ETA and the Government claimed that the whole story resulted from a simple conflict between persons. In truth, the usurpation of the acronym ETA constituted a clever manoeuvre to create confusion among the teachers, the UN agencies in Ethiopia, the observers of the diplomatic missions and also among the members of this Committee. The former secretary-general of the independent ETA, Gemoraw Kassa, was present today and would give a statement in the name of Education International later.

After the dissolution of the original ETA in June 2008, its affiliates and elected members – determined to continue their commitment to defend the right of freedom of association and the trade union rights in Ethiopia – had established a new association. The authorities had again used all possible legal measures to hinder all efforts aimed at registering this organization, referred to as National Teachers' Association (NTA). After having consulted the Minister of Education, thus the employer of the teachers concerned, in November 2008 the Minister concluded that NTA could not be registered. This was a violation of Article 3 of the Convention. For almost one year now, the teachers employed in the public sector were thus totally deprived of an independent organization for defending their rights. The announcement to establish a new agency to cater for NTA's request for registration would only constitute another pretext to defy the workers' legitimate entitlement.

The Worker members expected the Government to make tangible progress and to transcribe without delay all provisions of the Convention into its legislation to guarantee the full possibility to exercise, in law and practice, the right of freedom of association in all categories of workers. His group asked the Government to adopt a precise road map for bringing its legislation into conformity with all requirements of Convention No. 87. They further asked the Government to provide, for examination at the next session of the Committee of Experts, a detailed report on the measures taken in order to fully guarantee the teachers' right to unionize and to permit, in its legislation and practice, that legitimate trade union activities could be exercised without governmental interference and that trade union members were not arrested for having exercised the rights afforded to them by the Convention. They further asked that the independent ETA be registered without delay, without waiting for the establishment of the governmental agency provided for in the new Act concerning civil society organizations and without imposing on it new procedural requirements. Finally, the Worker members asked the Government to accelerate without delay a complete and independent inquiry into all cases of imprisonment and mistreatment of unionized teachers. To date, two persons were still being detained for their links to the original ETA.

The Government representative of Ethiopia, requesting a point of order, stated that although the Government was always willing to cooperate with the ILO supervisory bodies, his presence before the Committee should not be construed as a tacit acknowledgement by the Government of the status of the following speaker.

A Worker member of Ethiopia wanted to highlight the difficult experiences of teachers in Ethiopia. The harassment and intimidation imposed by the Government had been affecting mainly teachers who were talented, dignified and respected citizens.

Mr Anteneh Getnet had won an award in January 2004 for being among the most effective teachers. He was dismissed during the second semester of the same academic year on grounds of being ineffective. The real reason behind his dismissal was that he had been found dispatching publications of the independent ETA to other teachers. In 2005, he was abducted by Government security agents, heavily beaten and left unconscious in a forest. He was only narrowly able to save his life from hyenas. In 2006, upon his refusal to spy on the ETA for the security authority, he was detained. During his detention at the Addis Ababa police station, he was subjected to torture leaving him with breathing difficulties. He had scars on both arms and had lost the sense of feeling in his right hand. In October 2007, he was released on bail, but involuntarily disappeared a few days later.

The high esteem held for another key member had caused concern with Government officials who feared that her popularity as a woman teacher could also reflect positively on her professional association, the former ETA, for which she had been acting as a member of the National Educational Board. Government officials had repeatedly tried to recruit her for the ruling party and advised her to give up her activities in the independent ETA. She had persistently refused to accept either of these requests and now faced difficulties. For no reason, 36 days of her salary had been retained in 2005. Since then, she had been summoned to the police station at least once in every two weeks and had been under constant surveillance by Government security agents.

Mr Meqcha Mengitsu and Mr Ayalew Tilahun were both officers of the former ETA and prominent activists in promoting the EFAIDS programme. They were tortured during detention, causing the bleeding of Mr Mengitsu's ear and resulting in hearing problems. The torture caused Mr Tilahun's leg to be fractured. The purpose of this mistreatment was to force Mr Mengitsu and Mr Tilahun to admit that the ETA promoted a political agenda and was a sponsor of terrorist activities.

For the last 16 years, Ethiopian teachers and their association, the ETA, which was founded in 1949, had been constantly subject to harassment and interference. The assassination of Assefa Maru, Deputy-General of the ETA, in May 1997 remained one of the most deplorable experiences of the ETA. When teachers were harassed and disappointed, it was the teaching and learning process that deteriorated. When teacher colleagues were detained and dismissed from their jobs, their whole family was subject to starvation or death, which was tantamount to

collective punishment. In addition to using direct force, gross violations of human and trade union rights had been committed by perverting the rule of law and the right to due process.

Following the politically motivated court ruling in June 2008, former ETA members had regrouped and formed the NTA. Despite fulfilling the requirements of the Ministry of Justice, the application had been rejected three times. The first rejection had been justified on the ground that "NTA" was too similar with the initial name "ETA". The second rejection was yet again based on the name and the fact that no letter of support from the former ETA had been provided. The refusal of the third request for registration was due to the Ministry of Education's refusal, as the employer of teachers, to write a letter of support. Petitions to all relevant institutions in Ethiopia did not lead to a solution. This refusal to register the NTA with the Ministry of Justice reflected a continued bias against the former ETA.

A law suit filed against the Ministry of Justice for rejecting the application of registration without any valid reason had been dismissed by the Federal Court of First Instance. The court held that the Ministry of Justice should not be sued, as a State Agency responsible for the registration of Charities and Civil Organizations was being formed and which had to be the addressee of such a law suit. As this agency had not yet been established, a reference to it had to be seen as a delay tactic aimed at discouraging teachers to form associations for the defence of their rights.

For the last 16 years, the Ethiopian authorities had used all possible means to deprive teachers of their right of freedom of association. Despite the intimidations and the impossibility to carry out legitimate union activities, thousands of teachers still believed in having an independent association to defend their right to social justice. Being a committed trade unionist and active member of EI, he and his colleagues wanted to be an independent voice for the teachers in Ethiopia.

The Worker member of the United Kingdom stated that the Committee of Experts had set out in detail the series of legal provisions and administrative requirements by which the Government restricted the trade union rights of public servants and other groups of employees. Despite the criticisms against the Government over many years, those restrictions were still in place, denying many workers the right to form organizations without obstruction, and preventing them from carrying on their legitimate trade union activities.

This Committee had heard today what this had meant in human terms – intimidation, harassment, mistreatment, torture and deadly penalties – for teachers in Ethiopia seeking to defend their rights. This was truly humbling for those who were free to participate in union activities without fear.

This State harassment was backed up by a web of legal and administrative requirements which had been developed, constantly placing new obstacles in the way of the teachers' association every time it changed path to try to find a way through to free and unrestricted activities. The ETA was forced by court order to give up its name, property and check off arrangements to a government-backed organization. In order to be admitted for registration, the ETA had to re-establish itself under a new name – National Teachers' Association (NTA). As a matter of administrative proclamation, the Ethiopian teachers' organization had to be officially registered with the Government authorities before permitted to operate legally. This requirement was in itself a breach of the Government's obligations under Convention No. 87. In addition, before acceptance of the registration by the Ministry of Justice, it was required that the employer accepted and agreed to the registration leading to the referral of the registration request from the Ministry of Justice to the Ministry of Education, which was asked to provide an opinion.

Her own organization, the UK National Union of Teachers, was so concerned by the plight of teachers in Ethiopia and the inability of the NTA to be recognized by the Government, that the General Secretary of the UK National Union of Teachers had raised the matter with the UK Government. The UK Government received an assurance from the Ethiopian Prime Minister that the Ethiopian Government would, of course, recognize and register a new teachers' organization. However, despite that assurance and the report of the Committee of Experts after a direct contacts mission last year, the Government decided to increase the obstructions to freedom of association instead of removing them; since the Committee of Experts' report, the authorities had refused registration to the independent teachers association, leaving it unable to operate lawfully. Instead of meeting its obligations under Convention No. 87, the Government maintained its programme of excluding the union from its proper role in Ethiopian civil society and continued to claim that no barriers to the recognition of the NTA existed. By a series of bureaucratic and legal manoeuvres, some 120,000 Ethiopian teachers had thus been prevented from exercising their right to organize within an independent trade union. This move was also aimed to discourage all public servants from striving to form and join independent workers' organizations.

Recalling that the horrors of arrest, detention and torture as had been described by Mr Gomoraw Kassa continued, she stated that the Government was one of the governments which sought to disguise their intimidation and brutality under the pretext of combating subversion. Although the teachers had sought legal registration, gone to the courts to defend the name and legitimacy of their organization, and sought protection of Ethiopian law, and thus had fulfilled every requirement imposed, the Government now claimed that these teachers were subversive elements seeking to undermine the Government.

This was, however, not a new case for the Committee. The Committee of Experts urged the Government to conduct a full and independent inquiry, without delay, into the allegations of mistreatment and torture. The Committee of Experts urged the Government to conduct a full and independent judicial inquiry to prevent the risk of de facto impunity. No such inquiry had been conducted or planned. It was critical that the restrictions on freedom of association were removed as a matter of urgency and that the harassment and persecution of trade unionists was ended.

She believed that it was necessary to set up a time-bound programme of action to ensure that the NTA would be able to exercise its legitimate right to organize and defend its occupational interests. She had no confidence that either any progress would be made without determined and detailed requirement for action being set by this Committee, or that teacher trade unionists would be safe in exercising their rights under the ILO Conventions until this was accomplished.

Another Worker member of Ethiopia stated that the NTA was not covered by the labour law. The NTA was not registered pursuant to the normal procedures, and it was not a member of his organization, the Confederation of Ethiopian Trade Unions (CETU). The CETU therefore did not have sufficient information regarding the NTA. The ITUC Africa had recently informed the CETU of the refusal by the authorities to register the NTA. He expressed his support for the registration of the NTA in accordance with the legal requirements and requested the Government to consider doing so. In accordance with the Committee of Experts' comments, he further requested the Government to amend the proclamation concerning the public service so as to grant civil servants freedom of association rights.

The Worker member of Botswana stated that history demonstrated that trade unions were an indispensable element of the democratization process and of development of the civil society. To undertake this responsibility, it was not enough to exist nominally; unions needed to serve as platforms on which members could exercise their human and freedom of association rights. Only through the engagement of actors such as trade unions, peace, social justice and sustainable development could be achieved.

He congratulated Education International (EI) on its efforts to recognize the NTA, and recalled that Ethiopian teachers had consistently voiced their severe problems to the Ethiopian people and the Government through publications and demonstrations in various parts of the country. Ethiopian teachers strongly believed that their age-long and burdensome problems would be given proper consideration and solutions. Furthermore, teachers' unions promoted the social status of the teaching profession and dealt with such important issues as access to and the quality of education, as well as the development of the nation. Given this important role, it was unacceptable to deny teachers their freedom of association rights. He thanked the speakers who had voiced support for the NTA and expressed his own support for the NTA observer, who, notwithstanding the Government representative's statement regarding his organization's legitimacy, possessed the right to address the Committee on this important issue. In concluding, he suggested that the Committee's conclusions be included in a special paragraph to properly reflect the seriousness of the matter at hand.

The Government representative of Ethiopia thanked the speakers for their contributions to the discussion. He stated once again that the speaker representing Educational International (EI) lacked standing to appear before the Committee, and the fact that the Government was present in the room while the speaker representing EI had the floor should not be construed as an acknowledgement, on the part of the Government, of the legitimacy of the speaker's group.

As concerns the suggestion that the Government established an independent inquiry into certain allegations linked to CFA Case No. 2516, he stated that all such allegations were fully investigated by constitutional bodies. Such inquiries were carried out either by the judicial authorities or the Ethiopian Human Rights Commission, or by a mechanism approved by the legislature. Although it was unlikely that cases already resolved by the judicial authorities would be subjected to an independent inquiry, he stated that the matter would be brought to the relevant authorities for their consideration. He reiterated that the long court litigation between the former Executive Committee of the ETA and the latter's newly formed leadership had been settled by the nation's Supreme Court. He deeply regretted that, in spite of this fact, new allegations concerning Case No. 2516 continued to be introduced. These allegations were one-sided, were often of a sensational nature and they did not accurately reflect the situation. Other allegations concerned a criminal case involving 55 defendants, including several with connections to the ETA such as Meqcha Mengistu and Wibit Ligamo. The charges against those individuals were brought in accordance with the Criminal Code, for acts aimed at harming public interests by joining an illegal organization that intended to commit outrage against the Constitution and overthrow the constitutional order by force. Regarding the insinuations in the allegations, the charges had nothing to do with the defendants' membership in, or any other connection to, the ETA. As for the status of the court proceedings, the Second Criminal Bench of the Federal High Court had decided the case on 8 May 2009 – the complete English language translation of the judgement would be submitted to the Committee on Freedom of Association as soon as possible. With respect to the allegations concerning the refusal to register the NTA, he stated that the latter's registration was denied because its name was almost identical to that of the ETA; the law on the registration of associations provided, as one of the grounds for refusal to register, the similarity of the name of the group seeking registration with another association already in existence. NTA representatives had filed a civil action against the Ministry of Justice for failing to register them. However, the Federal Court of First Instance dismissed the case in a decision of 29 April 2009, reasoning that the Ministry of Justice was not the proper defendant, but rather the Charities and Societies Agency. The complete English language translation of that decision of the Court would also be submitted to the Committee on Freedom of Association. He added that the NTA representatives had also submitted this complaint to the Ombudsperson, and urged that the judicial and quasi-judicial processes in the country should be allowed to run their course before making any assessment on the merits of these issues.

With respect to Ms Elfinesh Demissie, who was allegedly fined 36 days' salary by her headmaster, he maintained that, on the contrary, she was found to have failed to observe her professional obligations by absenting herself from her post for 36 days. In respect of Mr Anteneh Getnet Ayalew, he had been charged with committing a serious crime in April 2008, but had escaped arrest. As concerned Ms Wibit Ligamo, he explained that she was released on 29 October 2007 and had been humanely treated while in detention.

With regard to the right to organize of civil servants, he stated that the Constitution guaranteed the right to organize for any lawful purpose or cause; this applied to all persons, without distinction whatsoever. Government employees were therefore able to form associations. However, the Government was not yet able to introduce a separate legal framework for such rights at this stage. Such a framework would be established after careful consideration of its consequences; the matter remained under examination. He added that the Government had not received a proper hearing, given the numerous allegations levelled against it. He recalled that Ethiopia had been a member of the ILO since 1923, was a party to several fundamental Conventions, and had endeavoured to ensure that its obligations under these, and other instruments, were fulfilled. Furthermore, the Constitution and other national laws not only guaranteed freedom of association, but collectively established a legal framework that enabled citizens to exercise those rights effectively. Ethiopia possessed a vibrant labour relations climate, and the ETA was just one of many associations that operated freely within the country. It was therefore regrettable that the Government had been made to endure the many allegations in relation to the ETA. He concluded by stating that, in spite of the challenges posed by its relations with some actors within the ILO, his Government would continue to fully collaborate with the ILO supervisory system.

The Employer members recalled the seriousness and repeated nature of these cases and the failure to resolve them. They did not understand why the investigation had not achieved any results and why it had taken so long to register the new trade union organization. A number of conversations with the Ombudsperson or Public Defender had been mentioned but these did not constitute solid arguments to justify such a delay. They urged the Government to address this particularly serious situation which violated the fundamental elements of freedom of association. The Government had to immediately meet its obligations with this fundamental Convention and demonstrate a serious level of commitment to this Committee.

The Worker members recalled that the Conference Committee had had to examine this case for the tenth time in 22 years and asked that the Government be clearly called upon to adjust their national legislation and prac-

tices to the requirements of Convention No. 87 and provide a clear road map for this. They asked the Government to prepare for the next session of the Committee of Experts a detailed report on the measures taken to ensure that teachers could freely and independently, without governmental interference and without risking becoming victims of repression, exercise their trade union rights. In particular, they asked for the registration of the NTA without delay. The establishment of this new governmental agency was not to serve as a pretext to delay this registration and the authorities could not demand the NTA to follow a new registration procedure.

In this respect, the Worker members drew the Committee's attention to Case No. 2516 filed with the Committee on Freedom of Association by the ETA, together with two international confederations of trade unions which had in the meantime merged with the newly established ITUC. In its recommendations, the CFA had asked that the ETA be registered without delay, that trade union rights be extended to include civil servants and especially teachers, that an independent inquiry on the allegations of torture and mistreatment and the prosecution of culprits be launched, that victims were awarded compensation, and that an independent and in-depth inquiry into the allegations of harassment against leaders and activists of the ETA be undertaken. Two persons were still detained and the Worker members demanded their immediate release.

The Worker members fully endorsed the Committee of Experts' comments on the 2003 Labour Proclamation directed towards the extension of the field of application of this Proclamation to currently excluded categories, the removal of public transport from the list of essential services, the modification of the rules governing the possibility of recourse to arbitration, the easing of the conditions to be met to start a strike, the modifications of provisions limiting the right to freely organize trade union activities and the protection of trade union rights of judges, prosecutors and employees of public administration. The Government was asked to submit for the next session of the Committee of Experts a report on the measures taken regarding all these items.

Conclusions

The Committee took note of the information provided by the Government representative and the discussion that followed. It further noted the direct contacts mission that had visited the country in October 2008.

The Committee observed that for many years the Committee of Experts had been making comments concerning serious violations of the right of workers, without distinction whatsoever, to establish organizations of their own choosing and the right of trade union organizations to organize their activities without interference by the public authorities. The Committee of Experts had expressed its deep regret that the registration of the National Teachers' Association (NTA), a newly formed teachers' organization, was still pending, as was the revision of the Civil Servant and Labour Proclamations.

The Committee took note of the statement made by the Government representative in which it expressed its disappointment that the Committee had not allowed it sufficient time to continue its dialogue and consideration of the recommendations of the direct contacts mission. He recalled the background to the case concerning the Ethiopian Teachers' Association (ETA), which had concluded with the final decision rendered by the Federal Supreme Court. The Government representative had added that workers in Ethiopia could form their associations based on applicable national laws and that the Government had not and did not interfere in the internal activities of the ETA. The Federal First Instance Court had dismissed the case brought by the NTA against the decision to deny it registration because the case had been brought against the wrong agency. The Government representative had stated that his Government would continue its active consideration of the review of the Civil Servant Proclamation and had indicated that it would provide detailed information relating to the various allegations to the Committee on Freedom of Association.

Recalling that the matters raised in this case concerned repeated and grave violations of the Convention, the Committee urged the Government to take all necessary measures to ensure the registration of the National Teachers' Association without delay so that teachers were able to fully exercise their right to form organizations for furthering and defending their occupational interests. The Committee further expressed its deep concern at the important and continuing allegations of grave violations of basic civil liberties for which detailed information had yet to be forthcoming from the Government. The Committee strongly urged the Government to guarantee that these workers could exercise their trade union rights in full security and expected that it would carry out full and independent investigations without delay and provide a detailed report to the supervisory bodies on the outcome. Observing with concern the allegations relating to the continued detention of Wubit Legamo and Megcha Mengitsu, the Committee urged the Government to ensure the immediate release of any workers or teachers being detained for their trade union activity.

Further recalling with concern that for several years the Government had been referring to a legislative review process, the Committee urged it to rapidly adopt the necessary amendments to the Labour Proclamation in order to bring it fully into line with the provisions of the Convention. It further strongly urged the Government to amend without delay the Civil Servant Proclamation so as to guarantee the right of civil servants, including teachers, to form unions and the free functioning of their organizations, including the right to affiliate at the national, regional and international levels.

The Committee expected that the Government would furnish in its report due this year detailed information on the concrete measures adopted to ensure the full conformity of national law and practice with the Convention, including an indication of the registration of the NTA and a clear timetable on the steps to be taken so as to demonstrate the Government's full commitment to resolving these long-standing matters without delay.

GUATEMALA (ratification: 1952)

A Government representative recalled that his Government had accepted the visit of a high-level mission of the ILO and thanked the Employer and the Worker Vice-Chairpersons for their participation in this mission. As could be observed by the members of the high-level mission, progress had been made in a number of cases that had been dealt with for many years such as violations of freedom of association and the right to organize. In this regard, his Government was committed to continue its efforts to obtain more positive results in those cases that had been denounced by the ILO supervisory mechanism.

During the mandate of the new Government, there had been no cases of persecution of unions and his Government was trying to resolve those cases that had occurred in previous years. Consequently, the Government could not be blamed for failing to comply with the provisions of Convention No. 87.

During the 97th session of the Conference, the Government had been accused, among others, of not having demonstrated the political will to resolve cases such as the assassination of the trade unionist Pedro Zamora of the Trade Union of Workers of Puerto Quetzal, and of not encouraging collective bargaining. The high-level mission was able to verify significant achievements in various areas: one person had already been indicted for the assassination of Pedro Zamora, collective bargaining was a state policy of the present Government, etc. In addition, social dialogue was a constant motivation of the present Government and there existed forums for permanent dia-

logue such as the Conflict Resolution Table for State Employees.

The speaker said that it was important to highlight that through this constant dialogue, important reforms of the Labour Code were examined with the support of the ILO with a view to amending some of the sections that referred, among others, to the certification of trade unions, the prescriptions regarding the constitutive instrument, the functioning and the composition of their executive bodies and the conditions for declaring a strike legal. With respect to the establishment and registration of trade unions in the export processing zones *(maquilas)*, he indicated that it was important to highlight that the present Government did not penalize nor stigmatize any trade union action, or any trade union, independently of the lawful action concerned. As long as they complied with the requirements provided for in national legislation and international Conventions ratified by Guatemala, trade union action was considered a priority to obtain legal recognition and to be operational.

He reaffirmed that the Government did not have any policy aimed at limiting the exercise of freedom of association nor the legal establishment of trade unions. In conclusion, he expressed his thanks for having been given the opportunity to explain that certain criminal facts had been elucidated, and to inform the Committee of his Government's firm intention to advance freedom of association and social dialogue as suitable tools in the search for consensus. His Government was mindful of the fact that only through those mechanisms it was possible to achieve full development of the people and to generate more opportunities for decent work.

The Employer members expressed appreciation for the hospitality and transparency shown to the ILO high-level bipartite visit to Guatemala in February 2009. The case of Guatemala had been examined by the Committee on 11 previous occasions, and significant efforts had been made by the Government and the ILO, which had provided resources and technical assistance. Previous discussion of the case had resulted in the high-level mission to the country in 2008 and the bipartite visit in 2009, undertaken in the context of the straightforward observations made by the Committee of Experts, which could be divided into two main categories: the issue of impunity with respect to acts against both unionists and other members of society and legal issues such as restrictions on establishing and registering trade unions, and on organizations of activities by workers, legislation relating to the establishment of public sector unions, slowness of justice, etc. The situation with regard to impunity had evidently become more severe since the high-level mission in February 2009. The Conference Committee had repeatedly emphasized that genuine freedom of association and trade union rights were incompatible with a climate of fear, violence and murder. The Employer members therefore expressed concern in that regard.

They recalled that the high-level visit in February 2009 had suggested that the problems were partly due to the lack of sufficient resources available to the Government to take all the necessary steps to implement Convention No. 87 in law and in practice, given that the country's total tax revenue was only 11 per cent of its gross domestic product. Meetings with the Tripartite National Committee during the high-level visit had revealed that the Committee was functioning and dealt with a range of serious issues, although its mandate could be extended. Nevertheless, despite all the efforts made, much progress remained to be done for the implementation of Convention No. 87, and the situation was not encouraging. A strategy on how to proceed was needed, as punitive measures against the Government were not appropriate. The Employer members concluded that concerted actions by the various parties, including the Conference Committee, were needed in working towards the establishment of effective freedom of association in Guatemala.

The Worker members considered that the core of the discussion was the follow-up of the Government on the declaration of the tripartite high-level mission which had visited Guatemala from 16 to 20 February 2009 with a view to assisting the country to find sustainable solutions to the problems indicated by the Conference in 2008: violence against trade unionists, including death threats and murders; urgency in adopting additional measures to end this violence; and the impunity for crimes committed against trade unionists and legislative provisions contravening Convention No. 87.

They recalled that the high-level mission had focused on three problems: impunity for crimes committed against trade unionists, effectiveness of the law in this context, and effective implementation of freedom of association. They highlighted the necessity to provide the Office of the Public Prosecutor with sufficient and duly trained personnel, and stressed the need to allocate additional resources for programmes for protection of trade unionists and witnesses. The high-level mission had made an uncompromising statement on the lack of independence of the judiciary. It had acknowledged the very low union affiliation rate and very limited number of collective agreements in force, the numerous restrictions affecting freedom of association in the industries in the export processing zones, and the extremely weak labour inspection in spite of the statements made by the Government in 2008. Observing that in Guatemala, people commonly had associated trade union activities with criminal activities, the mission had called on the Government to take concrete measures to stop trade unionism from being stigmatized.

They recalled that the Committee of Experts itself had underlined for many years the persistence of these acts of violence, the impunity around them and also the resistance in the labour legislation of provisions in contravention with Convention No. 87, namely: restrictions concerning the nomination of workers' representatives, restrictions concerning the exercise of trade union activities and the absence of freedom of association in the public sector. Considering that there had been a high-level mission in 2008, which had led to a tripartite agreement and then another one in 2009, that had given rise to a declaration, and that the question of the application of Conventions Nos 87 and 98 in Guatemala had been on the agenda of this Committee for more than 20 years, the Worker members requested that the conclusions would state that this case would appear in a special paragraph of the report of the Committee.

The Government member of the United States, referring to a public submission that had been received in 2008 from the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) and six Guatemalan unions under the Labour Chapter of the Dominican Republic-Central America-United States Free Trade Agreement, stated that her Government was reviewing many of the issues that had been examined by the Committee of Experts in its observation. She shared the Committee's deep concern at the acts of violence against trade union leaders and members, and urged the Government to undertake fully the steps recommended by the Committee of Experts in order to guarantee full respect for the human rights of trade unionists. The Government was particularly urged to provide additional resources to the Special Prosecutor's Office for Offences against Trade Unionists and Journalists.

The Government had acknowledged the serious challenges before it and had availed itself of ILO technical assistance on several occasions, including a number of high-level missions; the most recently had taken place in February 2009 by the Worker and Employer Vice-Chairpersons of this Committee. While the Government

had established mechanisms for addressing the issue of violence and impunity and resolving numerous long-standing deficiencies in the labour legislation, much remained to be done. She encouraged the Government to redouble its efforts – focusing not only on specific cases, but also on systematic improvements – in close cooperation with the ILO and with full involvement of the social partners, so that concrete progress in law and in practice could be noted in the very near future.

The Government member of Spain said that she was not going to highlight, once again, the violence against trade unionists in Guatemala, as the reports gave evidence enough for the Government to adopt the necessary measures to resolve this problem.

She emphasized, however, the importance of freedom of association, as enshrined in Convention No. 98, for the existence of democracy and recalled that the three levels of its components, namely, the right to establish trade unions, the right to draw up their constitutions, and the right to organize their activities, including the right to strike, were closely inter-related, insofar as if one of them failed, the other two could not function. This was what was happening with the right to form trade unions.

The Committee of Experts' report implied that administrative requirements and demands in Guatemala resulted in unjustifiable and serious restrictions to the right to form trade unions, a situation that was all the more serious considering that the obstacles concerned were being applied in a context of violence against trade union representatives.

She stated that her country was confident that, with ILO technical assistance and international cooperation, all the administrative obstacles impeding the formation of trade unions and the right to organize could be removed, since, as the high-level mission of the ILO had indicated, trade union organizations played a fundamental role in the social and economic development of societies and were closely linked to the consolidation of democracy. In conclusion, she said that employers, workers and the Government should work together to emulate the principle of freedom of association in their country.

The Government member of Belgium expressed grave concern about the situation in Guatemala as reflected in the report of the Committee of Experts, especially with respect to the acts of violence against trade unionists. His Government hoped that the positive elements which had emerged following the high-level mission would materialize through the effective application of Conventions Nos 87 and 98, which were key instruments for the improvement of social policy and, thus, for social justice. The implementation of all social policies involved the integration of social dialogue in the functioning of the State, and led to broader social protection, effective labour administration and the realization of rule of law. The speaker concluded stating that his Government hoped that all measures recommended by the Office would be implemented, and fully supported technical cooperation activities for the benefit of Guatemala.

A Worker member of Guatemala drew attention to the fact that, for nine consecutive years, the Government had received comments from the Committee of Experts concerning problems with the application of Convention No. 87. Those problems involved the most flagrant violations of the fundamental rights of the country's workers.

Among the facts that the Committee of Experts had most often highlighted were acts of anti-union violence, including murder and kidnapping, and the lack of freedom of association in export processing zones and enterprises, where it was impossible to form a trade union. Workers in such enterprises were not allowed to be pregnant, to urinate more than twice a day, get up to drink water during the working day, submit complaints or miss a single day's work due to illness, as those were all legitimate causes of dismissal for Guatemalan women working in textile companies.

Over the last 20 years, various Governments had indicated their political will to solve the problem of freedom of association, and the current Government continued to make such promises. The Government had also made other commitments and statements to the same effect. Furthermore, the President of the Republic, Álvaro Colom Caballeros, at the International Trade Union Conference against impunity organized by the International Trade Union Confederation in Guatemala in January 2008, had promised to end problems connected with freedom of association.

The speaker expressed concern about the fact that the Government was trying to take advantage of the good faith of the international community by saying that progress was being made thanks to the creation of eight labour courts and the strengthening of the Special Office for Offences against Journalists and Trade Unionists, which did not function in practice. He said that the situation with regard to freedom of association in the country was becoming more and more serious and cited, as an example, one case of kidnapping and another in which threats had been made.

The speaker recalled that the Employer and the Worker Vice-Chairpersons, who had been part of the high-level mission to Guatemala in 2009, had been informed regarding the murder of 26 trade unionists and other acts of violence against trade unionists that had taken place in Guatemala. The visit had enabled them to see that the issues raised continued to be very serious, particularly the entrenched climate of impunity and violence against trade union leaders and members, without any legal proceedings or convictions in recent years.

The Worker member of Germany highlighted the situation of extreme anti-union violence and impunity in Guatemala. Despite the new Government's promise to address the situation, no improvements had been noticed. Since January 2008, 26 trade unionists had been murdered, with an additional 24 cases of threats, 62 instances of criminalization of trade union activities, three kidnappings and five assassination attempts. In this regard, the speaker noted with relief that her Guatemalan colleague Mr Efrén Sandoval was in good health and participating in the Conference as an observer representing the ITUC. In view of the above, she did not find it surprising that the percentage of trade union organization in Guatemala was at only 0.5 per cent of the working population.

The problem of anti-union violence was closely linked to the issue of impunity; 98 per cent of the offences in Guatemala remained unpunished. The perpetrators of anti-union acts of violence did not face any consequences, which was mainly due to the inefficiency of the judicial system. It could only be deplored that justice in Guatemala only existed for those who could afford it.

The speaker further reported that, in January 2009, the labour movement of farmers and indigenous peoples that constituted the main target of anti-union attacks, had submitted a set of concrete demands to the relevant ministry and the Office of the Public Prosecutor. Amongst other things, the trade unionists had asked for a detailed report on the state of investigation of recent assassinations and a report on the factors impeding prosecution, and for a meeting with the relevant ministry to discuss a policy of prevention, identification and punishment of perpetrators. The fact that the Government had not even considered necessary to respond to this initiative, illustrated that the problem was not only due to lack of capacity but also to the lack of political will of the Government.

In view of the systematic violation of human rights, workers' and trade unions' rights, she stated that the DGB supported the Guatemalan trade unions in their cry for help directed to the European Union, the ILO and European workers' organizations, and also endorsed the exten-

sion of the mandate of the International Commission against Impunity (CICIG). Lastly, the DGB would suggest the insertion of a chapter on labour and social issues into the EU Association Agreement, which should include respect for the fundamental ILO Conventions as well as a mechanism for monitoring and assessing compliance.

Another Worker member of Guatemala said that, for many years, representatives of governments and production sectors throughout the world had listened to the Government talking about progress made with respect to freedom of association in Guatemala. However, during those same years, there had been a fall in the rate of unionization that had left trade unions representing only 0.5 per cent of the economically active population. In Guatemala, trade union activity faced more obstacles every day. The high-level mission that had visited the country in February 2009, had grouped these problems into three broad areas: impunity; lack of conditions for the exercise of freedom of association; and the ineffectiveness of the judicial system. Impunity was not rooted in the existence or non-existence of courts, but in the failure to apply national legislation and Convention No. 87, which Guatemala had ratified in 1952.

With regard to violence against trade unionists, he stated that, since 2007, 26 members of the Indigenous and Rural Workers Trade Union Movement of Guatemala had been murdered, but the culprits had not yet been arrested. Disguised labour relations, blacklisting, anti-union dismissals, corruption and the ineffectiveness of both labour inspection and the courts were just some of the problems facing trade unionists. Some years ago, the ILO had requested the removal of mechanisms for supervising trade unions but the present Government had introduced more supervisory mechanisms. This did not only restrict the freedom to join trade unions, but also restricted the areas in which trade unions acted independently, replacing unions with government bodies such as the Tripartite Committee on International Affairs, which had become the Government's main tool for signing agreements on apparent solutions to existing problems which were intended solely to confuse the international community.

He said that, in these circumstances, the trade unions could but request a special paragraph on Guatemala that:

(a) set out the concerns of the Committee regarding the lack of freedom of association in Guatemala;
(b) expressed regret that the technical support provided in recent years had not resulted in any objective improvement of conditions for the exercise of freedom of association;
(c) requested the Government to take measures to ensure freedom of association, and the courts of justice to adopt, in their application of Convention No. 87 and national legislation, the interpretation criteria issued by the Committee on Freedom of Association in its *Digest of decisions and principles of the Freedom of Association Committee*;
(d) requested the Government to take the appropriate measures to guarantee the physical security and life of leaders of organizations belonging to the Indigenous and Rural Workers Trade Union Movement of Guatemala and its work teams.

The Worker member of the United States indicated that while the reports concerning this case had always been consistent, fair and unambiguous, the events in Guatemala failed to live up to the provisions of Convention No. 87 and shocked the conscience. The egregious and wilful nature of impunity could not be reconciled with neither Convention No. 87 nor the existing Guatemalan law. The general climate of violence, whether focusing specifically on trade unionists or the general population, had a chilling effect on those who attempted to exercise their rights, such as the right to associate freely or the right to speak out publicly.

The Committee of Experts had, on more than one occasion, expressed the hope that in the near future "significant progress" would be made in particular with respect to the tripartite agreement concluded during the high-level visit. Tangible evidence should be provided that impunity was met with accountability and the rule of law and that workers were allowed to organize without fear or intimidation.

The speaker denounced existing employer tactics aimed at slowing down freedom of association of workers, such as retaliation, termination, harassment and the establishment of company unions designed to undermine existing legally formed unions; but also, bankruptcies, ownership substitution and re-registration of companies by employers seeking to circumvent their legal obligation to recognize newly formed or established unions. Blacklisting of union organizers, threats of factory closures, refusal to permit labour inspectors to enter facilities to investigate worker complaints, and refusal to reinstate wrongfully dismissed union organizers were also commonplace.

Government institutions had tolerated these practices, many of which could and should be addressed under existing law. Even worse, delays in processing legal complaints had rendered workers defenceless and employers immune from meaningful accountability. Most workers, including those organized in trade unions, did not have collective agreements concerning their wages and working conditions nor did they have individual contracts as required by law.

In instances where workers advocated their legal rights, employers subverted labour laws by taking advantage of back-logs, delays and the overall incompetence in the delivery of justice, the lack of prosecution and a lack of a functional independent judiciary. Particularly troublesome was the realization that before, during and after the high-level visit in 2009, trade unionists had been threatened, attacked and murdered. This was illustrated by the killing of an active member of the Union of Banana Workers of Izabel while at his workplace, which occurred a week after the Union had met with the Government to complain about threats against a union member.

Turning to the issue of enforcement, he pointed out that despite several recent efforts by the Government to improve enforcement of labour laws, the ability to follow through was virtually non-existent. Labour leaders had reported receiving death threats and were being targets of other acts of intimidation, but there had been only one conviction for a crime against trade unionists. The authorities responsible for protecting citizens against violations of the law were understaffed and underfunded and pressure was put on labour inspectors to rule in the employer's favour. In the view of the organized labour in Guatemala, the restructuring of the Special Prosecutors' Unit for Crimes against Journalists and Unionists reflected a reduced commitment to prosecuting crimes against unionists.

He concluded by stating that compliance with Convention No. 87 did not call for governments or employers to commit acts of largess; rather freedom of association and the right to organize was the core enabling right, essential to the meaningful attainment of all other rights at work. The Report of the Committee of Experts had reminded us that "[r]espect for freedom of association at the workplace [did go] hand in hand with respect for the basic civil liberties and human rights inherent to human dignity".

The Government member of Uruguay, speaking on behalf of the Group of Latin America and the Caribbean (GRULAC), thanked the Government, the Employer and the Worker members for their statements. He declared that the Government of Guatemala had illustrated, in its intervention, that it had made efforts to improve national conditions to ensure the full application of Convention No. 87, by means of actions that were already being implemented for some time; the most recent being the ac-

ceptance of a high-level mission in February 2009. In this regard, the speaker asked the Conference Committee and the Office to continue to provide the technical assistance requested by the Government and to ensure that such assistance was timely and appropriate to achieving the purpose. GRULAC considered that a country such as Guatemala that had relentlessly collaborated with the ILO for several years, should be conceded the time necessary to ensure that its initiatives and the technical assistance received from the Office could produce an impact.

Furthermore, the speaker noted once again that a number of countries in the region had been called upon to appear before the Conference Committee, albeit countries cooperating with the supervisory bodies and making efforts, at national level, to ensure the full application of workers' rights. GRULAC expressed concern about what seemed to be a constant that continued to carry on endlessly, to the detriment of the examination by the Conference Committee of serious situations in other parts of the world. Finally, GRULAC acknowledged certain improvements in the working methods of the Conference Committee but a lot remained to be done, in particular as regards transparency and objectivity of the selection criteria for work in this Committee.

The Worker member of Colombia stated that, while the Government representatives had made promises concerning freedom of association, the application of Convention No. 87 in this Central American country remained an illusion, insofar as the low degree of unionization illustrated that the Government and employers impeded on trade union activities.

The speaker found it discouraging that, despite the efforts made by the ILO including the high-level mission, the situation had not changed and that, in practical terms, the development of Guatemalan trade unionism continued being bogged down both by the reservations of the workers to affiliate due to the fear of losing their lives or jobs, and by the existing obstacles to establish new organizations or strengthen existing ones.

The speaker hoped that the required prerequisites to establish a workers' organization, the need for registration, and the accumulation of restrictions of the right to collective bargaining would not go unnoticed by the international community. In this regard, he felt that there was no justification that in Guatemala, a country that had ratified Convention No. 87 in 1952, more than 50 years ago, workers could not exercise their right to unionize, and the degree of trade union organization did not exceed the absurd percentage of one per cent of the active population. In addition, economic interests including the current system of tariff preferences also had a bearing on the situation in Guatemala.

The speaker invited the Government and the Guatemalan employers, in the interest of democracy and the establishment of a social rule of law, to provide the necessary guarantees to enable the workers to exercise their rights to unionization and collective bargaining. Lastly, he proposed that the conclusions of the present case should appear in a special paragraph so that the Government and employers did not forget the pledges made to the ILO.

The Government representative of Guatemala found it only natural for the Worker members to deplore the low number of trade unions existing in Guatemala. Nonetheless, the Government wished to point out that the scarcity of workers' organizations was not due to any Government policy intending to impede on the establishment of trade unions. He expressed the hope of his Government that progress would be accomplished with respect to the Guatemalan legislative reform in the previously mentioned areas, in particular, regarding the provisions of the Labour Code on freedom of association. He mentioned that he was accompanied by two members of the Executive Council of the Congress of the Republic to demonstrate the Government's willingness to bring about reforms.

The speaker stressed that the ILO was cognisant of the Government's attempts to put social dialogue into practice. However, on some occasions, the Government had faced the refusal of certain sectors, and dialogue necessitated more than one party. Moreover, the Government did not determine the composition of the Tripartite Commission on its own, given that it was constituted of three parts.

He asked the Conference Committee to formulate and adopt clear and well-defined strategies, since the full application of Convention No. 87 could not wait for another 50 years. The speaker also requested technical and financial assistance from the ILO and, and also asked for the commitment of the members of the Conference Committee to supporting vigorously Central American countries, in particular Guatemala, in order to achieve conformity with the Convention. The Government was ready to spare no effort to attain that objective. As regards the issue of *maquilas*, the Government emphasized that a joint commission had been set up to try to find solutions. At the beginning of 2008, 20,000 workers of one of the most significant *maquilas* of the country had lost their jobs due to delocalization. Now the maquila had returned to Guatemala, and every effort was made to reemploy the maximum number of workers.

The Government did not close the door upon any person respecting the Guatemalan legislation and international standards. The speaker further expressed regret that, for so many years, his country had appeared on the list of countries not fully applying Convention No. 87. Lastly, he concluded that it would be appropriate to strengthen the Tripartite Commission, since the vital legislative reforms were being elaborated in the framework of that tripartite body.

The Employer members thanked the Government for the information provided. The present case dealt with numerous issues, of which the most fundamental related to impunity. They recalled that the Conference Committee had usually reserved the special paragraph for cases where the Government had failed to take any measures or was not cooperating. In the Employer members' view, this was not the case of Guatemala. The high-level mission had concluded that the Government had allocated human and budgetary resources to prosecution and judicial administration to address impunity of anti-union violence. It was evident that more resources were needed and that legislation was required to address the issues of implementation identified by the Committee of Experts. However, during the long history of the present case, the Government had taken constructive steps and had adopted a positive attitude. The number of issues had been gradually reduced.

The Employer members recalled the general consensus that had emerged during the high-level mission. Accordingly, priority attention should be given to the following three main issues: (i) impunity in relation to violence against trade unionists; (ii) effectiveness of the judicial system; and (iii) implementation of freedom of association. The representativeness of the Tripartite Commission was also a matter of concern. The high-level mission had concluded that the above mentioned areas needed to be addressed on a priority basis and that concrete progress in this regard should be noted before the next session of the Conference. To this end, the mission had proposed that follow-up at regular intervals be carried out by the ILO to provide technical assistance and to assess the progress achieved. The Employer members felt that the latter recommendation had not yet been put into practice and emphasized the need to do so before adopting a special paragraph.

The Worker members highlighted that this case had been under the attention of the ILO supervisory bodies for more than 20 years. Therefore, the Government had had ample time to take the necessary measures to adapt its legislation and practice to the principles contained in

Convention No. 87. However, the Government had done nothing and the situation continued to deteriorate. They acknowledged that the Government made practically no use of the technical assistance which the Office had already provided. The Worker members hoped that the four components of the declaration issued by the high-level mission in 2009 – increasing the capacity of the courts against violence against trade unionists, improving the effectiveness and independence of the judiciary, reinforcing the means of labour inspection, concrete action against the stigmatization of trade unionists – would be monitored by means of a report which the Government would submit to the Committee of Experts at its session of November 2009, and which the Conference Committee would take up in 2010. Finally, the Worker members requested that the conclusions would state that this case would be included in a special paragraph of the report of the Committee.

Conclusions

The Committee took note of the Government representative's statement and the discussion that followed, as well as the numerous cases examined by the Committee on Freedom of Association. The Committee noted with concern that the problems at issue concerned numerous and serious acts of violence against trade unionists and legislative provisions or practices that were incompatible with the rights conferred by the Convention, including restrictions on the right to organize of certain categories of workers. The Committee also noted the inefficiency of criminal proceedings related to these violent acts, giving rise to a grave situation of impunity, and the excessive delays in legal proceedings. It also noted the allegations concerning the lack of independence of the judiciary.

The Committee noted that the Government representative had indicated that during the current Government, there had been no cases of trade union persecution, that progress had been made in the criminal investigations of some murders of trade union leaders, that the Multidisciplinary Committee responsible for coordinating the follow-up of the cases of trade union murders had been strengthened and that a special unit had been created for investigations of acts of violence against trade unionists in the Office of the Public Prosecutor. The Government representative also referred to the Tripartite Committee's activities, which was examining important reforms of the Labour Code. He also declared that there was no criminalization or stigmatization of trade union activity. This was also the case in the export processing zones where a bipartite commission had been established to find solutions to disputes in this sector. The Government representative had insisted on his Government's need for reinforced technical and financial cooperation. He stressed the importance of the entire trade union movement participating in the social dialogue in the country.

The Committee noted the high-level mission that had visited the country in February 2009 and that the mission had emphasized that, while additional resources had been placed in the investigatory mechanisms for combating impunity, further measures and resources were clearly necessary to that effect. The Committee observed with deep concern in that regard that the situation in relation to violence and impunity appeared to be worsening and recalled with urgency the importance of ensuring that workers were able to carry out their trade union activities in a climate free from violence, threats and fear. The Committee highlighted the need to make meaningful progress in the sentencing in relation to crimes of violence against trade unionists and in ensuring that, not only the direct authors of the crime, but also the instigators were punished and observed in this regard the need for continued strengthening of and specific training for those responsible for investigating violence against trade unionists, as well as an improved collaboration of the various bodies mandated in this regard. The Committee hoped that concerted efforts in this regard would finally permit meaningful progress in bringing an end to impunity.

Noting further with concern the important allegations of an anti-union climate in the country and the stigmatization of trade unions, the Committee recalled the intrinsic link between freedom of association and democracy.

In this regard, the Committee noted that, beyond the question of impunity, the conclusions of the high-level mission focused on the need for concerted action in relation to the effectiveness of the judicial system, the effective respect for freedom of association by all parties and the effective functioning of the national tripartite commission. The slowness and lack of independence of the judiciary, in particular, gave rise to significant challenges to the development of the trade union movement.

The Committee observed that despite the seriousness of the problems there had been no significant progress in the application of the Convention, in legislation or practice. It also expressed its concern regarding the situation in the export processing zones. The Committee urged the Government to redouble its efforts with respect to all the abovementioned matters and to adopt a complete, concrete and innovative strategy for the full implementation of the Convention, including through the necessary legal reforms, the strengthening of the programme for the protection of trade unionists and witnesses and of the measures to combat impunity, and the provision of the financial and human resources necessary for the labour inspectorate and the investigative bodies, such as the Public Prosecutor's Office. The Committee expected that, with the assistance and necessary technical cooperation of the Office, the Government and the social partners would be in a position to agree upon a road map with clearly determined time frames for the necessary action in respect of all the above points. The implementation of this road map should be reviewed periodically by the ILO.

The Committee requested the Government to provide a detailed report to the Committee of Experts this year providing information on the tangible progress made in legislative reforms, the fight against impunity and the creation of a conducive environment for trade unionism and it expressed the firm hope that it would be in a position next year to note substantial improvements in the application of the Convention.

MYANMAR (ratification: 1955)

The Government communicated the following written information.

In 2007, the Myanmar Workers' delegate to the ILC was elected from the Basic Worker Association which covered 11 sectors. A first-level organization had never been formed before. Even though the appointed Workers' delegate, represented most of the workers and had been elected from the sector in which the majority of workers were working, the ILO raised an objection to the Myanmar Workers' delegate. This time, in accordance with the advice of the ILO, the Workers' delegate was elected from the textile industrial sector, where the majority of the workers were working, most of whom were well organized.

The referendum for approval of the Constitution of the Republic of the Union of Myanmar was successfully held in the whole country with massive approval (92.48 per cent). The provisions on the organization of labour organizations were contained in paragraph 96 of Chapter IV, paragraphs 353, 354 and 355 of Chapter VIII and Schedule One, Union Legislative List, in Chapter XV of the Constitution. Once the Constitution came into force, labour organizations would emerge in line with these provisions and would be able to carry out their activities in the interests of the workers.

With regard to the recognition of the Federation of Trade Unions of Burma (FTUB) as a legitimate organization as indicated in paragraph 1093(b) and (e) of the 349th Report of the Committee on Freedom of Association and

in the report of the Committee of Experts of 2008, there was no comment about the affiliation of the FTUB to the International Trade Union Confederation (ITUC) or having associated status with the ITUC, but there was strong and firm evidence of the FTUB committing a series of terrorist activities and bombing in Myanmar. The FTUB supported financially and took part in these terrorist acts and supplied explosive materials to cause unstable situations in the country. As these terrorist acts were forbidden by the International Convention for the Suppression of Terrorist Bombings and the International Convention for the Suppression of the Financing of Terrorism, the Ministry of Home Affairs announced that the FTUB was a terrorist group in Declaration No. 1/2006 of 12 April 2006. It was therefore not possible to accept the FTUB as a legitimate organization.

Concerning the five persons arrested, including Ma Shwe Yee Nyunt, after investigation of the matters contained in the letters from Mr Guy Ryder, General Secretary of the ITUC, and the ILO, it was found that they admitted being neither workers of nor representing the Myanmar workers. Although they breached section 13(1) of the 1974 Immigration Act for illegally entering and re-entering the country, the Government did not take action against them because they admitted their fault honestly, telling the truth and saying openly that there was no trade union in the country. They also said that they had accepted financial assistance by pretending to be members of trade unions. The five persons, including Shwe Yee Nyunt, were illegally entering and re-entering the country and made contact with Ei Shwe Zin Nyunt, the personal assistant to Maung Maung and accepted 42 lakhs in Myanmar currency (kyats) by pretending to be trade union members. Actually, it was found that they were neither representing the Myanmar workers nor genuine workers, but a group of relatives, making this type of incident with the intention of receiving international financial assistance on the basis of false information.

With regard to the situation of Myanmar workers and their workers' rights under existing labour laws, the legislation respecting workers' associations, collective bargaining and tripartite consultation had been mentioned in the Constitution of the Republic of the Union of Myanmar with a view to being in line with Convention No. 87. Myanmar workers were aware of collective bargaining and practised it under the existing labour laws. Disputes between employers and workers were settled through conciliation and negotiation. Some 411 cases in 2007 and 365 cases in 2008 were settled under tripartite principles with the Township Workers Supervisory Committee playing a role as the Government representative and employers and workers also participating. Such conciliated dispute cases concerned over 2,000 or 3,000 workers.

With regard to the allegations of the murder, arrest, detention, torture and sentencing to many years of imprisonment of trade unionists for the exercise of ordinary trade union activities, action had been taken, not because of the exercise of trade union activities, but because of the breach of the existing laws of the country and attempts to incite hatred or contempt of the Government. Once the State Constitution came into force, labour organizations would emerge in line with the Constitution and the ITUC's comments and the observations of the Committee would automatically be solved at the appropriate time.

In addition, before the Committee **a Government representative** stated that Myanmar was in the process of transforming into a democratic society and had made significant progress in the implementation of the seven-step road map to democracy. The new Constitution, which was the fourth step in this process and had been approved by 92.48 per cent of the voters, clearly demonstrated the support of the people for this Constitution. The fifth step in implementing the seven-step road map would be free and fair elections to be held in 2010 in accordance with the Constitution.

The rights of citizens, including the right to express their convictions and opinions freely, the right to assemble peacefully and the right to form associations and unions were clearly laid down in article 254, subparagraphs (a), (b) and (c), of the new Constitution. Article 96 of the new Constitution stipulated that the legislative body were to enact laws on labour organizations included in the Union Legislative List, Schedule One, paragraph (r). The new promulgated law would be in line with Convention No. 87, as well as with the Constitution. He was confident that workers in Myanmar would be able to form their own associations and enjoy the fundamental rights as provided for in Chapter VIII, article 354, when the new Constitution would come into operation after the 2010 elections. There was therefore no legal basis to ask for an amendment of the Constitution.

The speaker added that Myanmar had been cooperating with the ILO with a view to fulfilling its obligations under various Conventions ratified by Myanmar. This became clear from the detailed and regular information provided in response to requests or clarifications sought by the ILO.

In addition to the written information provided by his Government, the speaker wished to highlight, with respect to the six workers arrested on May Day in 2007, that those workers had not been arrested for holding a May Day event but for breach of existing laws and for their involvement in unlawful activities and attempted terrorist acts in the country. There was solid evidence that those persons had been receiving instructions, training and financial assistance from the so-called Federation of Trade Unions of Burma (FTUB), an exile terrorist group and unlawful association which masterminded bombings and terrorist acts, to incite public unrest in the country. Any request to release them immediately was an act of interference in national law and constituted an infringement of the legal system of a sovereign State. It was a contradiction to the basic principles of public international law and Article 8 of Convention No. 87, which stipulated that the law of the land should be respected.

Turning to the case of Tin Hla, he considered that time and resources would be wasted if action were to be taken based on fictitious and fabricated facts or incidents. Tin Hla was neither a leader nor a member of a labour union but had worked as a supervisor for Myanmar Railways, which had no union. He had been caught by the police when committing the crime of possessing ammunition and had been subsequently charged and sentenced.

Recently, there was a sham conference which was organized by Maung Maung at Mae Sok, Thailand. In fact, there was a group of four persons including Ma Shwe Yi Nyunt who attended the meeting. In reality, none of them was a worker nor did they represent any workforce. They were a group of relatives who eventually had personal links to Maung Maung. For this group, their association with Maung Maung was punishable under existing laws of Myanmar and under laws of any country countering terrorism. Following an investigation after they had returned, it was revealed by them that they were neither workers nor representing any Myanmar workers and they had been asked to visit Maesot for a different purpose and accepted 4.2 million kyats in Myanmar currency. The purpose of their crossing the border was nothing but a gathering of relatives and friends funded by Maung Maung. These facts were also revealed by them during their meeting with the ILO Liaison Officer on 25 April 2009. The Government had complete records pertaining to the facts mentioned above. As they were the victims of a sham conference masterminded by Maung Maung and they had admitted what they did unwittingly, the Government stopped the investigation and condoned them in the best spirit of cooperation with the ILO.

With respect to the FTUB, he considered it unfortunate that Maung Maung, a fugitive from law who had escaped to a neighbouring country and who had joined anti-government organizations, could take part in the proceedings of the ILO. He was the Secretary-General of the so-called FTUB and the National Council of the Union of Burma (NCUB), an alliance of the Democratic Alliance of Burma and the National Democratic Front (NDF), composed of terrorist groups in exile, which had been resorting to violent acts such as bombings of public places. As their activities were harmful to the population and to the peace, stability and the rule of law of the country, they had been outlawed. These terrorist acts were also forbidden by the United Nations Convention for the Suppression of the Financing of Terrorism, to which Myanmar was a party, and the Ministry of Home Affairs had therefore issued Declaration No. 1/2006 of 12 April 2006, stating that the FTUB and Maung Maung were a terrorist group.

In conclusion, he stated that Myanmar was fully cognizant of its obligations under Convention No. 87 and that measures were being taken to review the existing legislation with a view to examining its compliance with international human rights law and the Constitution, including Chapter VIII. Given the nature and volume of the work, results could not be expected overnight. Myanmar was taking measures and doing its best to comply with the obligations contained in Convention No. 87; meeting this challenge was only a matter of time.

The Worker members stated that the present Committee had rarely had an occasion to assess such an overwhelmingly bad record of arrests, imprisonments and killings of persons for as simple a reason as the exercise of their trade union or political activities. Currently, 91 persons were still in prison following the repression by the Government of the September 2007 uprising. Six workers – Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win and Myo Min – were sentenced to imprisonment for having participated in a 2007 May Day manifestation and for association with the FTUB. The Committee on Freedom of Association called for their immediate release. A member of the Petro-Chemical Corporation Union, Myo Aung Thant, was sentenced to almost 12 years imprisonment for maintaining contacts with the FTUB. The Committee on Freedom of Association had called for his immediate release. Mr Saw Mya Than, an FTUB member and leader of the Education Workers' Union, had been murdered by the army in retaliation for acts, presented by the latter, like a rebel attack. The Committee on Freedom of Association had requested the institution of an independent inquiry. Mr U Tin Hla, a railway electrician, had been arrested along with his entire family on 20 November 2007 and sentenced to seven years in prison for possession of explosives which were, in fact, a harmless toolbox. In reality, he had been sentenced for inciting railways workers to support the popular uprising in September 2007. Ms Su Su Nway, the activist who had brought a forced labour complaint to the ILO which subsequently resulted in the successful conviction of four local officials, had been arrested in November 2007 and detained in jail for her actions in supporting the September 2007 uprising. Two trade union activists, Lay Lay Mon and Myint Soe, had disappeared at the end of September 2007 after having actively participated in the September uprising. In 2006, the FTUB activist Thein Win had been arrested together with seven members of his family. Three of his children had been sentenced to 18 years in prison. One of his children had been tortured and had become mentally unstable. Five political and labour activists, U Aung Thein, Khin Maung Win, Ma Khin Mar Soe, Ma Thein Thein Aye, and U Aung Moe, had been arrested in March 2006 and sentenced to long prison terms for having provided information to the FTUB and other pacifist organizations considered as illegal by the regime. Concerning 934 workers of Haw Wae Garment factory who had gone on strike on 2 May 2006, demanding better working conditions, 48 had been brought before the authority and had been forced to sign a written statement that indicated that there had been no problems at the factory. Ms Naw Bey Bey, an activist member of Karen Health Workers' Union, had been sentenced to four years of hard labour. Mr Saw Thoo Di, an activist of Karen Agricultural Workers' Union had been arrested, tortured and killed on 28 April 2006 by Infantry Battalion 83. On 30 April 2006, the Pha village had been shelled with mortars and rocket-propelled grenades because the authorities had considered that the FTUB and the Federation of Trade Unions-Kawthoolei (FTUK) were holding a demonstration. In June 2005, ten activists of the FTUB had been arrested and then tortured and sentenced, by a special court established in the prison, to prison sentences from three to 25 years for having used satellite phones to convey information to the ILO and to the international trade union movement through an intermediation by the FTUB.

The Worker members stated that it was up to the Conference Committee to denounce all these serious facts of arrest, sentencing to long imprisonments or murders suppressing the exercise of ordinary and normal trade union activities, such as speeches on socio-economic issues, commemorating May Day or sending of information to the trade union movement. The authorities of Myanmar had systematically denied any violations of Convention No. 87. They took pleasure in invoking the provisions of Article 8 of Convention No. 87, indicating the obligation for trade unions to respect the law of the land, but they ignored that the same Article provided that the law of the land should not impair the guarantees provided for in this Convention. All member States of the ILO had the obligation to respect freely ratified Conventions. The truth was that there was currently no legal basis providing for freedom of association in Myanmar. The new Constitution subjected freedom of association "to the laws enacted for State security, prevalence of law and order, community peace and tranquillity or public order and morality". Several legislative provisions were restricting, directly or indirectly, freedom of association: Order No. 6/88 requiring permission to form an organization; Order No. 2/88 prohibiting the gathering, walking or marching in procession by a group of five or more people; the Unlawful Association Act of 1908; the 1926 Trade Union Act; and the 1964 Law instituting an obligatory system of organization and representation of workers. The Worker members concluded by stating that freedom of association did not exist in Myanmar.

The Employer members recalled that the Government had ratified the Convention over 50 years ago. The present case had been discussed since 1991 (last time in 2005), and had, for many years, made the object of a special paragraph due to the continuous failure of the Government to implement the Convention.

This year's extensive observation carried a double footnote and referred to the severe repression of the 2007 uprising; the arrest, heavy-handed interrogation and long prison sentences imposed on six workers who participated in the 2007 May Day event; the significant harassment of their lawyers which had prompted them to withdraw from the case; and several additional convictions to further prison terms for associating with the FTUB and for illegally crossing the border. Concerning the relevant case, the Committee on Freedom of Association had concluded in its 349th Report that it was "undeniable that the six persons were punished for exercising their fundamental right to freedom of association and the freedom of expression". The Committee of Experts had further noted the detention and incarceration of a long list of other trade union activists contained in the observations submitted by the ITUC.

In view of the above, the Employer members agreed with the Committee of Experts that there was a lack of civil liberties in Myanmar, in particular freedom of movement, freedom of expression, freedom of assembly, freedom of association and the right to a fair trial. All those civil liberties were fundamental for making Convention No. 87 a reality. The Employer members expressed their conviction that there were no free and independent trade unions in Myanmar, given that all trade union activities constituted punishable offences under the law, which the Government did not deny.

The Employer members expressed doubts as to the Government's statement that the constitutional amendment concerning freedom of association would give effect to the Convention. In the absence of legislation implementing the rights contained in the Convention, any imparted civil liberties would lack protection. They therefore urged the Government to communicate to the Committee of Experts, as soon as possible, drafts of the texts of the long-overdue laws and regulations implementing the rights contained in the Convention, for analysis.

With reference to a credentials claim regarding the current Worker representative of the delegation of Myanmar, the Employer members recalled that, last year, the Workers' delegate was found to be a management official. Moreover, the Employer members believed that the discrepancy between the large Government delegation and the representation of employers and workers by only one delegate each, illustrated a lack of true tripartism, which was an essential part of a viable freedom of association.

The Government member of the United States recalled that the Committee of Experts had used the strongest language available to it to deplore the persistent failure of the Burmese authorities to guarantee freedom of association in both law and practice. In her view, it was undeniable and deeply disturbing that people in Burma were punished for exercising their fundamental rights of freedom of association and freedom of expression, and that the most ordinary trade union activities were considered to be criminal offences subject to severe punishment. The Committee of Experts and the Committee on Freedom of Association had condemned many instances where the fundamental civil liberties of trade union members, officials and supporters had been violated, including intimidation, arrest, torture, imprisonment and murder. The supervisory bodies had repeatedly stressed that a genuinely free and independent trade union movement could only develop where fundamental human rights were being respected.

She referred to the broad and long-standing legal restrictions on the right of workers to establish, join, and participate in organizations of their own choosing. While the Burmese authorities contended that a legislative framework had been established by the new Constitution and that steps were being taken for the establishment of trade unions at the basic level, the Committee of Experts noted with deep regret that the new provisions gave rise to continued violations of freedom of association in law and practice. It further noted with regret the lack of any meaningful consultation of the social partners and civil society to create a legal framework that would guarantee respect for, and realization of, freedom of association.

The speaker regretted the failure of the Burmese authorities to give serious consideration to the views of the ILO supervisory bodies regarding the authorities' continued and baseless refusal to recognize the FTUB as a legitimate trade union organization. She further regretted the persistent failure of the Burmese authorities to respect international legal obligations that had been voluntarily accepted over 50 years ago. It was therefore difficult to conclude that there had been any genuine progress to remedy the serious and urgent situation that the Committee of Experts had been examining for so many years.

In 2005, the Conference Committee had concluded that the persistence of forced labour in Burma could not be dissociated from the prevailing absence of freedom of association. If the Burmese authorities were truly serious about eliminating forced labour, they would need to recognize that strong and independent workers' organizations could play a significant role in accomplishing that goal. The speaker expressed the hope that the Burmese authorities would avail themselves of the ILO's assistance and advice in taking the necessary steps to bring law and practice into conformity with Convention No. 87.

An observer representing the International Trade Union Confederation (ITUC), stated that in 2008, one able-bodied Burmese seaman had died and another had been seriously wounded in an accident. The Seamen's Employment Control Division (SECD), the section of the junta's administration branch for seafarers from Burma, had pressured the families of these seafarers not to contact the International Transport Federation (ITF) that covered seafarers around the world, or ask for compensation directly from the company, but to wait for compensation to be awarded in accordance with standards implemented by the State Peace and Development Council (SPDC). This was not an isolated case. It was but one example of the methods used by the SPDC systematically to control Burmese workers and deprive them of their rights.

The seafarers of Burma worked through company contracts that provided less than 50 per cent of the ITF standard pay. Should the seafarers receive more pay than the company contracts allowed, the seafarers were required by the SECD to return the extra pay to the companies, or the SECD banned them for up to three years.

The Federation of Trade Unions of Burma (FTUB) member who worked on the "Global Mariner" education ship of the ITF had now become an ITF inspector in Houston, Texas, and was handling these cases on behalf of the SIU/ITF and their families. His greatest challenge in assisting the seafarers and their families came not from the companies for which they worked, but from the SECD, or the SPDC, which controlled the SECD.

In Burma, freedom of association and freedom of expression were strictly prohibited. Organizing of any kind, whether among workers or among public citizens, whether openly or behind closed doors, was quickly quashed through the SPDC's extensive network of informers, the regular use of brutal force, and the overt manipulation of the legal system using fabricated charges.

The shop-floor workers in industrial zones of the textile and garment industries, worked eight hours a day, five days a week for the equivalent of 50 cents per day. Only with compulsory overtime and work on the weekends did they earn up to $1 a day. Even if the workers were able to earn that $1 per day, pay was frequently late. If workers tried to organize to ask for their rightful pay collectively, once the dispute was over, the workers who took the initiative to organize were dismissed, through some alternative reason that was found to justify their dismissal.

Workers in agriculture were often ordered to grow government project crops for example, biofuel crops and sugar cane that did not benefit them. In the process, many were evicted from their land with no possibility to oppose this, in violation of the ratified Right of Association (Agriculture) Convention, 1921 (No. 11).

In 1988, when the FTUB had begun forming trade unions and participating in efforts to highlight the social and economic problems in Burma, the workers had been dismissed from their jobs and been attacked by the military regime and either forced to leave the country or face arrest. Trade union members had been persecuted and arrested by the regime, their families pressured and isolated by the SPDC and its thugs. At present, there were 38 workers' rights activists under detention – all with fabricated charges imposed after their arrests.

The SPDC's pressure had made labour organizing in Burma quite impossible. The FTUB had had to work 18 years in order to hold its first congress in March 2009. The delay was due to the fact that the SPDC continued to enforce Orders Nos 2/88 and 6/88, which, respectively, prohibited meetings of five or more persons and required the SPDC's permission to form any type of organization. The arrests of FTUB delegates after the congress was proof of that. These Orders were clear violations of the SPDC's obligations under ratified ILO Conventions.

Burma needed to comprehensively reform both the Constitution and legislation in order for workers' rights to be protected. Not only should workers be guaranteed basic rights, such as freedom of association and expression, but they should also be provided with education on their rights. The junta had now orchestrated voting for a workers' representative. Having workers vote for a representative without knowing why they were voting, and having a representative who did not understand the responsibilities, was not the way to introduce freedom of association or the means to develop independent trade unions. Nor should it be allowed to be the way to avoid implementing the recommendations of the ILO, as the SPDC was doing.

As reported by the Committee of Experts, section 354 of the junta's new Constitution, imposed under duress, would give rise to continued violations of freedom of association in both law and in practice. Section 354 was but one reason why the FTUB had rejected the SPDC's Constitution.

The speaker asked that the ILO, in consultation with the Worker members, issued clear recommendations to the SPDC on steps it should take to meet its ILO treaty obligations, so that its legislation would provide for freedom of association and be brought into compliance with international standards, and these steps should be timebound. Enforcement actions should be prepared by the ILO to ensure no further delays by the junta. He called for the full recognition of the FTUB as the legitimate trade union, working through peaceful and non-violent means inside Burma. The speaker called on the ILO and all of its members to do everything in their power to work with the ILO, particularly on the needed reviews of the junta's Constitution before it would be imposed on the people in 2010.

The Government member of India had listened carefully to the statement made by the Government representative and expressed his satisfaction over the tangible progress made and the further strengthening of cooperation between the Government and the ILO. It was a matter of satisfaction to note that the mutually agreed mechanisms between the Government and the ILO were functioning effectively.

The Government had reaffirmed that the new Constitution guaranteed the rights of citizens, including the right to express convictions and opinions freely, the right to assemble peacefully and the right to form associations and unions. The Government had further affirmed that the new laws to be enacted concerning labour organizations would be in conformity with Convention No. 87, and that hundreds of domestic laws were currently under review so as to ensure their compliance with the provisions of the new Constitution and international human rights standards. Under these circumstances, India once again encouraged continued dialogue and cooperation between Myanmar and the ILO.

The Worker member of Indonesia expressed full support for the recommendation, made by some members, that the FTUB be recognized as a legitimate trade union. Having participated in the first FTUB congress – which took place from 22 to 24 March 2009 and included as participants representatives from 20 ASEAN country trade unions, the General Secretary of ITUC Asia-Pacific, and representatives from the European unions FNV and CISL – he stated that he was impressed by the entire proceedings and outcomes.

He refuted the Government's allegation that the FTUB was not represented anywhere in the country's workforce. The FTUB congress was attended by 150 delegates, the majority of whom worked inside the country, in such sectors as transport, education, textile and garments, public services, agriculture, health, and mining. It was clear from discussions with these delegates that a genuine trade union such as the FTUB was necessary to protect workers' rights and promote decent work in Burma. Despite the restrictions it faced, the FTUB's membership continued to grow, as more workers contacted them in order to register. Furthermore, more workers were listening to FTUB radio, which was broadcast inside the country. As ITUC Asia-Pacific and the ASEAN Trade Union Council (ATUC) had expressed their commitment to accepting FTUB as an affiliate, he hoped that the Government would similarly extend recognition to the union.

He recalled that the FTUB congress had issued several declarations, including calls for the immediate release of Aung San Suu Kyi and all political prisoners, including ethnic and trade union leaders, as well as for the recognition of the ILO's fundamental role in the fight against forced labour and the promotion of freedom of association. Finally, he stressed that there was no evidence to support the claim that the FTUB was a terrorist organization. An organization that struggled against dictatorship and protected workers' rights through democratic, nonviolent means could not be considered a terrorist one.

The Government member of the Russian Federation recognized that it was essential for ILO member States to respect their obligations with regard to implementing international labour Conventions. After having listened attentively to the Government representative, he had noted that the country was in the process of large-scale constitutional reform. The new Constitution sanctioned the right to freedom of association. Furthermore, a new law on trade unions was going to be adopted. It was essential to strengthen cooperation between the ILO and the Government in order to ensure the success of labour reforms. He strongly hoped that such cooperation would bring about successful results.

The Worker member of Sweden, speaking on behalf of the workers of the Nordic countries, stated that countries which did not permit free and democratic trade unions would never attain sustainable growth, or social justice. Burma was such a country; the absence of freedom of association therein had led to widespread poverty, social exclusion, and negative growth overall. Deploring that no progress in the national situation had been witnessed, though the Committee had dealt with this case year after year, she urged the Government to ensure respect for freedom of association and put an end to the period of repression that had lasted for over 50 years. She further expressed support for the ITUC's and the FTUB's calls for the adoption of more effective measures against the Government in order to bring about change.

The branding of the FTUB as an illegal terrorist organization was entirely unacceptable. She maintained that the FTUB was a democratic, representative workers' organization, which only a few months ago had successfully convened its first congress, and commended the latter for this achievement. She stated that next year's national elections, which were to be based on the new Constitution, would not improve the country's situation. Ethnic groups were excluded from the elections, the military was to keep 25 per cent of the allotted seats in Parliament, and people of Burmese nationality who had lived outside Burma for more than five years were not allowed to vote. The election was, as such, not free. She urged the Government to amend the Constitution to allow all people and parties to participate in the process as well as to allow for free and independent trade unions, in line with the comments of the Committee of Experts.

She stated that after more than five decades of dictatorship, the country's population was now overwhelmingly a poor one. The military and its leaders had enriched only themselves, whereas for workers the situation was extremely grave; the cost of food, shamefully, was such that families would often go hungry unless both parents worked every day. She concluded by declaring that allowing democratic unions such as the FTUB to exercise the rights enshrined in Convention No. 87 was the only way to change this deplorable situation, and instead embark on the road to prosperity and social justice for the entire nation.

The Government member of China stated that the challenges that Myanmar faced should be taken into consideration. Progress towards democratization had been noted. The Government was considering the measures that would be needed in its domestic policies in order to conform to the Conventions that it had ratified while new laws had been adopted with regard to labour. Such action reflected the will of the Government to promote human rights and to protect workers. He hoped therefore that the ILO would continue its dialogue with the Government. Technical assistance from the Office was essential for the people of Myanmar.

The Government member of Cambodia expressed his appreciation regarding the progress in Myanmar relating to the adoption of a new Constitution which included a chapter on fundamental rights and duties of citizens and ensured the right to freedom of expression, the right to assemble peacefully and the right to form associations and unions. Many domestic laws and regulations were currently under review to determine compliance of the new Constitution with international human rights standards. This new progress clearly proved the commitment of the Government to comply with the provisions of Convention No. 87. Even though there was a need for a clear change on this issue, the speaker was convinced that given the excellent cooperation between the Government and the ILO, compliance with Convention No. 87 would gradually improve in the country. In this context, Cambodia strongly encouraged cooperation between the Government and the ILO, especially in the context of the process of the revision of laws and regulations at issue.

The Worker member of the United States stated that perhaps no country was more guilty of violating fundamental human rights, as reflected in the UN Charter, the Universal Declaration of Human Rights, and the ILO's Conventions, than Burma. In September 2007, the Burmese people mobilized their largest social and political uprising since 1988, when the military massacred 3,000 people. The crackdown of 2007 left at least 110 persons dead and thousands injured. Given that Burma's persecution of its citizens for attempting to exercise fundamental human rights was well documented, and in turn inspired condemnation from all over the world, year after year, it was sobering to realize that violations of human rights – including those rights enshrined in Convention No. 87 – continued to occur at an unrelenting and unrepentant pace. He recalled that Convention No. 87 guaranteed workers freedom of association rights, free from fear of discrimination, harassment, imprisonment or torture, and that Article 3 of the Convention specifically prohibited the public authorities from interfering with this right or impeding its lawful exercise. Such interference, however, was precisely the kind of conduct the Government continued to display with respect to the exercise of freedom of association.

He noted that the Committee of Experts' report contained such information as the arrest and interrogation of six workers for participating in a 2007 May Day event at the "American Center" in Rangoon. Serious interference with the parties' legal representation had taken place, moreover, and they were handed down prison sentences of 20 years for sedition, while four others were convicted and sentenced to five years in prison for association with the FTUB. Such actions represented a profound assault on human rights. They also served to intimidate all those who wished to exercise their rights under Convention No. 87 and sent a clear message to workers that any attempt to exercise the fundamental human right to freedom of association would incur stiff penalties – including being labelled a terrorist. He called for the immediate release and full restitution of all political prisoners, including all human rights and trade union activists. The Government needed to send a clear and unequivocal message that it would not use imprisonment or forced labour to interfere with the right of freedom of association.

He deplored that the 2008 Constitution enabled the Government to continue to impair the guarantees provided for under Convention No. 87. The provisions on freedom of association in the new Constitution were woefully inadequate, vague, and lacked procedures for their implementation or enforcement. Moreover, the vague rights referenced in the new Constitution were further weakened by gross exceptions, such as the limitation of those rights to the "laws enacted for state security, prevalence of law and order, community peace and tranquillity or public order and morality". Such exceptions rendered the principle of freedom of association virtually meaningless. Moreover, Burma's history of sustained human rights violations cast serious doubt as to whether these "law and order" exceptions would be legitimately and narrowly applied; the exceptions did little to create trust in a regime that had demonstrated time and time again, in rhetoric and in deeds, that it had yet to recognize the rights enshrined in Convention No. 87. Recalling that in last year's conclusions the Committee had expressed serious concerns over the restrictive provisions in the Constitution, and further observing that the Government had failed to act in respect of this matter, he emphasized the need to once again call for amendment of the Constitution in the Committee's conclusions. He concluded by urging the Office to monitor and report all violations of Convention No. 87 in Burma.

The Government member of Cuba stated that, in view of the statement of the Government representative, it was important to stress, in the current case, the principles of Article 8 of Convention No. 87: trade unions should respect the law and national legislation should not impinge upon the guarantees provided in the Convention. She noted the adoption of a new Constitution, which sanctioned trade union activity. The willingness expressed by the Government to make efforts to establish a peaceful nation should therefore be encouraged, as should cooperation and dialogue between the Government and the ILO, with the aim of putting into practice Convention No. 87 on freedom of association. To conclude, she expressed support for the request made by the Committee of Experts that the Government should report on its progress in implementing the Convention with regard to the provisions of the new Constitution.

The Worker member of Japan, in supporting the previous statements made by the Worker members, noted that this was one of the most serious cases under examination, which had been discussed over and over again and had been subject to a special paragraph repeatedly. She pointed out that still no concrete measures had been taken to enact legislation in order to guarantee to all workers the right to establish and join organizations of their own choosing. On the contrary, the Government indicated it would maintain for some more time Orders Nos 2/88 and 6/88, which the Committee of Experts and the Conference Committee had repeatedly urged the Government to repeal immediately. These two Orders were most seriously impairing the right to organize, and had to be immediately repealed by all means.

The Government indicated that the new Constitution provided for freedom of association. However, she pro-

foundly regretted that a broad exclusion clause had been added, as pointed out by the Committee of Experts, which stipulated that the exercise of freedom of association was subject to the laws enacted for state security, prevalence of law and order, community peace and tranquillity of public order and morality. It was peculiar to have such a long list of exclusions and it was therefore likely that even under the new Constitution, violations of freedom of association in law and practice would continue.

The Committee on Freedom of Association had ruled that the FTUB was a legitimate trade union aimed at defending and promoting the rights and interests of Burmese workers. However, the FTUB had been forced to operate in a clandestine manner and was the object of very serious suppression from the Government, who impeded the FTUB from existing freely and carrying out its activities as a full-fledged union.

The Government also had to understand that genuine freedom of association could not be realized without civil liberties and respect for civil society. In this regard, a first step had to be the immediate release of Ms Aung San Suu Kyi and the more than 2,100 political prisoners including labour activists. She urged the Committee to come up with the strongest possible message to the Burmese authorities to immediately recognize, guarantee and promote freedom of association and the right to organize.

The Government representative of Myanmar stated that he had listened carefully to the interventions made and thanked those speakers who had spoken in an objective and constructive way. His Excellency U Wunna Maung Lwin had clearly spelled out the present political situation of Myanmar and what Myanmar was doing and would do with regard to the application of Convention No. 87. There were divergent views on what Myanmar was doing to meet its obligations under Convention No. 87. There had been some speakers who were living in glass houses and throwing stones at others. There had also been some who could provide nothing but words for the benefit of workers in Myanmar. Some of them were acting as champions for the cause of workers in Myanmar, and had to disguise themselves for their own survival.

As the economic crisis was affecting all countries these days, the challenge of providing global jobs was an immediate issue to be taken up. In discussing global solutions, he urged those who had a genuine desire to improve the lives of many workers in Myanmar to do so most effectively by working towards removing the economic sanctions imposed on Myanmar. This would be one of the best ways to assist those who had lost their jobs because of sanctions to return to employment, because sanctions hurt workers' jobs.

The new Constitution had been adopted by over 90 per cent of voters and the Government had clearly declared that free and fair elections would be held in 2010 in accordance with the new Constitution. Citizens' rights were guaranteed in the new Constitution under Chapter VIII, entitled Citizenship, Fundamental Rights and Duties of Citizens. Citizens' rights included the right to express convictions and opinions freely, the right to assemble peacefully and the right to form associations and unions. There could be no doubt that once the new Constitution came fully into effect, workers' associations would soon come into existence.

The legal action against Ms Aung San Suu Kyi was an internal affair of Myanmar taking action through its legal system in accordance with domestic law. He referred in this context to the universal legal principle that no one is above the law. Only when this legal principle was upheld, put into practice and encouraged would there be rule of law in a country. His only comment on what had been said concerning the trial of Ms Aung San Suu Kyi was that all had been done and would be done in accordance with the law, applying well-accepted principles of justice.

It was regrettable that Mr Maung Maung, who had a criminal and terrorist record, had been permitted to make a presentation before the Committee. His activities, past and present, had done nothing to improve the situation of the Myanmar workers and he was trying to damage the peace and stability of the country. Through an examination of his records and credentials it could be found that he was not a genuine labour activist. It was hard to believe that a fugitive or a group of fugitives with refuge abroad could represent workers residing in a country which was thousands of miles away. They had not set foot on Myanmar territory in decades and it could therefore reasonably be asked how they could possibly share and advance the lives of workers in Myanmar. Mr Maung Maung was a fugitive from the law and the so-called FTUB had never existed in any form at any time within Myanmar. The Government had repeatedly pointed out that there was solid evidence that Mr Maung Maung and the FTUB had masterminded a number of bombings in Myanmar. In short, Myanmar would never recognize the FTUB, a terrorist group in exile, run by an outlaw. His Government would thus continue to object to his attendance at ILO conferences.

Some speakers had been referring to the name of his country incorrectly. The official communications from the United Nations and its agencies addressed the country correctly as Myanmar, as well as ASEAN, BIMSTEC, FEALAC. Even the letter addressed to the Director-General of the ILO by ITUC signed by Director Raquel Gonzalez on 4 June 2009 observed the correct usage. There were just a handful of groups and nations who disregarded the real situation and intentionally and disrespectfully referred to his country by a different name. Their action was in contempt of the Chair and should be considered a serious matter.

The Employer members wished to note at the outset the substantial difference in tone in the discussion, especially in the final statement by the Government representative as compared to the constructive atmosphere which had prevailed during the special sitting on the observance by Myanmar of Convention No. 29. All those who had participated in the Committee came with goodwill and had differing points of view because of their differences in background, origins, etc. Past experience in the Committee had shown that when faced with differing points of view, a disparaging approach by governments was not successful in addressing the problems. The issues raised in this case went to the root of democracy and civil liberties of people. The case had a clear and substantial history which, even with the prospect of the adoption of a new Constitution, naturally made one sceptical as to whether this Constitution could really make a difference. The question was what could make this Constitution real in the face of the continuous failure to implement the Convention, which should be reflected once more in a special paragraph in the Committee's report. If the Government wanted to show some goodwill, it would agree that the Liaison Officer in Myanmar facilitated education on freedom of association. The Employer members asked the Government whether it would agree to such facilitation, as it would be an important first step. They concluded by noting that this was a serious case and deserved serious treatment.

The Worker members stated that they should once again denounce the murders, torture, arrests and imprisonment of trade union members for involvement in union activity that was considered completely normal in other countries; those violations, as well as the terms used by the Government representative to describe an honest trade union member, warranted the creation of a commission of inquiry. The ongoing violations, in law and in practice, of freedom of association would continue for a long time if respect for fundamental civil liberties was not restored. It was for that reason that the Worker members had made

the following requests: that the Constitution be revised, particularly the articles on freedom of association and on forced labour; that the rulings and laws on illegal association be repealed; that the FTUB, whose representativeness had been attested to by a number of speakers, be both recognized and legalized; that Aung San Suu Kyi and all other trade union leaders and political prisoners who had exercised their right to freedom of speech and of association be released immediately; and that impunity for acts of violence against trade union members or for imposing forced labour be put to an end. To that end, the Worker members requested the Office to designate a Liaison Officer in the country who would be responsible for handling complaints filed in relation to exercising those rights cited in Convention No. 87. They also requested that the conclusions of the Committee be included in a special paragraph on the continued failure to implement the Convention.

Conclusions

The Committee took note of the written and oral information provided by the Government representative and the detailed discussion that followed. The Committee also recalled that it had discussed this serious case on numerous occasions over the last two decades and that its conclusions had been listed in a special paragraph for continuous failure to implement the Convention since 1996.

The Committee deplored the gravity of the information provided to the Committee of Experts by the International Trade Union Confederation (ITUC) with respect not only to the long-standing absence of a legislative framework for the establishment of free and independent trade union organizations, but also of the grave allegations of arrest, detention and denial of workers basic civil liberties, some of which had been examined by the Committee on Freedom of Association.

The Committee took note of the statement made by the Government representative in which he stressed that Myanmar was in the process of transforming to a democratic society and that freedom of association rights, as well as other basic civil liberties, had been provided for in the new Constitution. Once the Constitution came into force, labour organizations would emerge in line with it and would be able to carry out activities for the interests of workers. With regard to the question of the recognition of the Federation of Trade Unions of Burma (FTUB), the Government reiterated its previous statement that the Ministry of Home Affairs had declared the FTUB to be a terrorist organization in 2006; it was therefore not possible to recognize it as a legitimate organization. As regards the allegations of murder, arrest, detention, torture and sentencing of trade unionists, the Government explained that action was not taken because of the exercise of trade union activities, but rather due to breaches of existing laws and attempts to bring hatred and contempt upon the Government. The Government also provided information on the role played by the Township Workers Supervisory Committee in dispute settlement.

Recalling that fundamental divergences had existed between the national legislation and practice and the Convention ever since it had been ratified more than 50 years ago, the Committee once again urged the Government in the strongest terms to adopt immediately the necessary measures and mechanisms for the full assurance to all workers and employers of the rights provided for under the Convention. It once again urged the Government to repeal Orders Nos 2/88 and 6/88, as well as the Unlawful Association Act, so that they could not be applied in a manner that would infringe upon the rights of workers' and employers' organizations.

While taking note of the Government's statement that its Constitution had been overwhelmingly approved through a referendum by over 90 per cent of the population and that it included respect for freedom of association and basic civil liberties, the Committee wished to highlight the intrinsic link between freedom of association and democracy and observed with regret that the Government had embarked upon a road map for the latter without ensuring the basic requisites for the former. The Committee was obliged once again to stress that respect for civil liberties was essential for the exercise of freedom of association and called upon the Government to take concrete steps urgently, with the full and genuine participation of all sectors of society regardless of their political views, to ensure that the Constitution, the legislation and the practice were fully brought into line with the Convention. It urged the Government to take all measures to ensure that workers and employers could exercise their freedom of association rights in a climate of complete freedom and security, free from violence and threats.

The Committee continued to observe with extreme concern that many people remained in prison for exercising their rights to freedom of expression and association, despite its calls for their immediate release. The Committee therefore once again called upon the Government to ensure the immediate release of: Thurein Aung, Wai Lin, Nyi Nyi Zaw, Kyaw Kyaw, Kyaw Win and Myo Min, as well as all other persons detained for exercising their basic civil liberties and freedom of association rights. The Committee once again recalled the repeated recommendations made by the Committee of Experts and the Committee on Freedom of Association for the recognition of trade union organizations, including the FTUB, and urged the Government to put an end to the persecution of workers or other persons for having contact with workers' organizations, including those operating in exile.

The Committee recalled its previous conclusion that the persistence of forced labour could not be disassociated from the prevailing situation of a complete absence of freedom of association and the systematic persecution of those who tried to organize and called upon the Government to accept an extension of the ILO presence to cover the matters relating to Convention No. 87.

The Committee urged the Government to transmit all relevant draft laws and a detailed report on the concrete measures taken to ensure significant improvements in the application of the Convention, including as regards the serious matters raised by the ITUC, to the Committee of Experts at its up-coming session. The Committee expressed the firm hope that it would be in a position to observe meaningful progress in this regard at its next session.

The Committee decided to include its conclusions in a special paragraph of its report. It also decided to mention this case as a case of continued failure to implement the Convention.

PAKISTAN (ratification: 1951)

A Government representative stated that, since the new Government took office, it had taken important measures to fulfil its obligations under Convention No. 87. The Industrial Relations Ordinance (IRO) of 2002 was repealed by the Prime Minister during his first national address in Parliament, in March 2008, highlighting the Government's determination to implement the Convention. The Industrial Relations Act (IRA) 2008 was promulgated in November 2008 as an interim legislative arrangement to provide relief to the stakeholders in consonance with international labour standards. This law established a comprehensive system for the faithful enforcement of the provisions of Convention No. 87, and aimed at rationalizing and consolidating the laws relating to the formation of trade unions. It also aimed at improving relations between workers and employers. The IRA 2008 repealed the IRO of 2002 and reflected many of the recommendations by the Committee of Experts and the Committee on Freedom of Association. Highlights of the IRA 2008 included the following: (1) workers and employers, without distinction whatsoever, had the right to establish and join organizations of their own choosing without previous authorisation; (2) every trade union and employers' association

could frame its own constitution and rules, elect its representatives, organize its administration and activities, and formulate its programmes free from interference by the authorities; (3) workers' and employers' organizations had the right to establish and join federations and confederations, which in turn could affiliate with international organizations; (4) managerial and supervisory staff, and employers, had been granted the right of association; (5) union activity was permitted in the railway lines of the Ministry of Defence, the Pakistan Mint, the Employees Old Age Benefits Institution, and the Workers Welfare Fund; (6) industry-wide unions were permitted; (7) the minimum union membership requirement had been lowered to 20 per cent of the workers in an establishment; and (8) trade unions were free to join or not join federations or confederations.

In line with the Prime Minister's directives, a tripartite labour conference was held with the assistance of the ILO Pakistan office on 16 February 2009. Stakeholders from all over the country were invited to the conference, which was presided by the Prime Minister – clearly demonstrating the Government's commitment to resolving all outstanding labour issues. The conference defined a course of future action, with a corresponding time line: all stakeholders would submit their comments on the final draft of the IRA 2008 by September 2009, which would then be analyzed by all stakeholders in a joint meeting. The draft was to then be vetted by the Ministry of Law and Justice and then submitted to Federal Cabinet for approval. This process was expected to be completed by April 2010. As for the measures to review and ultimately reform section 27–B of the Banking Companies Ordinance of 1962, the Prime Minister, in his first policy speech to Parliament and during the inaugural session of the tripartite labour conference, had directed the Ministry of Labour and the Ministry of Finance to consider amending this provision. A bill to repeal section 27–B of the Banking Companies Ordinance had subsequently been presented to the Senate.

He stated that the Export Processing Zones (Employment and Service Conditions) Rules, 2009, had been finalized by the relevant authority in consultation with the stakeholders. These rules covered the areas of employment conditions, working hours and holidays, wages, welfare, occupational safety and health, the right of association and collective bargaining. The Ministry of Industries planned to place them before Cabinet for approval very soon. He maintained that all issues falling under Convention No. 87 would be addressed in consultation with the tripartite constituents.

As regards the trade union activities in Karachi Electric Supply Corporation (KESC), he stated that unions had been active in the KESC. A dispute concerning voting rights for contract workers was brought before the Sindh High Court, which decided in favour of extending those rights to contract workers. He added that Parliament had repealed the Chief Executive Order No. 6, and restored trade union activities at the Pakistan International Airlines Corporation (PIAC). Moreover, Administrative Orders Nos 14, 17, 18 and 25 had restored the previously suspended trade union activities and the existing collective agreements at the PIAC. A secret ballot for determination of the collective bargaining agent for workmen employed in establishments of the PIAC was held on 4 December 2008 throughout Pakistan; the People's Unity of PIAC Employees obtained the most votes and was declared the collective bargaining agent. In conclusion, he reiterated his Government's commitment to fulfilling its obligations under ratified Conventions, adding that the Government would continue to cooperate with all stakeholders in a positive manner to ensure implementation of the Convention.

The Worker members recalled that, in recent years, the Committee of Experts had repeatedly observed that the law of 2002 on industrial relations did not conform to ILO Conventions Nos 87 and 98. The law had also attracted continued criticism from Pakistan's trade union movement as well as the ITUC. The latter had provided a detailed analysis of the issue in its previous annual report on violations of the right to organize, which highlighted the exclusion of the right to organize and collective bargaining across a range of sectors, both public and private; the Government's ability to restrict the right to organize of any group of workers by simply declaring them as "civil servants"; the heavy restrictions on registering trade unions; interference in trade union activity; and restrictions on the right to strike.

Throughout the years, the Government had promised to amend its legislation in order to bring it into conformity with international labour standards, but without any practical results. In 2008, the Government had unilaterally replaced the law of 2002 on industrial relations with a new interim law, which would lapse on 30 April 2010. In the meantime, a tripartite conference had been held in February 2009 to draft a new legislative text in consultation with all stakeholders. The Committee of Experts would await the adoption of that new law, expressing the hope that it would conform to Convention No. 87 and would guarantee the right to form trade union organizations. Further, the Committee of Experts "wished to believe" that any existing restrictions on the right to strike would not appear in the new legislation.

The Worker members expressed serious doubts on the matter with regard to the implementation process and the content of the new interim law of 19 November 2008. Four particular areas fuelled those doubts: first, the law of 2008 had been adopted without any prior debate or consideration on the amendments proposed by the trade unions. Second, the new law prohibited the forming of independent trade unions and deprived more than 70 per cent of the total labour force in Pakistan of the right to collective bargaining, in flagrant violation of ILO Conventions Nos 87 and 98, which Pakistan had ratified. It was regrettable that a clear and detailed analysis of the new interim law did not appear in the report of the Committee of Experts. Third, the Government had refused to participate in consultations with trade unions on the draft legislation before it was brought to the National Assembly, in violation of Convention No. 144 which Pakistan had also ratified. Finally, the law of 2002 and the interim law of 2008 were not the only sources of such issues. The Committee of Experts had rightly made reference to the law of 1952 on maintaining essential services, which also applied to non-essential services according to the ruling of the Committee. The Committee of Experts also noted section 27–B of the Banking Companies Ordinance of 1962, which restricted the possibility of becoming an officer of a bank union only to employees of the bank in question, with reference to an amendment adopted in 1997. Amendments to the legislation on industrial relations would not therefore resolve all the issues.

The Worker members also expressed a hope – after all trade union action was built on hope, on the belief that a different world, with greater respect for union action and workers' rights, was a possibility. However, they hoped that the Committee would adopt firm conclusions and directly requested the authorities in Pakistan to end the violation of workers' rights. A more active approach was necessary. In its report, the Committee of Experts had requested the Government to provide copies of new legislative texts when they were adopted. The Worker members proposed proactive intervention, involving the ILO in the drafting of that law. They invited the Government to make use of technical assistance from the ILO to guarantee greater conformity of the new legislation with the ILO Conventions that Pakistan had ratified.

The Employer members thanked the Government for its presence and the information provided. This was a difficult case, because no copy of the draft legislation had

been provided for examination by the Committee of Experts. Without an appraisal of the interim law by the Committee of Experts, the Committee could not comment on the substance of this law. They encouraged the Government to pursue a more proactive approach as the case in question had persisted for a long time and had been discussed since the 1990s with different Governments. They were uncertain as to whether the interim law was as good as the Government claimed it was, but they expressed the hope that this was the case. Although the conclusions of this case would not be able to address the interim law substantively, they should express the ongoing concern of the Committee regarding the absence of a definitive legislation to meet the obligations of Convention No. 87.

The Worker member of Pakistan recalled that the Committee of Experts had been requesting the Government to introduce amendments to its labour legislation for a number of years in order to bring its laws into conformity with the Convention. Of those laws, the IRO 2002, in particular, imposed restrictions upon the exercise of the right of freedom of association. He stated that his organization, the Pakistan Workers' Federation (PWF), held talks with the major political parties, including the present ruling party, the Pakistan People's Party, to persuade them to include issues touching upon the world of work in their election platforms – including amendments to the labour legislation.

He maintained that in spite of the Government's indications relating to freedom of association in such bodies as the PIAC and the Pakistan Mint, many workers in these institutions were still denied the rights afforded under Convention No. 87. Furthermore, the Committee of Experts had pointed out that several categories of workers continued to be denied their right to organize, including agricultural workers, workers in charitable organizations, workers in the Ministry of Defence railway lines, teachers, oil refinery workers, and bank workers by virtue of section 27–B of the Banking Companies Ordinance.

He recalled that the Committee of Experts had requested the amendment of several provisions of the IRO 2002, including: sections 31(2) and 37(1), which undermined the right to strike by allowing one party to a dispute to seek compulsory arbitration; section 32, under which the federal or provincial Government could prohibit a strike related to an industrial dispute in respect of any public utility service; and section 39(7) which permitted the dismissal of striking workers. Although the Government had convened a tripartite labour conference in the early part of the year to address the question of legislative reform, the draft law promulgated at that meeting retained many of the restrictions previously commented upon by the Committee of Experts. Moreover, the draft legislation of 2008 contained other restrictions on freedom of association. For instance, the draft law allowed employers to enter into individual contracts with workers, bypassing trade unions and thus diminishing their ability to bargain collectively. It also provided for the dismissal of a trade union officer if he was found to even have been accused of an offence. Finally, the draft legislation contained several provisions relating to national public utilities that violated Convention No. 87.

Recalling that the nation had witnessed tremendous suffering in recent years, including the dislocation of one million people as a consequence of anti-terrorism initiatives in the Swat valley just last month, he urged the Government to pursue meaningful social dialogue in order to address the many and serious disparities between the legislation and the Convention's requirements. He concluded by requesting that ILO technical assistance be sought in respect of this matter.

The Government representative of Pakistan thanked the speakers for their comments. He maintained that reaching consensus on all labour issues was a difficult task that required progressive measures before attaining constructive dialogue. The Government was committed to fulfilling its obligations under the Convention, and all constituents would be involved in obtaining a consensus with harmony. He acknowledged the difficulty of the challenges ahead, and emphasized in this respect the need for optimism and hope in order to continue to progress and overcome the impediments that lay ahead.

The Worker members had taken note of the additional information provided by the Government representative. Due to the promises which had not been kept in the course of the last years, they remained nevertheless sceptical of the developments that had been started in 2008 and the conclusions from the analysis of the provisional act on labour relations. They requested the Government to adjust without delay its laws in order to ensure full conformity with ILO standards, in particular with Convention No. 87. In this respect, they referred to the 2002 and 2008 Acts on labour relations, the 1952 Essential Service Maintenance Act and the Banking Companies Ordinance. They invited the Government to make best use of the technical assistance offered by the Office to improve the conformity of the new laws with the comments of the Committee of Experts. Finally, they requested the social partners' utmost commitment and openness towards the preparation of the new legislative texts.

The Employer members reiterated the need to bring law and practice into full compliance with Convention No. 87 and encouraged tripartite consultations as a means for doing so. In response to a query from the Worker member of Pakistan, they indicated that they had no objections to the proposal that the Committee of Experts already evaluated the interim law at its next session instead of 2010, given that this would help the Government to formulate a definitive law in conformity with Convention No. 87.

Conclusions

The Committee took note of the information provided by the Government representative and the discussion that followed. It recalled that this case had been discussed by the Committee on numerous occasions.

The Committee recalled that this case concerned important restrictions to the right to organize of certain categories of workers and to the right of trade unions to formulate their programmes, elect their officers and carry out their activities without interference by the public authorities.

The Committee noted the Government's statement according to which the Industrial Relations Act (IRA) of 2008 had been promulgated as an interim legislative arrangement to provide relief to the stakeholders in conformity with international labour standards and was due to lapse on 30 April 2010. A tripartite conference had been held, with ILO assistance, to draft a new law in consultation with the social partners. The stakeholders had been asked to provide their comments on the IRA by September 2009 so that it could be reviewed again and sent to Cabinet for approval in time to complete the process by April 2010. The Government representative added that a Bill for the repeal of section 27–B of the Banking Companies Ordinance had been moved in the Senate. In addition, the Export Processing Zones (EPZ) authority had finalized the EPZ (Employment and Service Conditions) Rules, 2009, in consultation with the stakeholders.

Recalling that the Committee of Experts had been commenting upon discrepancies between the law and practice and the Convention for many years now, the Committee requested the Government to accept ILO technical assistance in the drafting of the new legislation so as to ensure that all the outstanding matters were brought into conformity with the Convention. It expressed the firm hope that the necessary legislation would be adopted in the very near future with the full consultation of the social partners concerned and that it would guarantee the right to all workers, without distinction whatsoever, to form and join organiza-

tions to defend their social and occupational interests and to organize their activities and elect their officers freely and without interference. It urged the Government to supply detailed information on the concrete progress made in this regard to the Committee of Experts for its examination at its meeting this year.

PANAMA (ratification: 1958)

A Government representative said that his Government maintained its firm commitment to the Conventions that Panama had ratified and the responsibility deriving therefrom. With reference to the observations of the supervisory bodies to the Government to take the necessary measures, in consultation with the social partners in order to bring the national legislation into conformity with Conventions Nos 87 and 98 concerning the principles of freedom of association, the current administration had indicated that while it was in office it had been encouraging the social partners to reach an agreement, through tripartite dialogue, on how to adapt the national legislation to Conventions Nos 87 and 98. The Government, in consultation with the social partners, had submitted to the National Assembly two draft Bills, which responded to the recommendations of the ILO technical assistance mission that visited Panama from 6 to 9 February 2006. The Government had also amended sections 398, 400, 401, 403 and 431 of the Labour Code, bringing it into line with Conventions Nos 87 and 98 with respect to freedom of association and the right to organize. In this regard, it was important to emphasize that the current Government had clearly indicated the importance of adapting the national legislation to the ILO's fundamental Conventions with a view to complying with workers' rights for the creation of decent work. Considering that the present administration had reached the end of its mandate, it was in the Government's interest to continue the process of social dialogue and tripartite consultations with a view to consolidating democracy in Panama.

The Employer members indicated that this was the seventh time that the case had been examined by the Committee. It was a case of great importance for the Employer members. The observations of the Committee of Experts concerned several elements related to the right of employers and workers to establish and join organizations, and the right of organizations to freely organize their activities and formulate their programmes. They emphasized in this respect: (1) the importance of the right for trade union unity not to be imposed by legislation, which would be contrary to Convention No. 87; (2) the requirement in the Labour Code of too high a number of members to establish a professional employers' organization or a workers' organization in an enterprise; (3) the denial to public servants of the right to establish trade unions; (4) the requirement of Panamanian nationality to be a member of the executive board of a trade union; and (5) the deduction of trade union dues from the salaries of public servants who were not members of trade unions and who benefited from the improvements obtained in conditions of work under a collective agreement.

The Committee of Experts also set out a series of considerations relating to the right to strike. The Employer members reiterated their view that an interpretation could not be derived from the Convention concerning the limits and scope of the right to strike, and they maintained this position. The Employer members considered that the fundamental pillar upholding freedom of association was the freedom of the enterprise to organize its resources. The absence of direct or indirect coercion was based on this freedom.

Section 493 of the Labour Code, which had been amended in 1972, required the immediate closure of all the enterprises, establishments or businesses affected by a strike. This was a unique provision without parallel anywhere else in the world. This meant closure enforced by the police or by order of the public authorities. As such, once a collective action had been initiated, the labour administration authorities immediately proceeded to seal off the doors of employers' establishments or businesses, including those of the administrative and managerial offices. The labour administration authorities would instruct the police to ensure the closure and to duly protect persons and property. In other words, according to Panamanian law, their action prevented employers from entering their own businesses. The Committee of Experts, the Conference Committee and the Committee on Freedom of Association had reiterated that this regulation constituted a serious and inadmissible infringement, which violated the provisions of Convention No. 87. A regulation that forced enterprises to close in the event of a dispute: (1) completely undermined its ability to organize its resources; (2) violated the right of property and the right of free access to property; (3) restricted the freedom of movement of the employer; (4) interfered with the proper management of the employer's business, which also prejudiced the interests of the workers; (5) interfered in an inadmissible and excessive manner with the capacity to bargain freely, thereby obstructing or distorting any negotiation, particularly if the enterprise was also required to pay wages during this period; (6) could irreversibly threaten the sustainability of the enterprise itself; and (7) infringed the freedom of workers to support this type of action. The essence of the right to organize and freedom of association lay in their voluntary nature.

This case had been examined by the Conference Committee on no less than seven occasions, the last being in 2005, when the Employer members had indicated that nothing had changed since the Committee had examined the case in 2003. The Employer members had once indicated that the comments they had made in 2003 could literally be repeated, as the questions then raised continued to be grounds for great concern. The same could be said this year. The Committee of Experts had also recognized this and had referred to the serious discrepancies that continued to exist for so many years, qualifying them as "serious." The Committee on Freedom of Association had also considered that this provision violated the right of workers' to work and disregarded the basic needs of enterprises, including the maintenance of installations, the prevention of accidents and the right of employers and managerial staff to enter the enterprise premises and exercise their activities.

The Committee's final conclusions of 2005 had deplored the lack of progress for many years in this case and had urged the Government to take the necessary measures with the technical assistance of the ILO. A technical assistance mission had visited Panama in 2006, in view of the willingness of the Government to attempt to resolve the matter. The Employer members emphasized that the Government could no longer blame the lack of technical assistance, the lack of a sufficient majority in Parliament or the lack of consensus among the social partners. Compliance with the provisions of a fundamental Convention was the responsibility of the State and the involvement of employers' and workers' representatives did not constitute a requirement for consensus between them on all points of divergence with the Convention. The Employer members wished to know the extent to which the Government was willing to show its determination to resolve this case through tangible future action.

The Worker members indicated that a recent analysis by the ITUC on the situation of trade union rights in Panama showed that the past year had been marked by an intensification of anti-union persecutions of trade unionists of the Construction and Allied Workers' Union (SUNTRAC), the repression of various events and the issue of arrest warrants against trade unionists. Construction companies had also resorted to new strategies to undermine collective agreements and the report of the

Committee of Experts also referred to the situation in SUNTRAC, and referred to very serious acts of violence against the leaders of the organization, and one case of arbitrary arrest, thereby confirming the analysis of the ITUC.

At the legislative level, the law recognized the right of workers to establish and join trade unions, with certain restrictions. The setting up of only one trade union was allowed for each establishment; trade unions could only establish one local branch per province and a minimum of 40 members were required to establish a first level trade union. The Committee of Experts had recalled that it was not for the State to impose trade union unity by intervening through legislative measures, as this was contrary to Articles 2 and 11 of the Convention. The same applied to the setting of a minimum number of workers, which was certainly not justified at the enterprise level. The Committee of Experts had also raised certain questions relating to the right of public servants to establish trade unions.

The right of organizations to elect their representatives in full freedom was also subject to certain restrictions. All the members of the executive body of a trade union had in practice to be nationals which represented an obstacle to the freedom to elect trade union representatives, while non-nationals were better able to defend their own interests, for example, when they were migrant workers. Practices contrary to the spirit of the Convention, set out in Act No. 24 of 2007, also existed with regard to trade union dues and affected collective bargaining. For a strike to be legal, it had to be approved in a ballot by an absolute majority of workers in the enterprise concerned. Strikes aimed at seeking improvements in working conditions, in relation to a collective agreement, or to protest against repeated violations of rights, were not authorized, nor were strikes to protest against government policy, seek an increase in the minimum wage or claim trade union recognition. Federations, confederations and national trade union centres had no right to call a strike. A Legislative Decree adopted in 1996 had undermined the right to strike by imposing a mandatory process of arbitration and conciliation and by listing several cases in which strikes were prohibited, the list of which could be extended by the Minister of Labour. The Government could also bring an end to a strike in the public sector by imposing mandatory arbitration. The law also required public servants to guarantee a minimum service and gave the Government the right for that purpose to requisition at least 50 per cent of public servants in essential services, including transport services, which went beyond the ILO definition of essential services.

The exercise of the right to strike therefore raised specific problems, and they shared the concern expressed by the Committee of Experts, when it noted with regret the non-conformity of national law and practice with the Convention which had persisted for many years. In consultation with the social partners, the Government should therefore take all the necessary measures.

The Employer member of Panama said that he would not comment on the cases referred to by the Worker members, since they did not appear in the observations of the Committee of Experts and therefore were not to be taken into account. Among the issues referred to by the Committee of Experts, he considered that the most serious was that of the closure of an enterprise in the event of a strike and he emphasized that there was no recourse available against closure in such a case. He explained that in practice the police would close the enterprise, seal its entrance and prohibit both workers and employers from entering. This had extremely serious consequences for the enterprise, and also for the workers, particularly those non-striking workers who were thus obliged to participate in the strike against their will. Moreover, it allowed for the closure in the event of a dispute based on a mere allegation by workers that the law had been violated and in the absence of proof of the allegation. Allegations were not even verified during conciliation. This was a breach of due process and constituted a serious case of irresponsibility.

He also addressed the issue of the obligation to pay wages lost during the closure of the enterprise. The Committee of Experts had already indicated that the payment of lost wages for strikes should be negotiated between employers and workers. He indicated that the common feature of these and other cases referred to by the Employer members was that the Government alleged that it could not change the situation due to the absence of consensus and a majority in the legislature. The Committee of Experts had been extremely patient, but there had to be a limit to such patience, as otherwise it would no longer be possible to trust the supervisory bodies.

The Government member of Uruguay speaking on behalf of the Group of Latin American and Caribbean States (GRULAC), emphasized that Panama had ratified the Maritime Labour Convention on 6 February 2009 and referred extensively to the positive effects of the ratification of the Convention. He also mentioned the ratification of Convention No. 167 in 2008. He indicated that this demonstrated the commitment of Panama to the ILO. He observed that seven GRULAC member States had been invited to appear before the Conference Committee, despite their cooperation with the supervisory mechanisms and were making efforts to give full effect to international labour standards. Finally, he called upon the employers and workers of Panama to continue the dialogue with the Government and reach their objectives through national and international labour standards, taking into account the commitment of Panama to social dialogue.

The Government representative of Panama indicated that his delegation had noted all the comments made by the Employer and Worker members concerning the application of Convention No. 87 and that, together with the conclusions adopted, they would be communicated to the transitional Government, which would take office on 1 July, so that it could take into consideration and discuss with the social partners the necessary reforms to the national labour legislation to bring it into conformity with the Convention. He indicated that the ILO technical mission that had visited Panama in 2006 had held all the necessary consultations with the social partners in relation to the observations of the Committee of Experts. These were described in the mission report submitted to the Committee of Experts reflecting the position of the Government and of the social partners. In 2007 and 2008, the Government had made huge efforts to address some of these observations. As each of the social partners in Panama defended its own position as to whether or not to amend the Labour Code, the Government could not, nor was it healthy for social dialogue, tripartism or democracy, to impose these reforms on one of the social partners when they might involve constitutional or legislative reforms.

Over the past few months, nevertheless, the Government, in consultation with the various partners, had submitted to the National Assembly two preliminary draft bills in the context of the recommendations made by the mission that had visited Panama. One concerned the reduction in the number of members required to establish a trade union from 40 to 20, and the other the repeal of the Act that restricted the right to organize in export processing zones for a period of two years.

The Government had also enacted four Executive Decrees amending the sections of the Labour Code that were related to the observations that the Committee had made, namely: Executive Decree No. 24 containing measures for compliance with the labour rights of workers and the obligations of employers relating to fixed-term contracts; Executive Decree No. 25 issued under sections 486 and 487 of Cabinet Decree No. 252 of 1971 (Labour Code amended by Act No. 44 of 1995); Executive Decree

No. 26 establishing the factors to be taken into account with regard to the percentage of workers working in shifts in public service during strikes (minimum service) in accordance with the provisions of section 487 of the Labour Code; and Executive Decree No. 27 adopting measures to protect the independence and autonomy of workers' trade union organizations. These Decrees had already been enacted and had been published in the *Official Gazette* on 5 June 2009. In conclusion, he reaffirmed that the Government had made efforts to strengthen social dialogue.

The Worker members thanked the Government representative for the information provided and indicated that the Government appeared to be willing to bring the national law and practice into conformity with the Convention. It was still possible to give the Government another opportunity and it should accept the technical assistance of the ILO with a view to making an accurate assessment of the scope and content of the legislative amendments needed. The Government should also submit a report to the Committee of Experts for examination at its next session.

The Employer members believed that the fact that the Government had organized consultations did not excuse it from fully complying with Convention No. 87. Consultations with the social partners should not be used as a pretext to neglect responsibilities, using consensus as an excuse. They said that the Government had referred to bills that had nothing to do with the cause for concern and they were not certain that the employers had been consulted. They emphasized that they hoped for rapid progress and would not give up on the progressive use of the mechanisms available in the ILO supervisory system.

Conclusions

The Committee took note of the Government representative's statements and the discussion that followed.

The Committee noted that the Committee of Experts had for many years commented on the serious legal restrictions on the right of workers to freely establish organizations of their own choosing, to freely elect their representatives and the right to organize their administration and activities. The Committee of Experts' comments also repeatedly objected to the legislative provision that ordered the closing of the enterprise prohibiting management from accessing the workplace.

The Committee noted the Government representative's statements according to which a new Government would take office in July 2009 and it would receive the Committee's comments and conclusions from the current Government. The Government representative stated that the Government had addressed part of the Committee of Expert's comments on the application of the Convention and already had adopted various executive decrees to regulate various provisions of the Labour Code, for example, in the case of minimum services during a strike. It also submitted to the National Assembly two draft bills to reduce the minimum number of workers required to form a union and to guarantee fully the right to unionization in export processing zones. Finally, the Government representative stated that the Government could not impose legislative reforms where there was disagreement with one of the social partners, as this would contravene the principle of tripartism.

The Committee noted with concern the allegations of murders and other serious acts of violence against trade unionists, as well as employment-related anti-union acts. The Committee urged the Government to respond to the comments on the application of the Convention concerning serious acts of violence submitted to the Committee of Experts by two worker organizations.

The Committee regretted that, despite its having discussed the case on several occasions, it was not in a position to note significant progress with respect to the requested legislative amendments, the restrictions of which affected not only workers and their organizations, but also employers and their organizations. In this regard, the Committee observed, with concern, the negative effects created by provisions, such as the closing of the enterprise and the prohibition of management access to the workplace. The Committee considered it necessary that the Government had recourse to ILO technical assistance to evaluate the scope of the new provisions to which the Government referred and to complete the reforms in order to bring the legislation fully into conformity with the Convention.

The Committee urged the Government to prepare urgently and without delay a concrete draft for amending the legislation as regards the provisions concerning freedom of association and the right of employers to carry out their activities, as provided for in the jurisprudence of the supervisory bodies, so as to bring it into full conformity with the Convention, intensifying the social dialogue in this regard. The Committee requested the Government to send a report for examination at the next meeting of the Committee of Experts in 2009, explaining the measures taken, and expressed the need to observe concrete progress next year.

PHILIPPINES (ratification: 1953)

A Government representative expressed regret for the delay in the submission of the Government's replies on Convention No. 87. The reply was submitted on 1 June 2009, and the delay was due to the considerable time devoted to conducting consultations with the concerned government agencies and the social partners. The consultation took into account matters raised in the 2009 report of the Committee of Experts, which included the request for the Government to accept a high-level ILO mission to obtain a better understanding of all aspects of the case. The consultation yielded positive results. The Government decided to accept the ILO mission as soon as possible.

The Government welcomed the mission at this opportune time, after the tripartite partners had adopted the Philippine Decent Work Common Agenda 2008–10 with the theme "Narrowing decent work deficits", with the assistance of the ILO Subregional Office. Under Strategic Objective No. 1, there were 13 items on rights at work that the Government and the social partners agreed to pursue to strengthen compliance with ratified Conventions, especially the eight core Conventions. One item was the labour law reforms with the objective of evolving an overall tripartite position on proposed legislation that would bring the national law into conformity with the Convention. Initially, the project entailed review and formulation of a common trade union position on possible amendments to the Labour Code provisions, particularly articles 234(c), 269, 272(b), 263(g), 264(a), 272(a), 237(a) and 270, referred to by the Committee of Experts in its report. Referring to article 263(g), the Government representative indicated that there were already four Bills undergoing committee hearings in both Houses of Congress: Senate Bills Nos 159 and 606 and House Bills Nos 2112 and 1717, which limited the authority of the Secretary of Labour to specific sectors in the economy. The project was enrolled by the Workers' group through the Federation of Free Workers (FFW). Relating to the reduction of the 30 per cent membership requirement for registration of public sector unions and their full representation on the Public Sector Labour Management Council (PSLMC), the Government had scheduled the review and possible amendment of Executive Order No. 180, and the worker members of the Council were commencing a forum on decent work in the public sector.

On issues relating to the Labour Standard Enforcement Framework formulated in consultation with the social partners and with the assistance of the ILO Subregional Office, the tripartite partners were going to a labour inspection audit in July 2009, in a collaborative effort based on the request of the Government to improve the efficiency, effectiveness and governance of the labour inspec-

tion system. Also, the worker members of the Council, through the Trade Union Congress of the Philippines (TUCP), would conduct research on the modalities of labour standards enforcement to make the framework more responsive to the emerging needs of workers, and for better implementation of the labour standards enforcement system. Additionally, the worker members of the Council would conduct capacity-building activities to fully equip workers and their organizations with the technical knowledge and skills to enhance their participation in the enforcement of labour standards. The employer members of the Council would help establishments to strengthen compliance with labour standards through training and deployment of social compliance assessors using SA 8000 on social accountability.

With reference to the alleged restrictions on workers' rights and the intervention of the police and the military in labour disputes, especially inside export processing and special economic zones, the Government had a continuing labour–management education programme on employer and labour relations with culture orientation for expatriates and workers. Also, the TUCP offered distance education on the fundamental principles and rights at work to increase awareness and capacity of the workers, trade unions and workers' support groups on the effective exercise of their fundamental labour rights. The employer members of the Council were also implementing a rights-based approach to global competitiveness through the promotion of fundamental principles and rights at work, in line with the principle of corporate social responsibility.

Other measures included the review, in consultation with the social partners, of the joint guidelines on the conduct of the Philippine National Police personnel, security guards and private company guards during strikes, pickets and lock-outs, to facilitate better implementation. The guidelines defined the role of the Department of Labour and Employment and the police and set strict conditions on the involvement of the military in labour disputes. The Memorandum of Social Understanding on Labour and Social Issues Arising Out of the Activities of Multinational Enterprises/Foreign Direct Investments had also been due for review. The Memorandum reaffirmed a commitment to observing the principles of the ILO core Conventions and respect of the right of workers to freedom of association and collective bargaining. In pursuit of tripartism and social dialogue, a series of forums had been conducted for a broad range of members of society. The objective had been to raise awareness on the role of international labour standards and decent work already integrated into the Medium-Term Philippine Development Plan 2004–10, with a view to mainstreaming decent work in government policies, plans and programmes, and ensure more effective implementation.

With regard to cases of alleged extrajudicial killings involving trade unionists, the Government welcomed the opportunity for the high-level ILO mission to have direct contacts with the complainants and the competent authorities concerned. This would enable the mission to have a better appreciation and understanding of the case and to recommend appropriate measures to ensure the fair and rapid investigation, prosecution and conviction of the violators.

The Philippines had demonstrated, through a long history of harmonious cooperation with the ILO, the shared goal and strong commitment to securing decent work for all Filipinos under conditions of freedom, equity, security and dignity. Such commitment was also shared by the social partners, as reaffirmed in the joint statement on the implementation of the Philippine Decent Work Agenda 2008-2010, in which they declared they would uphold their commitment to the ILO Declaration on Fundamental Principles and Rights at Work, respect and promote freedom of association, recognize the right to collective bargaining, the abolition of forced labour, the elimination of child labour and the elimination of discrimination with respect to employment and occupation. They recognized the immediate need to address the decent work deficits in the country and agreed that the third cycle of the Philippine Decent Work Common Agenda should be participatory, results-based, impact-oriented and with clear accountabilities. They adopted the theme "Narrowing decent work deficits" for our common agenda to embody the aspirations of enhancing opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity. They also agreed that the Decent Work Common Agenda represented their point of convergence as their activities contributed towards the common goal of reducing decent work gaps by enhancing workforce productivity, competitiveness, representation and equity at work.

It should also be noted that on the occasion of the ILO's 90th anniversary celebrations, the President of the Philippines had taken the opportunity to renew this commitment when issuing Proclamation No. 1752 declaring 21 April to 1 May 2009 as ILO week. The Government representative assured the Committee that the Government would extend all its support and assistance to ensure the success of the high-level mission to the Philippines. She also hoped that the information provided by the Government would be useful to the high-level mission in carrying out its mandate.

The Worker members emphasized the numerous violations of the Convention that had been occurring for many years. The violations consisted of acts of violence against trade unionists and other activists, including murders, assassination attempts, abductions and acts of torture. These multiple violations had already been denounced on many occasions by the Committee of Experts and the Committee on Freedom of Association. This year, however, the Government had not submitted a report and had just provided oral explanations several months late, repeating information that had been provided previously. It had referred to: the establishment in 2007 of the Melo Commission, an independent body responsible for examining the murders of journalists and activists; the monitoring of the establishment of special regional tribunals; the establishment of a special unit within the national police; the organization in 2007 by the Supreme Court of a consultative summit on extrajudicial killings and forced disappearances; and the establishment of a so-called *"amparo"* procedure for the protection of constitutional rights.

These measures, however, had not resulted in much progress in practice. New summary executions had taken place in 2007 and 2008, raising to 87 the number of trade unionists killed since 2001. Between July 2007 and August 2008, five trade union leaders had been murdered and three abducted. Others had been intimidated and threatened, or placed on blacklists available on the Internet. Demonstrations were still violently dispersed and work relations had become increasingly militarized in export processing and special economic zones, as the Committee would realize when it heard the testimonies on this subject. The hundreds of acts of violence were not giving rise to investigations or convictions, as in the past five years only two cases had led to the prosecution of four suspects, none of which related to anti-union acts.

The high-level mission proposed by the Committee in 2007 had only just been accepted by the Government. This was to be welcomed as the situation had not really changed. This had just been confirmed by the United Nations Special Rapporteur in a recent report indicating a decline in extrajudicial killings, but also many cases of impunity. According to this report, the most serious shortcoming was the Government's failure to institutionalize or implement the many reforms that had been rec-

ommended. In the absence of these measures, any progress made remained fragile and easily reversible.

Finally, a number of other problems of a legal nature remained. The Human Security Act defined terrorism in vague terms as an act that caused "widespread and extraordinary fear and panic among the populace". In 2007, the Committee had asked for clarifications on the impact this Act had on the application of the Convention, to which no reply had as yet been provided. Furthermore, for several years, the Committee of Experts had been calling for amendments to the provisions of the Labour Code, which required that, for registration, trade unions should provide a list of all their members, and that their membership comprised at least 20 per cent of the employees in the enterprise concerned. In 2007, the Government had indicated that the Labour Code had been amended, but it had not yet been able to provide the text of the amendment concerned. Other amendments to the Labour Code were required in order to: limit compulsory arbitration to essential services in the strict sense of the term; review the penalties for participation in a strike considered illegal; lower the excessively high number of trade unions (ten) required to establish federations or confederations; and not to make foreign assistance to trade unions subject to the prior authorization of a minister or secretary of state.

In addition to legislative measures and acts of violence, certain economic measures, such as the excessive use of contractual workers through outsourcing, could also be used to undermine the trade union movement. These mechanisms were in themselves prohibitive, as the workers who were "contracted" for a maximum period of five months could not dream of joining a union if they wished to keep their jobs and their income. This was an apparently innocent practice that had become a particularly effective means of controlling the trade union movement and of circumventing in practice the application of the fundamental rights guaranteed by the Convention.

The Employer members thanked the Government representative for the information provided. However, they expressed surprise that she had not spent more time on the issue of impunity and the arrests and harassment of trade unionists, which accounted for over half of the observation of the Committee of Experts. They also missed the determination on the part of the Government to ensure that the situation started to move. They recalled that it had taken two years to accept the high-level mission. It was the view of the Employer members that the high-level mission needed to cover certain fundamental aspects of the case if progress were to be made in addressing the issue of compliance with the Convention in law and practice and of impunity. Without going into the details of the case, which had been reviewed very thoroughly by the Worker members, they noted the explanations provided for the delay in replying to the observation of the Committee of Experts, as well as the very positive development of the enhanced consultation with the social partners for the preparation of the report, on which the Government was to be commended. However, the problems were more basic than the adoption of a Decent Work Agenda, as they went to the heart of the issue of freedom of association. The Committee's conclusions therefore needed to emphasize the gravity of the situation of impunity and to reaffirm the urgent need to take action in order to tackle the long-standing problems that hindered the implementation of the Convention both in law and practice. In conclusion, they recalled that Convention No. 87 was not a promotional instrument, but set out minimum standards to which effect needed to be given upon ratification.

The Government member of the United States remained very concerned at the situation of workers' rights, including freedom of association, in the Philippines, particularly in light of the ongoing review of the Philippines' status as a beneficiary country under the United States' Generalized System of Preferences (GSP). A key concern highlighted by the petition requesting the review of the Philippines' GSP status had been the Government's reluctance to accept an ILO high-level mission, as had been requested by the Conference Committee in 2007, to visit the country and assess all aspects of the application by the Philippines of Convention No. 87. She was very pleased to learn that the Government had recently decided to receive such a mission. The issues that were being examined by the Committee of Experts and the Committee on Freedom of Association were serious and long-standing. With respect to violations of the civil liberties of trade union members and leaders, they were also well documented. She urged the Government to cooperate fully with the ILO and take the necessary steps to implement the recommendations that would be generated by ILO technical assistance.

The Worker member of the Philippines commended the Government for accepting the high-level mission to look into allegations and reported violations of trade union rights, including killings, attempted murders, death threats, abductions, disappearances, assaults, torture, military interference in trade union activities, violent police dispersion of marches and pickets, arrests of trade union leaders in connection with their activities, and widespread impunity for the authors of such acts. Through its acceptance of the high-level mission, following tripartite consultation, the Government was demonstrating its commitment to ILO processes. The mission would undoubtedly serve as the most appropriate forum for those who had complaints to be heard and to substantiate their claims and allegations. The members of the high-level mission would be able to observe, investigate and verify the situation so that the truth could prevail.

He condemned every case of extrajudicial killing, whether it was committed by the armed forces of duly constituted governments, armed rebel forces or criminal elements. He therefore called upon the Government to mobilize its resources to pursue the investigation and prosecution of those responsible. He emphasized that extrajudicial killings created an environment of fear that was not conducive to the exercise of civil rights and liberties or freedom of association. They eroded the foundations of the global and national institutions upon which social justice depended.

He expressed confidence that the high-level mission was not intended to find fault or ascertain guilt, but rather to explore the immediate and remote causes of the situation in an objective manner and to develop appropriate responses through technical cooperation to help the country fulfil its obligations and also to suggest concrete steps and practical ways in which the ILO and the social partners could combat extrajudicial killings.

With reference to the repeated requests by the ILO supervisory bodies to align the Labour Code with the respective Conventions, he noted that the country had adopted the Philippine Decent Work Common Agenda 2008–10 with the theme of "Narrowing decent work deficits", which included a trade union programme for the review and reform of the Labour Code led by the FFW and assisted by the ILO subregional office in Manila and ILO ACTRAV. The programme had provided a venue for the various trade union organizations to reach common ground on the approach to be adopted to the adaptation of the Labour Code and the promotion of the principles of freedom of association in the country. The first phase of the programme had recently been completed, consisting of a number of regional consultations attended by over 250 trade union leaders from the private and public sectors representing over 40 labour federations and workers' alliances. They had discussed reforms in the areas of promoting trade unionism, collective bargaining and the right to strike and combating the harmful effects of flexible employment arrangements on fundamental principles

and rights at work. Based on the reports and observations of the ILO supervisory bodies, they had also served to discuss pending legislative bills proposed by certain trade union organizations to strengthen the constitutional rights of workers to organize, collective bargaining, the right to strike and employment protection. Significant dialogue would also be held to engage the social partners, including employers, workers, the Government and civil society at large, in the process of review and reform.

He explained that the next step would be to synthesize the findings and recommendations of the regional consultations and to ensure the mainstreaming of the gender dimension in the recommendations, on the basis of which the participating trade unions would propose legislative measures to remove the offending legislative provisions, and push for other measures to regain the two lost decades of organizing workers to achieve social justice and peace.

Meanwhile, with regard to the reiterated requests of the ILO supervisory bodies to amend article 234(f) of the Labour Code, which required the submission of all the names of an organization comprising at least 20 per cent of all employees in the bargaining unit where it sought to operate, he indicated that with the adoption of the Republic Act No. 9481, this requirement had already been removed. Similarly, concerning the indiscriminate exercise of the power to assume jurisdiction over labour disputes set out in article 263(g), he recalled that the Government representative had indicated to the Conference Committee in 2007 that the Government agreed to limit the exercise of assumption of jurisdiction to cases involving "essential services", as defined by the ILO.

The programme adopted by the tripartite social partners followed another ILO-supported initiative to build the capacity of trade unionists on the use of international instruments and the supervisory system to create an enabling environment for trade unionism and collective bargaining. Those who had attended the training were now in the forefront of efforts to raise the awareness of the social partners, and particularly the workers, on the importance of international standards and the use of international supervisory mechanisms with a view to bringing the Labour Code into greater conformity with ILO standards. The experience in his country showed the importance of ILO technical cooperation in improving the implementation of international labour standards, particularly through the strengthening of social dialogue. He therefore hoped that the high-level mission would adopt a similar approach by combining fact-finding with concrete technical cooperation programmes to help solve the problems indicated by the supervisory bodies.

The Employer member of the Philippines supported the Government's decision to accept the high-level mission requested by the Conference Committee to obtain a better understanding of the situation concerning extrajudicial killings, and other acts against trade unionists. He described some of the initiatives and activities that were taken by the Employers Confederation of the Philippines (ECOP) to ensure the full implementation of Convention No. 87 and the other fundamental Conventions. He recalled that the third cycle of the Decent Work Common Agenda had recently been launched. He noted that this had been the result of tripartite initiatives, in which organized labour and the employers, represented by ECOP, had found common ground in promoting and implementing the Decent Work Action Plan. This was a sign of the success of social dialogue in the country. However, full implementation of the National Action Plan remained a daunting challenge in view of the scarcity of government resources, the chronic unemployment and underemployment, which were exacerbated by the 2.36 per cent annual population growth rate that had eliminated the otherwise positive effects of the country's annual economic growth. Although the contributions made by the Government and the social partners to reducing decent work deficits were too numerous to enumerate, their collective activities had served to develop strategies for the implementation of the National Action Plan for Decent Work for the benefit of the country. Moreover, ILO technical assistance and sustained support would be necessary to reduce the deficit.

He added that social dialogue had become the lynchpin of industrial democracy in the country. Bipartism and tripartism had contributed to the statutory recognition and acceptance of social dialogue as a vital tool for the achievement of industrial peace. He recalled that the country had been affected by a series of debilitating strikes induced by the political and economic crises in the 1970s and 1980s. At that time, the social partners had taken it upon themselves to help resolve the worsening problem, by concluding an agreement under which the employers reaffirmed their respect for workers' fundamental rights. The workers, in turn, had undertaken to exercise their rights within the rule of law and the established rules of industrial relations. The timely intervention by the social partners had preserved industrial stability and helped to prevent labour and social policy conflicts. It had also enabled the country to minimize the effects of liberalization and acquire the necessary resilience to withstand the effects of the 1997 Asian financial crisis and the present global crisis. Accordingly, social dialogue had helped to save jobs and had ensured the survival of enterprises. It allowed for collaboration between workers and employers in peace and harmony.

The Worker member of the United States emphasized the fundamental importance of the right of workers, as set out in the Convention, to establish and join organizations of their own choosing without previous authorization, and the duty of the Government to refrain from any interference whatsoever which would restrict or impede this right. However, despite these protections, many unions in the Philippines, when organizing or exercising their right to freedom of association, were subjected to government interference intended to instil fear and erode support for unions. Unions of which the agencies of the Government, and particularly the Armed Forces of the Philippines (AFP), did not approve, were often dismantled. The impact of these anti-union activities was that there was a climate of impunity for human rights abusers, resulting in killings, abductions, torture, arbitrary arrests and a general state of fear for many union leaders in the country.

The AFP was the body responsible for conducting anti-union campaigns, which often began with the drawing up of lists of unionists deemed by the Government to be sympathizers of the internal insurgency led by the Communist New People's Army (NPA). This was followed by anti-union campaigns and seminars intended to categorize listed trade union leaders and organizers, in particular those affiliated with the Kilusanag Mayo Uno (KMU), as "fronts" for insurgents and terrorists. Sometimes union leaders or their families were threatened with death or harm if they continued to work for a particular union. The AFP also sometimes established or supported civic organizations professing to be workers' organizations and assisted them in conducting seminars in local villages to try and turn the local population against democratically elected unions. Unions were often accused, without evidence, of using union dues to fund the NPA. The military would visit the homes of union leaders to pressure them to resign from the union, refrain from organizing or asking for too much in contract negotiations and accepting what was offered by the company. Other unions had also experienced such harassment, including the Alliance of Progressive Labour (APL), the Buklaran ng Manggagawang Pilipino (BMP) and the Partido ng Manggagawang, Makabayan (PM). As the United Nations Special Rapporteur had indicated, the worst effect of the Government's anti-union activities was the increased likelihood of murders, disappearances, threats and harassment of listed trade unionists. The 2008 report of the Philippine Com-

mission on Human Rights (CHR) had noted a resurgence of such acts of violence against activist groups and labour organizations and, according to the United States Department of State, the CHR suspected the Philippine National Police (PNP) and the AFP of a number of killings of leftist activists in rural areas. The CHR had also noted a shift in methods intended to silence civil society, with a significant drop in extrajudicial killings and an increase in arrests and enforced detentions. Trade unionists who were detained languished in jail without protection facing slow trials, therefore effectively being removed from their movement. This had led many workers to live in hiding.

In response to the Government's claim that it was pursuing legitimate counter-insurgency tactics and that the military had been absolved by the Melo Commission, he claimed that the Government was in fact intentionally blurring the lines between armed insurgents and legitimate trade unions. However, he recalled the conclusion of the Melo Commission that only an organization with intelligence and coordination capacities would have been capable of carrying out such killings. He questioned the Government's political will to stop the violence against trade unionists, particularly in view of its failure to investigate the involvement of General Palparan, now a member of Congress, in the killings, despite the fact that a 2008 Court of Appeal ruling had found evidence to be credible of his responsibility in the killings, as a minimum by virtue of "command responsibility".

An observer representing the International Metalworkers' Federation (IMF) reported that his union, the Toyota Motor Philippines Corporation Workers' Association (TMPCWA), had suffered serious anti-union discrimination and interference by the corporation. Although since 2001 the Committee on Freedom of Association had been recommending the reinstatement of the trade unionists and leaders who had been illegally dismissed, no effect had been given to the recommendation. His union had appealed to the OECD National Contact Point through its group of supporters in Japan, but with no results so far. Despite the clear rulings by the Supreme Court in 2003 and 2004 requiring the Toyota Company to negotiate a collective agreement with the TMPCWA, the company had not respected the ruling, concluding instead a bogus agreement with the "yellow union" it had created, which had been issued a registration certificate. He further alleged that the Supreme Court and the Court of Appeals were thwarting the Constitution in favour of the company's interests and that the management was doing everything in its power to destroy the TMPCWA. Picket lines had been broken up by force, criminal charges fabricated against union members and even a striptease organized to draw workers away from union meetings. He reiterated the seriousness of the climate of violence against activists and trade unionists in the country and indicated that the placement of a detachment of the 202nd Infantry Brigade had been located very close to his union's office, which had been subject to frequent visits and searches for the union leaders. As a union leader, he personally had to sleep every night in different places, as union leaders were under constant surveillance.

In conclusion, he appealed to the Committee to send a high-level mission to investigate the situation and to take all effective measures to compel the Government to fully recognize the TMPCWA, reinstate the illegally dismissed workers with full compensation and to fully respect freedom of association.

The Worker member of Australia noted that the violations of freedom of association in the Philippines had a severe impact on the capacity for workers to freely organize, form or join trade unions, run elections, certify unions, negotiate collective agreements and take up campaigns or seek legal redress for matters in dispute. Companies could be involved in standoffs with their democratically-elected trade union for years and the Department of Labour's (DOLE) own statistics said that a mere 226,000 workers were covered by CBAs. She drew attention to the three most recent cases before the Committee on Freedom of Association concerning the infringement of workers' rights brought by the International Metalworkers' Federation concerning the situation referred to by the previous speaker, the International Union of Food Workers (IUF) on behalf of the NUWHRAIN Dusit Hotel workers, and the International Wiring Systems Workers' Union in the Special Economic Zone in Northern Luzon.

She added that since the Conference Committee had last examined this case in 2007, the number of extrajudicial killings and disappearances of trade unionists had fallen. However, the very incidence of killings was a symptom of a bigger problem – that of the lack of criminal accountability and the ongoing existence of the environment that allowed these violations to happen. She therefore welcomed the fact that the Government had indicated its acceptance of an ILO high-level mission and emphasized that the mission would have to:

- first and foremost, consult the local trade unions that had raised the concerns with the ILO, including the Kilusang Mayo Uno (KMU);
- with regard to the role of the military in legal issues, look at the counter-insurgency policies of the Government and the armed forces, which had equated the militant unions with the insurgencies and were blurring the lines between illegal activities and legitimate trade union activities. This would include not only an examination of the assassination of trade union leaders and organizers, but also of other human rights violations and the impunity enjoyed by the military;
- examine the military's efforts to establish anti-union education campaigns, especially in Mindanao and Luzon Provinces, and the role of the army's Civil-Military Operations units;
- focus on the Government's implementation of the recommendations and make contact with the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions in relation to trade unions and their ability to organize;
- examine the relationship between the Philippine Economic Zone Authority and the Department of Labor, which had, in practice, ceded authority for labour law implementation, as well as the key constraints to organizing in the Special Economic Zones, which had had a de facto no-union, no-strike policy in place for years. Local government units in and around the Special Economic Zones had been conducting anti-union education efforts, as well as intimidating those who sought to form unions. Union organizers were prohibited from entering Special Economic Zones and if workers were identified as being union organizers, they lost their jobs;
- examine the Assumption of Jurisdiction Statute 263(g), both for its scope (going beyond essential services) and implementation (some unions were prevented from calling strikes, while others were allowed to do so);
- examine the application of criminal law in industrial issues, criminal libel statutes and the use of criminal libel charges, sedition charges and other criminal charges aimed at unionists engaged in protected activities or to undermine union leadership;
- examine the implementation of the Labour Code, and especially that of the Republic Act No. 9481 (the union organizing bill), which appeared to favour organizing efforts by national federations over independent unions;
- examine the Government's definition of what encompassed a strike or concerted action and engage in discussions with the Supreme Court and the legal justice system;

- examine and recommend measures to ensure that Filipino workers could enjoy security of tenure and the right to organize. It was common practice to illegally classify workers as "casual" or "contractual", or to dismiss workers after six months and then to rehire them; and
- meet the full range of trade unions and acknowledge them all as key social partners.

She expressed the strong hope that the preparation and process of the mission would assist the Government and social partners to resolve the serious issues, improve compliance with the Convention and strengthen social dialogue for the benefit of the country.

The Government representative of the Philippines thanked the members of the Committee for their statements and welcomed the support expressed for the Government's decision to accept a high-level mission with a view to gaining a better understanding of all the aspects of the case. She also noted the comments made concerning the Decent Work Common Agenda and the strength of the tripartism and social dialogue that had led to its adoption. The Common Agenda included an arrangement to monitor its implementation and would provide a basis for the provision of ILO support and assistance to the tripartite constituents to strengthen the application of international labour standards.

She added that she shared the valid and serious concerns raised in relation to cases of alleged extrajudicial killings involving trade unionists, to which reference had been made in the report of the Committee of Experts. In this respect, she indicated that the Human Security Act had been challenged before the Supreme Court, and had not therefore been implemented. She emphasized that cases of alleged extrajudicial killings were a very serious matter and had provided compelling grounds in the Government's decision to accept the high-level mission, which would be able to undertake an independent and impartial examination of the case within the purview of the Convention. She expressed full trust and confidence in the independence, impartiality and high degree of competence of the high-level mission in carrying out its task. Finally, she reiterated her assurances of full support for the ILO mission.

The Worker members said that for years they had been denouncing the continued violations of the Convention in both law and practice. It was therefore appropriate to call once again for the Labour Code to be amended in accordance with the recommendations that had been made for several years by the Conference Committee and the Committee of Experts; as well as for detailed information on the effects of the Human Security Act on the application of the Convention and the levels of unionization in the export processing zones. The Government should also be urged to indicate the measures adopted to bring a definitive end to the climate of violence and impunity, and to ensure that murders, disappearances and other violations of the fundamental rights of trade unionists were rapidly investigated, prosecuted and punished. In order to encourage this approach, the Worker members welcomed with satisfaction the Government's statement that it would accept an ILO high-level mission. This mission would have to investigate, together with the unions, the acts of violence against trade unionists; follow up all the cases under consideration by the Committee on Freedom of Association; examine the manner in which the Convention was being applied in the special economic zones; and ensure the implementation of the recommendations of the Committee of Experts, those of the United Nations Special Rapporteur and those of the Conference Committee, particularly in relation to impunity.

The Employer members thanked the Government representative for the very helpful statement. They indicated that the Committee's conclusions would need to call for action to give full effect to the Convention in law and practice. They expressed the belief that the key to the achievement of progress in this case was the high-level mission, the objective of which needed to be broader than that proposed in the conclusions adopted by the Committee in 2007, when the proposal of a mission had been made with a view to achieving better understanding of all aspects of the case. The high-level mission that had now been accepted by the Government needed to address and clarify all the shortcomings in the application of the Convention and identify the areas in which action needed to be taken. As it was doubtful whether the Government would be able to provide much new information in time for the next session of the Committee of Experts, the Employer members hoped that the next observation of the Committee of Experts would include the findings of the high-level mission and its appreciation of the situation, with a view to promoting action to achieve a tangible improvement in the situation.

On a more technical point, the Employer members recalled that the issue of EPZs was more closely related to the application of Convention No. 98, whereas it had been raised by the Committee of Experts under the present Convention.

In conclusion, they expressed the hope that, when working with the high-level mission, the Government would develop a timeframe for action to be taken to achieve the implementation of the Convention in both law and practice, particularly since the principal issues involved were long-standing problems. Although there might be slight differences of views on the situation between the Employer and Worker groups, they were in agreement on the fundamental elements of the case, and in particular on the need for effective implementation of the Convention in law and practice.

Conclusions

The Committee took note of the statement made by the Government representative and the debate that followed. The Committee observed that the Committee of Experts' comments referred to serious allegations of the murder of trade unionists, death threats, arrests of trade union leaders in connection with their trade union activities, widespread impunity relating to violence against trade unionists and the militarization of workplaces in export processing zones (EPZs) and special economic zones. The Committee also noted that the Committee of Experts had been referring, for many years, to the need to amend the current Labour Code to bring it into conformity with the Convention.

The Committee noted the Government's statement according to which important labour law reforms were under way and four Bills were before the Congress limiting the authority of the Secretary of Labour to impose compulsory arbitration. The Government representative also referred to joint guidelines on the Conduct of the Philippine National Police (PNP) personnel, security guards and private company guards during strikes, pickets and lock-outs. The Government representative welcomed the opportunity for the ILO high-level mission to have direct contacts with the complainants and concerned competent authorities. This would enable the mission, in a fully independent and impartial manner, to recommend appropriate measures towards ensuring fair and fast investigation, prosecution and conviction of the violators.

In reply to a question concerning the Human Security Act, she had indicated that its application had been suspended as it was currently the subject of an appeal to the Supreme Court.

Deeply concerned at the continuing allegations of violence against trade unionists, the Committee emphasized that respect for basic civil liberties was essential for the exercise of freedom of association. While noting with satisfaction the Government's acceptance of an ILO high-level mission with respect to this serious situation, the Committee remained concerned at the allegations of a continuing situation of vio-

lence against trade unionists and urged the Government once again to ensure that all the necessary measures were taken to restore a climate of complete freedom and security from violence and threats and bring an end to impunity so that workers and employers could fully exercise their freedom of association rights. The Committee further urged the Government to take measures, in full consultation with the social partners concerned, to amend the legislation taking into account the comments that the Committee of Experts had been making for many years and urged it to adopt a time frame for all the above measures.

Welcoming the Government's acceptance of an ILO high-level mission, as requested when it considered this case in 2007, the Committee expressed the firm hope that this mission would be able to take place in the near future and be able to clarify the gaps and propose solutions relating to the question of violence against trade unionists, the matters pending before the Committee on Freedom of Association, as well as the other matters pending under Convention No. 87. Elements of the UN Special Rapporteur's report as they related to trade unionists could be of assistance for the mission's consideration. It expected that the mission would be in a position to report back to the Committee of Experts this year on the important elements of its findings. The Committee expressed the firm hope that, following this mission and the additional steps promised by the Government, it would be in a position to note tangible progress in the application of the Convention both in law and in practice in the very near future. It requested the Government to provide precise information on all the points raised in a detailed report for the examination of the Committee of Experts this year.

SWAZILAND (ratification: 1978)

A Government representative, Minister of Labour and Social Security, underlining the enduring value of freedom of association, protection of the right to organize and trade unionism, expressed unease at the selection of the case of the application of Convention No. 87 in Swaziland for examination by the Committee, given the steps taken by his Government to comply fully with ILO Conventions, mainly with ILO assistance. Nevertheless, it was a positive opportunity to share his country's progress on applying the Convention with the Committee. Referring to allegations made by the International Trade Union Confederation (ITUC) and the Swaziland Federation of Trade Unions (SFTU) of harassment, arrest and detention of trade union leaders who had participated in a march and the presentation of a petition, he denied any such action by his Government. The Secretary-General of the SFTU, Mr Sithole, had indeed been questioned by police, but his fundamental constitutional rights had not been violated, nor had those of his family. His Government did not believe in threatening and harassing people, least of all for exercising their trade union rights. He explained that Mr Sithole had been questioned in connection with insulting statements made against the King of Swaziland at a march held in Johannesburg, South Africa, on 16 August 2008. The statements were close to constituting a criminal offence, and he suggested that any person making or connected with such statements could expect to be questioned by the police. On 21 August 2008, Mr Sithole had voluntarily presented himself for questioning at Manzini Regional Police Headquarters, accompanied by two other trade unionists, after officers, only two of whom were armed, had visited his home to invite him to do so, which was common police practice. It should be noted that there was no allegation that Mr Sithole had been threatened with a firearm. He had left after being interviewed for less than an hour, and although an offence had been suspected, he had been neither harassed, arrested or detained. The police had simply done its duty to enforce the laws of the land and ensure that no double standards existed. It was not a violation of trade union rights to question someone in connection with any perceived violation of the law, provided that such questioning observed the principles of justice. He stressed the need for accusations to be accompanied by evidence to substantiate them.

He noted that issues had also arisen with regard to trade unionism in the prison and police services and the fact that some individuals had exercised their constitutional rights and brought legal proceedings against the Government. Although they had lost an appeal regarding the formation of trade unions, the judicial ruling handed down had suggested that the Government should consider amending certain laws. The Government would review all laws in order to bring them into line with the Constitution, and the Tripartite Drafting Committee's report on the Industrial Relations Amendment Bill had made some important proposals in that regard.

Turning to the allegation that the police had arrested several union leaders on their way to stage a peaceful protest action, thereby violating Convention No. 87, which Swaziland had ratified and incorporated into its domestic legislation, he expressed the view that the allegation was exaggerated. Swaziland had taken various legislative steps to ensure full compliance with international labour standards, including by monitoring and amending legislation as necessary, with ILO support. The allegation concerning serious violations of workers' rights during a peaceful and lawful strike by textile workers, including beatings and shootings with live ammunition, contained serious factual inaccuracies. Workers had not been shot at using live ammunition, and there was no evidence to support such a claim. The complaint also omitted to state that the originally peaceful strike had deteriorated into violence, particularly against non-striking workers and the police. He refuted claims that the strike had been stopped by police brutality, and that police officers had stolen medical reports and warned doctors against issuing medical reports without police permission, as there was no evidence and the police was not authorized to do so. In fact, the striking workers had taken an independent decision to end the strike, which had by then lasted around a month. Despite provocation, the police, some of whom had sustained injuries during the course of their duties, had maintained law and order by applying only minimum force where necessary. With regard to the allegation that an unidentified worker had been drowned by police, he underlined the public expectation that the police would operate within the law. Anyone with evidence to support this allegation should pursue justice through the courts. Several allegations made, concerning shootings and death threats, also lacked any evidence to substantiate them and unduly portrayed tyranny by the police. It had also been alleged that workers engaged in protected strike action had been dismissed, which automatically constituted unfair dismissal under Swaziland law and could be costly for employers. The Government did not support such dismissals.

He drew attention to the increasing tendency of peaceful socio-economic protests to become violent, which went against the spirit of Convention No. 87. Under section 40 of the Industrial Relations Act, workers not engaged in an essential service were entitled to take part in peaceful protests to promote their socio-economic interests, but many such actions were hijacked by political groups to pursue their own agenda, which was often at variance with those of the workers concerned. Violence towards police and the public during such events was increasingly frequent and threatened public order. In such circumstances, the police was expected to carry out its mandate. He gave several examples of marches and other demonstrations that had ended in violence, including one scheduled to coincide with national elections in September 2008. The Government had denied permission for the demonstration to be held on the grounds that it was purely political, but the workers had gone ahead with their pro-

test, seriously threatening the election process. Although the line between socio-economic and political matters was always thin, the protest in question had clearly been political in nature, as it had been aimed at regime change. It should also be noted that a demand for changes to the Constitution had already been tabled with the High-Level Steering Committee on Social Dialogue, in line with the recommendations of the ILO high-level mission to Swaziland in June 2006.

He emphasized that social dialogue had been welcomed in Swaziland, where much had been achieved in terms of its institutionalization. Lists of issues prepared by the social partners were discussed by committees within the structure. The Labour Advisory Board had recently reached agreement on the draft Industrial Relations Amendment Bill, and the proposed amendments covered most of the comments made by the ILO supervisory bodies. While he acknowledged that the process had taken time, that was only to be expected when tripartite consultation was involved. He outlined some of the proposed amendments, which demonstrated that the comments of the Committee of Experts and other bodies had been fully taken into account. In his view, the rights of workers received further support from the Constitution, the provisions of which prevailed over any other law. He reaffirmed his country's commitment to observing the letter and spirit of all the ILO Conventions it had ratified, both in law and in practice, and looked forward to further cooperation with and support from the ILO.

The Worker members expressed the view that the case of Swaziland should be considered in the light of previous observations by the Committee of Experts and the ILO high-level mission in 2006, as well as the continuous, deliberate, systematic and well-calculated violations perpetrated by the State through various legislative acts. Recalling previous discussion of the application by Swaziland of Convention No. 87 and the direct contacts mission of 1996, they said that persistent violations of the Convention had prompted the ILO to send a high-level mission to the country to review the impact of its Constitution on the rights of workers and to make suggestions for a meaningful framework for social dialogue in the light of steps already taken. The high-level mission had noted a number of laws that were interfering directly with the operation of trade unions and civil society in general and had requested the Government to keep it informed of the progress made in a number of areas. The mission had held meetings with interested parties at all levels, from the Prime Minister to civil society groups; however, neither the direct contacts mission nor the high-level mission had persuaded the Government to fulfil its obligations. They added said that the Government had claimed to have submitted a copy of the Media Council Bill to the ILO, but that it had not done so. The Bill placed statutory restrictions on the nomination of union candidates and their eligibility for office, in direct contradiction with the aims and objectives of Convention No. 87. In response to calls from the ILO supervisory bodies to amend certain sections of the Bill, the Government had asserted that it needed more time. With regard to provisions allowing employers to dismiss workers during a strike, the Government had claimed that they were intended to act as a deterrent for workers against flouting striking procedure before a strike. Many other laws contained similar provisions, but no action had been taken on the recommendations made by the high-level mission. Despite various ILO missions to Swaziland, the arrest, detention and brutalization of trade union members, human rights defenders and peaceful demonstrators continued. Workers engaged in lawful strikes in the textiles industry had been dismissed and protesters had been maliciously attacked, in clear violation of workers' rights. Swaziland had voluntarily ratified Convention No. 87 and was therefore obliged to recognize the trade union freedoms provided for therein, implementing the letter and spirit of the Convention in law and practice. They outlined various measures taken against trade unionists by the police, which demonstrated that no pluralism was accepted in Swaziland. The autocratic governance system was stifling civil society, including trade unions. Workers suspected that the Government of Swaziland was maliciously resisting the right to freedom of association by prison staff, denying them even the possibility of forming a trade union, in part because of acts committed against incarcerated trade unionists.

Expressing the view that decrees had always been used to circumvent the law-making process and only served the interests of the authorities, they affirmed that, if the practice were allowed to become a way of life, workers in Swaziland would never enjoy democratic values in their workplaces. The ILO had always encouraged its member States to engage in social dialogue in order to ensure that workers' rights were guaranteed. In that regard, they highlighted the punitive effects on Swaziland's workers of various acts and decrees that remained in force. In an echo of the country's colonial past, the police forced themselves into trade union meetings and conferences. In its current form, the Industrial Relations Act was divisive and unnecessary, particularly given that the Southern African Development Community was encouraging its members, which included Swaziland, to harmonize their laws with a view to comprehensive regional economic integration. They recalled that the Committee of Experts had duly noted the previous tripartite undertaking to establish a special consultative tripartite subcommittee within the framework of the High-Level Steering Committee on Social Dialogue, the purpose of which was to review the impact of the Constitution on the rights embodied in Convention No. 87 and to make recommendations to the competent authority to eliminate discrepancies between existing provisions and the Convention. This had been promulgated in October 2007, with notice given of the appointment of members of the Steering Committee. However, the initiative had failed to obtain any result. There was still no sign of commitment to a programme to review laws and, if anything, the situation was worsening. They emphasized that the Government of Swaziland did not exist in isolation, but had to coexist with its citizens. Arrest, detention and other forms of oppression and suppression did not present a good image of Swaziland. Its decrees contradicted peace-making, yet peace and social justice were at the foundation of the ILO and were the desire of all humanity. The Government of Swaziland seemed intent on continuing to inflict pain on its workers, throwing the concept of social dialogue out of the window. The establishment of a functioning tripartite structure and a subcommittee to examine the Constitution and the concept of constitutionalism was fundamental to ensuring genuine democracy in the world of work. They cautioned against referring to regime change in the context of sub-Saharan Africa, given the unfortunate connotations of the phrase. The basic rights of workers had nothing to do with regime change. The statements by the Government representative on several issues served only to support the workers' case against the actions of the Government, the police and other bodies. Trade unions had evidence of the arrest and torture of a number of individuals, but they raised the question of what action the Government would take. Even as the Committee continued its deliberations, the Government was preparing to approve new laws that would have a detrimental effect on workers' rights.

The Employer members were sceptical about the progress alleged by the Government of Swaziland. National legislation had basically remained unchanged since the first examination of the case in 1996, and the 50 per cent threshold for workers to organize did not constitute progress, since it was far too high. The present case consti-

tuted a seamless history of repression of free speech, police brutality and oppression. The Employer members expressed their disbelief in the Government's statement that the issues raised would be solved, and raised serious doubts as to the possibility that the situation could improve in the near future.

The Government member of Norway, speaking on behalf of the Government members of the Nordic countries, Denmark, Finland, Sweden and Norway, stated that the human rights situation in Swaziland, including the right to organize and to arrange and participate in legal strikes in accordance with Convention No. 87, was a long-standing case and had been discussed by this Committee several times. She took note of the allegations of repercussions on trade union activists and of the dismissal of workers who had taken part in lawful industrial action. She expressed concern that the ITUC had also reported serious acts of violence and brutality by the security forces against trade union activists and leaders. She called on the Government to respond to these allegations in detail. Her Government also noted that the Committee of Experts had once again highlighted the non-conformity of some of the laws with Convention No. 87. While the Committee of Experts had acknowledged that the Industrial Relations Amendment Bill had taken into account some of its comments, certain issues still remained unaddressed. Among others, the national legislation still did not provide for the right of workers to organize and to take lawful industrial action, as provided for in the Convention. She urged the Government of Swaziland to continue to make use of the technical assistance of the Office to bring the legislation into conformity with Convention No. 87 and to provide detailed information regarding the reported acts of violence against trade union activists and those who had participated in lawful and peaceful strikes.

The Worker member of Swaziland stated that, unfortunately, Swaziland was again listed among the countries violating Convention No. 87. For over ten years, the Government had been advised by the ILO not to use the 1963 Public Order Act and to repeal the 1973 State of Emergency Decree. However, the 1963 Act continued to be applied and the Government had stated that the contents of the 1973 Decree had been included in the new Constitution. As a result, the new Constitution, like the 1973 Decree, did not respect the doctrine of the separation of powers, banned political parties and provided for a very limited Bill of Rights. He referred to a number of examples of continued gross violations of the Convention by the Government, such as the arrest and detention of a number of textile workers, mostly women, who had participated in a legal strike, some of whom had been severely injured by the police; the detention and interrogation by the police of trade union leaders and other workers who had participated in marches in Sandton and Johannesburg to deliver a petition at the SADC Summit; the interception of workers by the police in a lawful demonstration in September 2008; and the interference by the police in other events organized by workers and arrests of activists. He added that certain political parties had been banned under the Suppression of Terrorism Act, and that a Bill on Public Servants was being prepared by the Government without consulting the tripartite Labour Advisory Board. In conclusion, he said that the system of governance in Swaziland was profoundly anti-democratic, economically unjust and socially discriminatory. The Government systematically evaded the only tool of conflict management, which was social dialogue accompanied by ILO technical assistance.

The Employer member of Swaziland indicated that the Tripartite Drafting Committee had completed its work, and that the Bill had recently been adopted by the Labour Advisory Board. All the issues raised by the Committee of Experts had been adequately addressed. With regard to the application of the Convention in practice, she indicated that she was not aware of any dismissal of workers engaged in lawful strikes, but if that were the case, the Swaziland Industrial Court was the competent authority to review such cases of violation and to effectively punish the employers found guilty of infringing workers' rights. She urged all members of her Federation to comply with the law in this respect. Generally speaking, employers were not always in favour of strikes because of their negative impact on the economy and business in general. A significant number of strikes and protests were due to reluctance to engage fully in social dialogue. While the Government of Swaziland was committed to social dialogue, progress was desperately slow, and the recently established infrastructures were not frequently utilized. However, in the context of the current economic meltdown, it was only through social dialogue that a country could forge a way forward.

The Worker member of South Africa recalled that the Committee of Experts had been examining this case for several years and that, despite the Government's commitment to achieve progress, the situation had not improved in practice. The adoption of the Industrial Relations Act in 2000 had appeared to be a positive step. However, the Government was still applying the state of emergency legislation, such as the Public Order Act of 1963 and section 12 of the Decree of 1973 on trade union rights, against workers and their organizations, thereby violating civil freedoms. Since 1973, the current Government of Swaziland had been ruling the country through the use of force, impunity, absence of social dialogue, lack of the rule of law, brutality against citizens engaged in peaceful demonstrations and failure to respect the judicial authorities. In May 2008, the Parliament of Swaziland had passed a controversial Act empowering the Prime Minister to declare virtually anyone or anything a terrorist activity. The Parliamentary elections of September 2008 had been declared by the Pan-African observation mission as infringing basic democratic rights, and a Commonwealth expert team had made recommendations for constitutional reform to ensure political pluralism. It would not be possible to note tangible progress until the Industrial Relations Act and the Terrorism Act were repealed, the arrests and detention of political and trade union leaders discontinued and the constitutional review enabling the people of Swaziland to democratically choose their Government undertaken and genuine, meaningful and result-oriented social dialogue aimed at achieving socio-economic justice, decent work and proper governance introduced. Trade union and political activists who feared for their lives were currently taking refuge in neighbouring South Africa. The case of Swaziland should therefore be mentioned in a special paragraph.

The Worker member of Botswana emphasized that the monarchy was circumventing the Bill of Rights enshrined in the Constitution by bringing back the 1973 State of Emergency Decree through the backdoor with the introduction of the Suppression of Terrorism Act of 2008. This Act removed all the fundamental rights guaranteed in the Constitution and the Universal Declaration of Human Rights which provided for the basic freedoms of opinion, expression, association, belief and conscience. He expressed surprise and dismay that Mario Nasuku and Thulani Naseko had been arrested. Mario Nasuku, the leader of the People's United Democratic Movement (PUDEMO), was facing charges in connection with terrorism, or alternately sedition. Thulani Naseko, a human rights lawyer, was alleged to have made seditious statements on May Day in 2009. Their arrest and that of others was a clear indication that there was no freedom of association and expression in Swaziland. Jan Sithole, Secretary-General of the Swaziland Federation of Trade Unions, was an example of a trade union activist who had been subjected to torture and harassment by the security forces. He condemned the arrests of Mario Nasuku and

Thulani Naseko and called for their immediate and unconditional release. He also called on the ILO to assist the Government with its legislative reform and emphasized that strike action was a way of exercising freedom of expression.

The Worker member of Senegal recalled that the case of Swaziland had been discussed several times by the Committee, and that both the Workers and the Employers had always emphasized the seriousness of this case. The comments of the Committee of Experts were still a matter of concern despite the severe conclusions adopted by the Conference Committee for many years. The Government had ratified the ILO Conventions, but always found ways to evade its obligations, and workers were still denied their basic right to organize in full freedom. In his view, the Government's silence in relation to the requests of the Committee of Experts demonstrated its desire to evade its obligations. He endorsed the regrets expressed by the Committee of Experts concerning the Government's persistent refusal to amend the legislation of 1973, which had established a state of emergency that had lasted for over 36 years and used public order as a pretext to suppress legitimate and peaceful strikes. The Government seemed to have forgotten the public social order and its responsibility to ensure the implementation of the Convention. He considered that the case needed to be classified as a continued failure to apply the Conventions on freedom of association. He recalled the extreme gravity of the situation in practice, as testified by Mr Sithole during a visit to Senegal. Such a situation merited the inclusion of the case in a special paragraph of the Committee's report.

The Worker member of Germany, speaking on behalf of the Worker members of the European Union, referred to the relations between the European Union and Swaziland, which were based on the Cotonou Agreement and the South African Development Community (SADC) Agreement. The EU high-level mission to the country in May 2009 had noted that the Human Rights Commission had still not been set up and that the Constitution had not yet been amended. The mission had also noted that freedom of assembly was not guaranteed, that the Terrorism Act was utilized to prohibit demonstrations by civil society, including trade unions, and that murders and torture of members of civil society were not prosecuted. She added that the Cotonou Agreement represented the give and take of development aid versus democracy and human rights. As illustrated above, Swaziland had not taken steps forward, but rather backward. The Worker members of the European Union expected the European Union to draw the obvious conclusions from the lack of noticeable progress in respect of democracy and human rights. This was not about stopping development aid for Swaziland. However, the European Union should demand that the Government of Swaziland respect its commitments under the Cotonou Agreement and implement the recommendations of the EU high-level mission.

The Government representative of Swaziland was encouraged by the constructive comments made by some of the members and wished to assure the Committee that all comments would be given due consideration. Since he had already covered most of the comments in his main statement, he refrained from repeating them. Although this was not the first time that Swaziland had appeared before the Committee concerning this Convention, he reiterated that this did not imply that nothing had been done in this regard. Significant progress had been made on legislative reform aimed at ensuring future compliance. In this regard, the Industrial Relations Act of 2000 had been amended several times since its promulgation and other amendments were under way. This had been achieved with the full participation of the social partners and the assistance provided by the ILO. With regard to social dialogue, the Kingdom of Swaziland had established a high-level national social dialogue committee consisting of cabinet ministers, legislators, members of the business community as well as workers. He wished to report to this Committee that Swaziland's tripartite partners had identified and agreed on the development of a Decent Work Country Programme and on a centralization of social dialogue to attain decent work objectives. Social dialogue was also to be used as the entry point for ILO technical assistance. The Government was committed to working with the social partners to achieve their national objectives and to improving the quality of life. ILO technical support was necessary to be able to complete the development of the social dialogue initiative that had been started in Swaziland. The proposed draft legislative amendments had been submitted to the ILO as per normal practice. The Ministry had set up a programme to have the drafts passed by the relevant legislative authorities and would report on progress to the Committee of Experts in November 2009.

The Worker members recalled that the Committee had decided in 2005 on a high-level mission to Swaziland, following which a Tripartite Agreement had been signed in 2007. However, not a single step had yet been taken to implement the Agreement and in the past two years the situation of trade unions and of all fundamental human rights, in particular under the provisions of the Terrorism Act, had worsened. There was no social dialogue in Swaziland and the Government needed to take effective steps to implement the 2007 Tripartite Agreement. The most immediate steps to be undertaken concerned the review of the Constitution to bring it into compliance with the provisions of Convention No. 87 and the issuing of recommendations to the relevant authorities to eliminate discrepancies in both law and practice with Conventions Nos 87 and 98, taking into account the comments of the ILO supervisory bodies. They asked to be kept informed of the progress of tripartite dialogue in the assessment of the Public Sector Bill and requested that the Government be asked to report back to the Governing Body in November 2009. They called for the repeal of the Terrorism Act. The Office had to offer technical cooperation to the Government of Swaziland in order to bring the Constitution as well as the Public Order Act of 1963, the Decree of 1973 and the Industrial Relations Act into line with ILO Conventions. Furthermore, they called on the Government to immediately and unconditionally release Mario Masuku and Thulani Maseko. The Government also needed to end the brutality directed against trade unionists and other human rights defenders, stop the violent suppression of peaceful rallies and civic actions, respect human rights and immediately act to end the impunity of those responsible for anti-union repression. In view of the long history of violations and the current situation, they called for this case to be included in a special paragraph. As all trade unionists from Swaziland present at the Conference risked becoming victims of persecution when returning to the country, they asked the Office to remain vigilant and to undertake measures to assure their safety and ongoing protection.

The Employer members noted the consensus within the Committee that there was a lack of social dialogue. In paragraph 62 of its report, the Committee of Experts had highlighted the need for technical assistance in this case. It was clear that technical assistance would be valuable, considering that the case had a long history with no progress. It was evident that since the first discussion of this case in 1996, the Government knew what needed to be done, yet had not done it. The Employer members agreed with the proposal by the Worker members that the conclusions of this case needed to be included in a special paragraph in order to highlight the need for the Government to finally implement Convention No. 87, including adhering to freedom of speech and social dialogue and preventing police repression. The Government needed

enact to promptly the necessary legislation to adequately address the issues identified by the Committee of Experts.

Conclusions

The Committee took note of the statement made by the Government representative and the debate that took place thereafter.

The Committee observed that the comments of the Committee of Experts had referred for many years to the need to repeal the Decree/State of Emergency Proclamation and its implementing regulations and the Public Order Act, as well as to restrictions to the right to organize of prison staff and domestic workers, the right of workers' organizations to elect their officers freely and the right to organize their activities and programmes of action.

The Committee took note of the Government's detailed reply in relation to the allegations of arrest and detention of the Secretary-General of the Swaziland Federation of Trade Unions (SFTU). While the Government acknowledged that the police had called Mr Sithole to headquarters for questioning in relation to serious insults allegedly made in respect of the King in his presence, the Government representative insisted that this had nothing to do with his trade union activity and he had not been detained any further. The Government representative had provided further information in relation to the other allegations and, while admitting that some elements were true, he had stressed that there were also serious inaccuracies. He had also indicated that the request for change of the national Constitution had already been tabled with the High-level Steering Committee on Social Dialogue, as requested by the 2006 ILO high-level mission. He had further indicated that a draft law within the framework of the Labour Advisory Board amended some provisions objected to by the Committee of Experts and would be put before Parliament this year. Finally, the Government representative stressed that workers rights were fully guaranteed by the 2005 Constitution.

The Committee noted with concern the Government's reply to the allegations submitted by the International Trade Union Confederation (ITUC) to the Committee of Experts concerning the acts of violence carried out by the security forces and the detention of workers for exercising their right to strike, and felt itself obliged to recall the importance it attached to the full respect of basic civil liberties such as freedom of expression, of assembly and of the press. The Committee stressed that it was the responsibility of governments to ensure respect for the principle according to which the trade union movement can only develop in a climate free from violence, threat or fear and called upon the Government to ensure the release of any persons being detained for having exercised their civil liberties.

The Committee regretted that, although the Government had benefited from ILO technical assistance for some time now, including through a high-level mission, the legislative amendments requested for many years have yet to be adopted. The Committee urged the Government to take the necessary measures so that the amendments requested by the Committee of Experts were finally adopted.

Noting with concern that the Special Consultative Tripartite Subcommittee of the High-level Steering Committee on Social Dialogue had not met for several months, the Committee, stressing the importance of social dialogue, particularly in these times of economic crisis, urged the Government to reactivate the Subcommittee as a matter of urgency. It further highlighted its outstanding calls to the Government to repeal the 1973 Decree, to amend the 1963 Public Order Act, as well as the Industrial Relations Act, and expressed the firm hope that meaningful and expedited progress would be made in the review of the Constitution before the Steering Committee on Social Dialogue, as well as in respect of other contested legislation and bills. The Committee offered the continuing technical assistance of the Office in regard to all the above matters. The Committee requested the Government to transmit a detailed report to the Committee of Experts for its meeting this year containing a timeline for resolution of all the pending questions. The Committee expressed the firm hope that it would be in a position to note tangible progress next year.

The Committee decided to include its conclusions in a special paragraph of its report.

TURKEY (ratification: 1993)

A Government representative recalled that, as proposed by the Conference Committee at its session in 2007, a high-level ILO mission had visited Turkey in April 2008. The members of the mission had met high-level representatives of the Ministry of Labour and Social Security, the confederations of private and public sector trade unions and the confederation of employers' organizations. The visit had offered a very useful opportunity to observe the Government's sincere and well-intentioned efforts to cooperate with the social partners and to obtain an accurate picture of the unique conditions of the Turkish industrial relations system in both law and practice.

He noted that the Government had undertaken the work of preparing the amendments to Acts Nos 2821 and 2822 in close cooperation with the social partners both before and after the ILO's high-level mission. The Tripartite Consultation Board and its working group had worked intensively and the process of cooperation and consultation with the social partners had continued in the discussions on the envisaged amendments in the Parliamentary Committee and its subcommittee. A similar approach had been followed in relation to the envisaged amendments to Act No. 4668 respecting public servants' unions. The Bill to amend Acts Nos 2821and 2822 was currently on the agenda of the plenary session of the Grand National Assembly. The text of the Bill had been communicated to the ILO, and further information would be provided when it had been enacted. However, the summer recess, local elections and a Cabinet reshuffle had delayed the enactment of the new legislation. He added that the Bill did not include amendments to the provisions relating to political, general and solidarity strikes, as this would require a constitutional amendment. Although amendments to the Constitution were not easy to achieve and required consensus in all parts of society, he emphasized that the Government was planning to introduce amendments to the Constitution.

He reported a positive development in line with the view expressed by the Committee of Experts that trade unions should be able to engage in action on social and economic issues affecting the interests of their members. In a ruling published in April 2009, the Constitutional Court had unanimously found that section 73, paragraph 3, of Act No. 2822 was in breach of the Constitution and had therefore repealed it. As a result of this ruling, which had been handed down in a case involving a work stoppage by employees protesting against a Bill respecting pensions, participation in a work stoppage aimed at influencing measures taken or contemplated by the authorities with regard to work and working conditions was no longer deemed illegal.

He provided further information about measures that had been taken or were envisaged to limit the intervention by the police during meetings and demonstrations and to prevent the excessive use of force in controlling demonstrations, rallies and marches by trade unions. He emphasized in this respect that, in the same way as all other natural and legal persons, trade unions had to comply with the relevant legislation, and particularly Act No. 2911 respecting marches and demonstrations. Activities by trade unions which did not comply with the law could not be immune from police interference, although judicial means of recourse were available to trade unions and their members to contest police action. He emphasized that the Government was determined to take all necessary disciplinary and judicial measures against members of the se-

curity forces who used disproportionate and excessive force to control demonstrations, rallies and marches. The following measures were planned for this purpose: the procurement of communication equipment placed inside the helmets of police officers; the inscription of easily identifiable numbers on their helmets; and new legislative provisions on the actions, methods and principles governing police officers assigned to control demonstrations and marches. He added that several circulars had been issued by the Office of the Prime Minister since 1997 instructing the public authorities to facilitate lawful activities by trade unions. These circulars clearly illustrated the positive attitude of the public authorities towards lawful trade union activities. This positive approach was also reflected by the approval of May Day as Labour and Solidarity Day in 2008 and as an official holiday in 2009.

However, in relation to the use of excessive force by the police, he emphasized that members of illegal organizations sometimes infiltrated trade union demonstrations and marches and attacked the security forces with stones and clubs, causing injury to members of the public and police officers, and damaging public and private properties. Nevertheless such infiltration should not be an excuse for the use of disproportionate force and police officers who resorted to using excessive force were certain to face disciplinary action and would be liable to prosecution if they transgressed their authority. He reaffirmed that the attendance of the police at trade union demonstrations and marches was entirely related to the maintenance of public order. Moreover, in accordance with Article 20 of the Associations Act, the security forces were not authorized to enter the premises of trade unions or any other organizations unless a court ruling was obtained on the grounds of maintaining public order and preventing the occurrence of criminal acts or a written instruction issued by the local Governor's office in cases where undue delays might endanger public order.

With regard to Act No. 4688 on public employees' trade unions, he recalled that the Ministry of Labour and Social Security had prepared a Bill in consultation with the social partners, which had been communicated to the ILO in February 2009. The Bill repealed the restrictions on the right to form and join unions by public employees during their probation period, private security guards employed in the public sector, prison guards and the highest ranking officials in public establishments employing over 100 employees. It would also remove the requirement of two years' seniority as a public servant to be a founding member of a trade union. The Bill envisaged that the coverage of collective bargaining would no longer be confined to financial rights, but would also cover social rights, which would align it with the de facto situation. The Bill did not include the right to strike, as this would require amendments to the Constitution and an overhaul of the public personnel regime.

With reference to the right of the members of a union affected by the change of the branch of a service to be represented by a trade union of their own choosing, which mainly concerned the Yapi Yol-Sen case, he indicated that public servants had the right to form or join unions of their own choosing in the branch of activity of the institution in which they worked. The closure of an administrative unit due to restructuring and the transfer of its staff to a different unit without affecting their status as public servants could not be considered as interference in trade union matters, and indeed showed the importance attached by the Government to the job security of public servants. It was not consistent with the current system based on the principle of branch level unionization for a trade union to recruit employees working in another branch. The acceptance of such a practice would block the existing system for the determination of the authorized trade union. This was also valid for union officers whose branch of service changed. The underlying principle of the exercise of freedom of association by public servants was that they had the right to form and join trade unions of their choosing within the branch of activity of the public establishments for which they worked.

In relation to the question of suspending the term of a union officer who stood for local or general elections and the termination of the status of a union officer who was elected, he explained that, in accordance with article 82 of the Constitution, members of the Grand National Assembly could not sit on the executive boards or audit boards of unions or confederations, and that the holding of office in a public establishment was not compatible with membership of the Parliament. He added that the situation of trade union officers standing in local or general elections was governed by section 18 of Act No. 4688. Section 10 of the Act provided that union officials who failed to call a general congress in accordance with the union's statutes or did not abide by the quorum could only be removed from office by a court decision.

When there were discrepancies between a trade union statute and the provisions of the Constitution or other Acts, the union would be required to amend its statute and, if it failed to do so, the case would be referred to the courts. However, the Ministry of Labour and Social Security did not have recourse to judicial action for the amendment of trade union statutes.

With reference to the comments of the Committee of Experts concerning section 35 of the Associations Act of 2004, he said that the provisions of the section included trade unions together with other associations within the scope of sections 19 and 26 of the Act, provided that their special law did not contain relevant provisions. Act No. 2821 concerning trade unions was a special law governing the status of trade unions, section 26 of which required associations to obtain permission from provincial and district authorities to establish and operate hostels and dormitories for the purposes of education and training. Section 95 of the Regulations respecting associations provided that the establishment and operation of hostels and dormitories for secondary and high school students was subject to the Regulation issued by the Council of Ministers in December 2004, the provisions of which applied unless they contravened the Associations Act. It was difficult to understand how the regulation of student hostels and dormitories for secondary and higher education students could be considered as interference in trade union activities. This was a purely technical matter entirely unrelated to trade union freedom and was intended to ensure the existence of the necessary conditions for the provision of these types of services.

In conclusion, he emphasized that major progress amounting to a reform had been achieved in the Bills to amend Acts Nos 2821, 2822 and 4688. He thanked the social partners for their enthusiastic participation in the process of formulating these amendments and indicated that the Government would endeavour to ensure that the Bills were enacted as soon as possible.

The Employer members thanked the Government representative for the information provided and indicated that the case raised a dilemma. Much new information had been provided regarding fundamental aspects of the case related to civil liberties and violence, as well as the measures taken to amend Acts Nos 2821 and 2822. However, the Committee was not in a position to assess this information. Although it would appear on the surface that steps had been taken in the right direction in relation to civil liberties and violence, it was not possible to make a firm determination in that respect at the present time. It might well have been expected that the proposed amendments would already have been enacted. Both the organizations of employers and workers had fulfilled their responsibilities with due diligence and the respective Bills had been submitted to the Grand National Assembly. The Govern-

ment therefore needed to ensure that they were enacted as soon as possible.

They recalled that the case had been discussed by the Committee for many years. It had been examined in the 1980s and 1990s under Convention No. 98, and since the ratification of Convention No. 87 in 1993, the case had been discussed by the Committee under the latter Convention in 1997, 2005 and 2007. On several occasions in the past, the Committee of Experts had noted the action taken by the Government with interest, and even with satisfaction. At its last session, the Committee of Experts had also noted with interest and satisfaction action taken under other Conventions ratified by Turkey, but not under Convention No. 87. A high-level mission had visited the country in 2008, although progress appeared to have slowed since then. There had also been a change of government, which might give grounds for hope. Certain indications had been provided that some action was being taken, but it was difficult to assess precisely what. While the Government had undertaken to adopt the amendments referred to above as soon as possible, it was necessary to ascertain the level of commitment involved. The Government should be called upon to provide a detailed report in response to the matters raised by the Committee of Experts in order to allow a better assessment of the situation. They added that the number of issues raised in relation to the public sector showed the need for reforms in the public sector personnel system in the country. In conclusion, they noted that it was unclear whether the Government was indeed heading in the right direction, although the pace of reform had certainly slowed down.

The Worker members indicated that since 1993, the year which Conventions Nos 87, 135 and 151 had been ratified, all the elements had been in place for proper social dialogue, except the acceptance by the Government of the fact that social dialogue could effectively lead to organizations challenging government action, particularly in the areas of economic and social policy and civil rights. The Government's dialogue on freedom of association with the Committee of Experts and the Conference Committee resembled a dialogue between deaf persons, thereby undermining the credibility of the ILO. The Committee of Experts had made a dozen individual observations, which had remained unanswered. In general, the Government paid little attention to the calls that were made, whether by the Committee of Experts, the ITUC or national unions. The application of the Convention had already been examined by the Committee in 2005–07, but not in 2008 as a high-level ILO mission had visited the country a few weeks before the Conference. The amendment of Acts Nos 2821 and 2822, in consultation with the social partners, was central to the requests of the Committee on Freedom of Association and the Committee of Experts, but the Government advanced the same arguments and promises on the occasion of each complaint. The recommendations of the supervisory bodies with a view to the implementation of Conventions were nevertheless clear. The report of the high-level mission referred to a number of statements by the Under Secretary of State for Labour and Social Security, according to which there was a consensus to amend Acts Nos 2821 and 2822, subject to the resolution of some minor issues. On the other hand, the amendment of the provisions of Act No. 2822 concerning general and solidarity strikes, occupations of the workforce and go-slows could not be made until the Constitution was amended, which was necessary for the country's accession to the European Union. Finally, Act No. 4688 respecting the right of public employees to engage in collective bargaining was currently being reviewed in the context of the reform of the conditions of service of all public employees.

Another problem was that of anti-union practices, already raised by the Committee in 2005 and 2007. Despite the circulars issued by the Prime Minister requiring compliance by the administration with the relevant provisions of the law and non-interference in union activities, participation in a demonstration and the publication of certain information was still punishable by imprisonment. These freedoms were hampered by judicial investigations and prosecutions of trade unionists and leaders. The terrible incidents that had occurred year after year during the May Day celebrations in Istanbul were a case in point. The fact that the Government had finally recognized 1 May as a holiday did not mean that it respected the right to demonstrate. The Government argued that unions were not above the law, that they engaged in illegal activities and that they were free to take legal action in case of dispute. Admittedly, unions needed to comply with the law, but when that had the effect of depriving them of freedom of association, the problem became intractable. The arrests of trade unionists were escalating under the pretext of terrorist activities or propaganda for terrorist organizations. Education International had written to the Prime Minister protesting against the arrest of over 30 members of the trade union Egitim Sen on 28 May 2009, of whom 14 remained in prison. Just last week, the police and security forces had used extreme violence against teachers protesting to obtain guarantees of the right to bargain collectively. Egitim Sen had marched on Ankara to make this claim. On 3 June 2009, the city centre in Ankara had been surrounded by security forces and turned into a battlefield. Trade unionists had been injured. Members of trade unions in the public sector had been dismissed or transferred under totally false pretences. The unions did not have the right to include in their statutes the peaceful objectives that they deemed necessary to protect the rights and interests of their members. They did not have the right to express their views, particularly in the press, even though the full exercise of trade union rights required the free circulation of information and opinions in accordance with the principles of non-violence. With regard to the amendment of the legislation, the report of the Committee of Experts once again highlighted the pretexts put forward by the Government for failing to take action. The revision of the Constitution, which was required to resolve the issue of strikes, had not been undertaken. The revision of sections 5, 6, 10, 15 and 35 of Act No. 4688 on public employees' trade unions, to bring them into compliance with the Convention by allowing all workers without distinction whatsoever to enjoy the right to establish and join organizations of their own choosing, still had not been carried out despite repeated requests of the Committee of Experts and the discussions that had taken place during the high-level mission. The Government would probably invoke the responsibility of trade unions for the failure of the reforms. But, while the unions had rejected the Bill amending Acts Nos 2821 and 2822, they had issued a statement on the reasons for the rejection: the refusal to allow a trade union to be dissolved for lack of information documents, the lack of guarantees of the effective right to collective bargaining and the maintenance of a series of prohibitions on the right to strike. In view of the overwhelming situation, the legal considerations raised by all the supervisory bodies and the subject under examination, it was clear that a revision of the legislation to bring it into compliance with the Convention and establish an industrial relations system worthy of Social Europe, needed to be undertaken with the social partners. Such dialogue presupposed that workers' organizations were not simply presented with a non-negotiable text. The Worker members called for the adoption of firm conclusions against the Government.

A Worker member of Turkey said that the Bill to amend Acts Nos 2821 and 2822 which had been submitted to Parliament contained provisions abolishing some of the remaining trade union rights and freedoms. Although the Government representative had thanked the social partners for their support, the Bill had been submitted to Par-

liament without the support of the social partners. The Bill did not resolve the problems raised by the Committee of Experts, and indeed gave rise to new problems. Adoption of the Bill would maintain very high thresholds for the establishment of trade unions. The requirements for the establishment of trade unions, and particularly the need to organize 50 per cent plus one of the workforce in an establishment, meant that in most cases they could not exist. Moreover, there was a broad prohibition on collective bargaining in many cases. There were many ways in which the legislation was not in compliance with ILO Conventions, including the determination of branches for the purposes of collective bargaining in the public sector. Such determinations should be undertaken by a representative body. There was also a need for a statutory mediation process that could be initiated by the parties. Trade unionists should be protected against dismissal for trade union reasons through the establishment of a right to reinstatement. However, the Government had refused to discuss a proper new law to establish the rights required in compliance with Conventions Nos 87 and 98.

The Employer member of Turkey said that it was impossible to disagree with the report of the Committee of Experts on the criterion for the use of civil liberties. In this regard, while limited police intervention only in the cases where there was a genuine threat to public order was acceptable, he did not approve of the disproportionate use of force. He added that the adoption of a law in April allowing 1 May to be celebrated as the "Day of Labour and Solidarity" should be seen as a step forward. He recalled that prior to 1980, when the military regime had adopted a law prohibiting the celebration of May Day, it had been a national holiday, and that this was an important step in the democratization of Turkey. Due to this measure, the leaders of Turkish trade unions had been able to enter Taksim Square in Istanbul on 1 May 2009, and the police had not used force.

With regard to the amendments to Acts Nos 2821 and 2822, the Turkish Confederation of Employer Associations (TISK) had fulfilled its responsibilities with diligence in regard to the Bills that had been presented to the Grand National Assembly last year. The Government should be encouraged to enact these Bills, which had been prepared to align legislation with Convention No. 87. He noted that on various occasions, TISK had hosted and provided the secretariat for meetings between the Government and the social partners. The texts prepared for the Parliament were acceptable from the employers' standpoint as they had been accepted in meetings where TISK had been present.

He added that the detailed observations in the report of the Committee of Experts concerning the union activities of public employees demonstrated the great need for a reform of the public sector personnel system. Such a reform would clarify who exercised authority for the State and who was employed in essential services. Turkish employers supported the Government's initiatives in this respect and were prepared to collaborate with the Government in the improvement process, and expected the Government to keep its promises.

Another Worker member of Turkey recalled the significant contribution that trade unions had made in support of public sector employees. In 2001, Act No. 4688, on public employees' trade unions, had been adopted following a long struggle by public sector employees. However, these employees continued to be subject to significant restrictions, which had been discussed in recent years at the Conference Committee. The Government had promised to remove these restrictions, but this had not been done, and currently there was no plan to amend Act No. 4688. Moreover, the draft amendments to Acts Nos 2821 and 2822 had been submitted without consensus by the social partners.

He asserted that public servants did not have the right to engage in collective bargaining, the consultations held were meaningless, restrictions were placed on union membership, the tripartite advisory system did not work and there was discrimination between trade unions and the workers were liable to be transferred if they engaged in union activities. Between 2003 and 2009, 70 union representatives had been transferred without valid reasons. Although some had been reinstated, the majority had not. Finally, he emphasized that Act No. 4688 was in violation of Convention No. 87 and needed to be amended, in consultation with the social partners and with ILO technical assistance.

Another Worker member of Turkey speaking on behalf of the International Trade Union Confederation (ITUC), recalled the military intervention in Turkey in 1980. A number of laws regulating trade union rights had been adopted by the military regime and the workers have been subjected to these laws ever since. He added that trade union laws in Turkey were not in conformity with Conventions Nos 87 and 98, and that trade unions were under strict monitoring by the Government, due to these laws. Moreover, the double threshold system prevented the exercise of the right to freely join unions and to collective bargaining: a trade union had to organize at least 10 per cent of the workers at the sectoral level, and over 50 per cent of workers at the enterprise level. Freedom of association was largely undermined by the obligation to consult a public notary for union membership and resignation. Workers therefore had to pay a public notary to certify their registration forms and make their payments. Moreover, the procedures to determine authority for collective bargaining were too complex and cumbersome, and this authority was determined by the Ministry of Labour following a lengthy trial period.

He recalled that the right to strike was very limited in Turkey, and that solidarity strikes, warning strikes and general strikes were all prohibited by law. The right to strike was prohibited by law in many sectors and the Government had the right to postpone a strike on the pretext of public health and national security.

The report prepared by the high-level mission in 2007 emphasized that the Bills still contradicted ILO Conventions. The only steps taken following this report had been unfruitful discussions and the Government refused to make the necessary amendments to the laws. Moreover, the right of assembly was heavily repressed. The May Day demonstrations in 2007 and 2008 had been attacked by the police and hundreds of trade union activists had been taken into custody. In 2008, the headquarters of the Confederation of Progressive Trade Unions of Turkey (DISK) had been attacked using tear gas and water cannons. In 2009, May Day had been announced as a public holiday, but the demonstration, in the same way as in previous years, had been marked by extreme violence, the use of tear gas and hundreds of injuries to workers. In addition, the union representing retired workers had been closed down. A week ago, the security forces had invaded and searched the headquarters of the Confederation of Public Employees Trade Unions (KESK) and over 30 members, including an executive committee member, had been taken into custody. It therefore had to be concluded that the trade union regulations were not in conformity with ILO Conventions and the Government never kept its promises on trade union laws and the dismissal of trade union members.

The Worker member of the Netherlands recalled that in 2007, when the Committee had discussed Turkey's failure to implement Convention No. 87, it had recommended that the Turkish Government accept a high-level mission to assess the problems and recommend solutions. It had been hoped that the mission would speed up the process of adapting Turkish laws to bring them into conformity with ILO Conventions Nos 87 and 98. At first, the high-

level mission had seemed to work well. The Government had consulted the social partners and submitted a new Bill to Parliament in May 2008, although the draft differed from what had been agreed by the social partners and was not in compliance with the Convention. The old legislation was still in place. The technical resources of the ILO, the Committee of Experts, the Conference Committee and the high-level mission had all been involved in discussing and analysing Turkish legislation. In addition, European institutions, such as the European Economic and Social Council, had advised the Government to enact the necessary reforms, and the European Court of Human Rights, in its judgement in the case *Demir and Bakara* v. *Turkey* had explicitly referred to Turkey's ratification of Convention No. 87 and the need for the Government to reform its legislation to bring it into conformity with the Convention. Together, these institutions had made available significant information that made it clear which amendments were needed to bring national laws into conformity with ILO standards. Lack of understanding of what changes were necessary could not therefore be the reason for the delay.

The Government had publicly indicated that the lack of progress was due to a lack of consensus with the social partners on the proposed draft amendments. However, the Government could not use this lack of consensus as a reason for not bringing its legislation into conformity with Conventions Nos 87 and 98, as from the report of the high-level mission we could read that the trade unions had explicitly urged it to do so. The Government had attempted to justify the very slow pace of reform by arguing that some of the legislation that was in violation of the Convention was not being used in practice. Yet this argument was not convincing, as any restriction of trade union freedom set out in the law could be used. Moreover, if it was not the Government's intention to use such restrictions, there was no valid reason for them to remain in the legislation. Indeed, the accounts by Turkish worker representatives of the recent cases of violence against trade union demonstrations and officials indicated that many of the restrictions were being used. Although the Committee of Experts had called on the Government to take measures to ensure that the police did not intervene in demonstrations that did not pose a threat to public order and to avoid excessive violence, the Government had used tear gas against a May Day meeting and had raided the offices of the KESK. Several cases of dismissal for joining a trade union had been mentioned, as well as examples of interference in the internal affairs of trade unions.

She recalled that during the first week of the Conference, the Committee had heard several statements on the importance of ILO standards in times of economic crisis. In addition, there was agreement within the Committee that ILO standards were needed to protect the most vulnerable workers from being the worst affected and to emerge from the crisis in a sustainable way. There was agreement that Convention No. 87 was the enabling standard, without which the chances of preserving and developing other standards were weakened. She noted that, prior to the crisis, Turkey had experienced relatively rapid economic growth, which was now slowing due to the crisis. The workers that had been integrated recently into this economic development risked losing their hard-won gains. Just over five per cent of workers in Turkey were covered by collective agreements, which was a very low percentage and in practice meant that less than half of the workers who were organized benefited from a collective agreement. Turkey needed to fully implement Convention No. 87 to extend the freedom to organize to its workers, so that they could defend their rights and working conditions during the ongoing economic crisis. It also needed trade unions to be full partners in social dialogue for economic recovery and future development. The limitation of the trade union rights of Turkish workers was very serious. There was no valid reason for the delay in bringing legislation into conformity with Convention No. 87. She therefore urged the Government to do so immediately.

The Worker member of the Republic of Korea expressed serious concerns with regard to the repression of basic labour rights by the Government of Turkey. Turkish labour laws were not in conformity with ILO Conventions and the Government was dragging out the process of implementing its commitment to bring them into line with ILO principles. Furthermore, the Government had repeatedly attacked workers and trade union officials through the riot police. Every May Day rally since 2007 had ended with large numbers of arrests and many injuries, and the headquarters of DISK, an ITUC affiliate, had been besieged. In this totally unacceptable situation he urged the Government to bring an end to violent actions against workers. He added that 14 members of KESK were still held in custody for exercising their trade union rights. They included 12 teachers who had been arrested at school during a class. The Government was trying to accuse them of terrorist activities, but most of them had been employed by the public service for over 20 years and there was no evidence to prove that they were linked to violent activity. He urged the Government to release them immediately and to stop criminalizing trade unions of public employees.

With regard to the limited protection against anti-union discrimination and dismissals, he indicated that, according to ITUC sources, the minimum number of employees in a workplace needed for the application of job security legislation was 30. However, as a result of subcontracting and fixed-term contracts, about 95 per cent of workplaces had fewer than 30 employees. In view of this situation, he called upon the Government to enact without delay appropriate laws to eradicate all types of anti-union discrimination and to protect workers from dismissal.

In conclusion, he drew parallels with the situation in his own country, where the police were used very frequently to prevent the exercise of the right to demonstrate and to strike, and where the Government had repeatedly ignored the recommendations of the international community, including those of the ILO and the OECD. He therefore urged the Government to give effect to ILO Conventions on freedom of association so that workers could enjoy full trade union and human rights. He also warned that social consensus would never be achieved through the use of brutal violence against trade unions.

A Government representative of Turkey thanked the members of the Committee for their constructive comments. He reaffirmed the will of the Government to proceed with the reform process. Although it had been delayed by local elections and the recent Cabinet reshuffle, the reform of labour laws was proceeding. He reaffirmed that the arrest of the unionists of KESK had been carried out in accordance with an order of the Office of the Public Prosecutor on the grounds of suspicion of terrorist activities in the context of the Kurdistan Workers' Party (PKK), which was on the list of international terrorist organizations. He therefore emphasized that they had been arrested for illegal activities which had nothing to do with their trade union activities. He recalled in this respect that, despite the calls that had been made, governments did not have the authority to release persons who had been arrested by court order. In conclusion, he said that, although it was not possible to claim that the entire labour legislation in Turkey was in full compliance with ILO Conventions, this was due to some of the provisions contained in the Constitution. The Bills submitted to Parliament constituted very important and even radical reforms. He called on the Committee to reflect in its conclusions the fact that the draft legislation had been prepared in cooperation with employers and workers.

Another Government representative of Turkey indicated that the claims that consensus had not been reached on the Bills did not reflect reality. The social partners had participated intensely in the process of formulating the amendments, both in the Tripartite Consultation Board, which had met every month, and in the Parliamentary Committee and its subcommittees. With regard to the claims concerning anti-union discrimination, he recalled that, with its population of 70 million, Turkey had a large economy and there might be certain employers who would not let trade unions organize at the workplace. However, there were already three pieces of legislation dealing with anti-union discrimination and those responsible were liable to severe penalties. Workers who were victims of such discrimination could obtain compensation. With regard to the allegations concerning public servants, he observed that they could always appeal to their superiors and that judicial review was always available to them. With reference to trade union rallies and demonstrations, he indicated that trade unions did not have to seek prior permission for such events, and only needed to notify the Office of the Governor 48 hours beforehand. The Governor could indicate the location at which such events were to be held. For example, in Istanbul, four main squares were available for these events. However, Taksim Square had been closed for such demonstrations since 1979 for security reasons. The 2008 incidents had occurred because of the insistence of some trade unions and confederations to hold the May Day celebrations in Taksim Square. This year, a number of workers had been permitted to hold a celebration in the Square. The Government had taken the necessary measures and the event had been peaceful. He expressed the belief that the violent incidents had mostly occurred in the past as a result of infiltration by illegal organizations which had attacked the security forces. It therefore followed that the measures governing May Day celebrations were not an infringement of trade union freedoms, but that the unnecessary insistence of the trade unions to hold their celebrations in violation of the law had been the main cause of the incidents.

The Worker members expressed their concern regarding the situation that persisted in the country, as well as the sad events that had been described. Given the severity of the failings and the persistent refusal of the Government to make efforts to bring legislation into conformity with the Convention, a special paragraph was envisaged. They noted, however, that it was important to continue believing that efforts could lead to real social dialogue, based on the European model, in an atmosphere free of violence. The Government should therefore accept ILO technical assistance, as well as a bi- or tripartite high-level mission to resolve the problems that persisted despite the many discussions that had taken place on this case, particularly in the context of the high-level mission of April 2008. Vague promises were insufficient and a timetable on the planning of the measures to be taken would need to be established, in agreement with the social partners and under the aegis of the ILO. The Government would then have to provide a detailed report of the activities carried out to the Committee of Experts for its session in 2009. In this way, the case of the application of the Convention could be followed year after year and, if necessary, be included on the list of individual cases if no progress was noted. This should not give rise to problems, if, as the Government indicated, the social partners were already associated with the reform process. However, it should be noted that there had been no tripartite consultations in the public sector for over three years.

The Employer members observed that there was a lack of clarity in the present case concerning the underlying facts and the legal situation. Although it had appeared that consensus had been reached with the social partners on the Bills to amend Acts Nos 2821 and 2822, the message from the Worker members appeared to be that there was in fact no consensus. The question therefore arose as to what the actual situation was. They also recalled their previous comments concerning the difficulties in assessing the value of the initiatives that had been taken recently in relation to civil liberties and violence. The Government would need to provide a report in time to be examined at the next session of the Committee of Experts. Something was needed to stimulate action to bring the situation into compliance with the Convention. Finally, they agreed with the proposal made by the Worker members that a high-level tripartite mission should be carried out.

Conclusions

The Committee took note of the statement made by the Government representative and the debate that followed. The Committee also noted that a high level ILO mission visited the country on 28–30 April 2008, pursuant to a request of this Committee in June 2007.

The Committee observed that the Committee of Experts' comments had been referring for a number of years to discrepanc ies between the legislation and practice, on the one hand, and the Convention, on the other, concerning the rights of workers in the public and private sectors without distinction whatsoever to establish and join organizations of their own choosing, and the right of workers' organizations to draw up their constitutions and rules, to elect their representatives in full freedom and to organize their activities without interference by the authorities. The Committee noted the comments presented by both national and international workers' organizations on the application of the Convention, particularly with respect to the violent repression of demonstrations, use of disproportionate force by the police and arrests of trade unionists, as well as government interference in trade union activities.

The Committee took note of the Government's statements according to which: work had been carried out on the amendments to Acts Nos 2821 and 2822 in close cooperation with the social partners, and that the Tripartite Consultation Board had conducted intensive work in this regard. The draft bills were on the agenda of the National Assembly. The Government also referred to consultations with the social partners on amendments to be made to the Public Employees' Trade Unions Act. While the draft bills did not yet envisage certain requested amendments, this was because it was necessary to first amend the Constitution. The Government was also planning the necessary amendments in this regard. The Government also referred to a recent Constitutional Court judgement which found unconstitutional the provision restricting certain types of work stoppages. As regards the allegations of excessive police intervention in relation to trade union demonstrations, the Government representative stated that, while the Government was determined to take all necessary disciplinary and judicial measures against the members of the security forces who used disproportionate and excessive force, it was important that those demonstrating respected the relevant provisions of national legislation. He highlighted the important step taken by the Government in 2008 to declare May Day as a public holiday.

While noting the information provided by the Government in reply to the serious allegations made to the Committee of Experts relating to police violence and arrests of trade unionists and government interference in trade union activities, the Committee noted with concern the information provided with respect to recent mass arrests of trade unionists, as well as the allegations of a generalized anti-union climate. The Committee observed with deep regret the statements made of important restrictions placed upon the freedom of assembly and of expression of trade unionists. It once again emphasized that respect for basic civil liberties was an essential prerequisite to the exercise of freedom of association and urged the Government to take all necessary measures to ensure a climate free from violence, pressure or threats of

any kind so that workers and employers could fully and freely exercise their rights under the Convention. It urged the Government to review all cases of detained trade unionists with a view to their release and to reply in detail to all the pending allegations and to report back to the Committee of Experts this year on all the steps taken to ensure respect for the abovementioned fundamental principles.

With respect to the recent draft legislation amending Acts Nos 2821, 2822 and 4688, referred to by the Government, the Committee, noting the lack of clarity as to the current situation and the extent to which consensus had been reached with the social partners in this regard, expressed the firm hope that these drafts would address appropriately all the issues raised by the Committee of Experts over the years and that the necessary measures would be adopted without further delay so that the Committee of Experts would be in a position this year to note significant progress made in bringing the law and practice into conformity with the provisions of the Convention. The Committee further called upon the Government to rapidly put forward and ensure any constitutional reforms necessary for the application of the Convention. The Committee urged the Government to elaborate a plan of action with clear time lines for finalizing the abovementioned steps. The Committee requested the Government to accept a high-level bipartite mission with the aim of assisting the Government in making meaningful progress on these long outstanding issues. The Committee requested the Government to provide detailed and complete information on all progress made on these issues as well as all relevant legislative texts, in a report to the Committee of Experts for its upcoming session in 2009.

BOLIVARIAN REPUBLIC OF VENEZUELA
(ratification: 1982)

A Government representative indicated that his presence in the Committee was in full awareness that the new call to discuss the case had been made for political rather than technical reasons. What was at issue was not to provide information on real violations of freedom of association and Convention No. 87, but rather a pretext to challenge the basis of the humanist and sovereign policies adopted in the country in the context of participatory democracy. Since 1999, when the present government first had taken office, the Committee had called on his Government to provide information on the Convention on eight occasions at the request of the Employer members. During previous sessions of the Conference, the spokesperson for the employers had even indicated that the Government would be permanently called upon by the Committee, thereby demonstrating the political nature of the summons, which did not precisely comply with the criteria for the selection of individual cases.

Nevertheless, the solitary defence of its policies put up by the Government for the past ten years had now changed. Now, in Latin America and the world, a larger number of governments and peoples were becoming aware of the causes, effects and those responsible for the crisis of the economic model. Today, there was greater clarity on the mistaken and perverse elements of capitalist theses which advocated the disappearance of the State, the untrammelled privatization of public enterprises and essential services as a justification for lowering the rights of men and women workers, greater flexibility, outsourcing and precarious forms of work. Under the pretext of alleged violations of freedom of association and without complying with the criteria for the selection of cases, the Government had been called before the Committee. This was the world being turned upside down, as those who needed to answer for the crisis wanted those who had been combating it for years to answer for their acts.

With regard to freedom of association, the Government representative added that between 1989 and 1998, 2,872 unions had been registered, whereas over the ten years of office of the current Government, 5,037 unions had been registered, representing an increase of 75 per cent. This demonstrated that there were no complex and tiresome procedures preventing the exercise of the right to organize in full freedom. Similarly, during these ten years, 6,294 collective agreements had been freely and voluntarily concluded, with an annual average coverage of 570,000 men and women workers. In 2009, despite an overt media campaign of disinformation, the existence of a global crisis, and the fact that the national minimum wage was raised twice, collective agreements had been concluded covering 416,389 men and women workers, including those employed in state schools and colleges and manual workers and salaried employees of public universities. Collective bargaining was currently being carried out in the state electricity sector, and was about to start in the telecommunications, construction and oil sectors and, in some cases collective bargaining would start once the trade union election processes had been completed, this would benefit a total of almost 1 million workers. Furthermore, in accordance with freedom of association since 2006 there had been 426 strikes registered, which had been carried out legally. This demonstrated cooperation and compliance with the provisions of the Convention.

With regard to the recommendations of the Committee of Experts, it should be noted that the Basic Labour Act dated from 1991, prior to the current Government taking office. In 1997, the Committee of Experts had already referred to the then Government preceding with the amendment of the provisions respecting freedom of association through "Tripartite Social Dialogue Commission". This reform in practice served to modify the social benefit system, facilitate dismissal, make labour relations more flexible and privatize the social security, with the support of FEDECAMARAS and the CTV. The labour reform of 1997 had paradoxically been undertaken by the previous President, who had drawn up the original Act in 1991. One of the protagonists of the labour reform had been the Minister of Labour designated by the President of FEDECAMARAS during his brief period of office in April 2002. The Government valued the observations of the Committee of Experts concerning freedom of association. Since 2003, work had been carried out in the National Assembly for the reform of the Basic Labour Act, which had been commented on favourably by the ILO in 2004. The draft general reform had been held up by the definition of aspects related to the social benefits system, compensation for dismissal and absolute employment stability, among other matters. This year, the National Assembly had commenced a new process of public consultations with workers and employers' organizations, academic institutions and the public authorities, with a view to reforming the Act. These consultations had been undertaken in a climate of full amplitude and participation without any pre-determined agenda with the social partners, and based on the model of the Bill to amend the Basic Labour Act formulated in 2003 in consultation with the Office.

With reference to the National Electoral Council (CNE) and trade union elections, he indicated that, following consultations with trade union organizations, two legal instruments had been adopted: the Standards to Guarantee the Human Rights of Men and Women Workers in Trade Union Elections and the Standards Respecting Technical Assistance and Logistical Support in Trade Union Elections, which would enter into force in August. The first of these standards was of a general nature and was intended to guarantee the transparency of trade union elections, providing guarantees of the right of members to participate in accordance with the principle of trade union democracy set out in Article 95 of the Constitution. Furthermore, the principle of democratic changeover acknowledged the possibility of the re-election of trade un-

ion leaders whose elected mandate had expired, which was already normal practice, as indicated to the Committee in the past. With respect to the competence with which the CNE was endowed to organize trade union elections (article 293 of the Constitution), various modalities were envisaged: (a) the publication of election results in the Electoral Gazette so that they were in the public domain and to prevent secret and fraudulent procedures; (b) technical assistance to undertake all phases of elections, subject to previous request or at the voluntary or statutory requirement of trade union organizations and in accordance with their statutes; and (c) the review of elections on the basis of complaints by members who considered that their rights had been impaired, as the CNE was a quasi-judicial body empowered by the national public authorities, at the same level as other public authorities, and was therefore independent and autonomous and was held in high esteem at the national and international levels. The second of these standards developed one of the means of participation of the CNE, namely technical assistance for the holding of elections, also subject to previous and voluntary request by trade union organizations and in accordance with their statutes, and never through compulsory imposition. Furthermore, as it was a public service requested on a voluntary basis, the costs of carrying out electoral processes would have to be borne directly by the organizations concerned.

With regard to the observation by the Committee of Experts concerning the provisions of the Regulations of the Basic Labour Act sections 155 (on the representative status of minority unions), 152 (on essential services) and 191–222 (on cases referred by trade unions), it should be emphasized that these standards did not correspond to the 2006 text, but the text originally approved in the last Council of Ministers of the previous Government in January 1999, before the coming into power of the current Government. One of the participants in drawing up these sections had been the person later appointed Minister of Labour by the former President of FEDECAMARAS. He expressed surprise at the observation made by the Committee of Experts on these sections, which were in substance the texts that had been in force since 1999, and not since 2006. The sole modifications made to the sections consisted of gender sensitive language through the recognition of men and women workers in accordance with the requirements of the 1999 Constitution. On 1 May 2006, the amendment of the Regulations of the Basic Labour Act had been approved and had repealed the provisions which promoted greater flexibility and precariousness in labour relations, and thus broadening the rights of men and women workers. The sections that had been removed from the Regulations were those relating to temporary work agencies, disciplinary labour rules and first jobs for the young. They were removed because they were contrary to the rights of freedom of association and collective bargaining. The amendments to the Regulations adopted in 2006 broadened protection against anti-union discrimination, as well as the protection of annual leave, maternity and nursing leave, while strengthening the labour administration to combat illegal practices relating to work and social security. The Government indicated that these provisions had been maintained because the Committee of Experts had not made comments on them between 1999 and 2005. Indeed, its comments had only been made in 2009, precisely after the repeal of the provisions promoting greater flexibility and precarious work.

He added that Resolution No. 3538 had been issued in accordance with the Basic Labour Act of 1991, current case law and the recommendations of the Credentials Committee concerning the determination of the representative status of trade unions. The Government had guaranteed the confidentiality of the data of the members of trade unions and did not know of, or had not been informed of the existence of any cases in which the data in the public trade union registry had been used to the prejudice of or to discriminate against the rights of a trade union member. Nor was it aware of any complaint made on this matter to the Ministry of the Interior, the Office of the Ombudsperson or the judicial authorities.

On the subject of tripartite social dialogue, he said that it had been characterized by a history of the absence of democracy and the violation of rights. The objective of the National Tripartite Commission established in 1997 had been to reform social benefits and the system of compensation for unjustified dismissal. In 1998, by means of Legislative Decrees, and without consultation with the workers, the privatization of social security schemes had been imposed, with the establishment and promotion of private retirement and health benefit administrators. This meant that those who today called for consultations had not consulted anyone before abolishing the public social security institute. As the labour standards had been costly, with the support of FEDECAMARAS and the CTV, one week before the Government of the current President had taken office in January 1999, the outgoing government had approved the Regulations of the Basic Labour Act. Social dialogue at the level of confederations and elites, which was exclusive and monopolistic, had therefore been replaced by decent and responsible social dialogue, which was an agent of transformation and progress and was inclusive through the recognition of all the social partners. The current Government, in contrast with those which preceded it, had convened all the trade union organizations, and not only FEDECAMARAS and the CTV. The latter organizations had previously, through legislation and practice, benefited from privileges in the appointment of ministers and high-level government officials in a clear policy of favouritism and advantage in relation to other organizations in the country.

He added that, with the authorization of the National Assembly, the Government had been empowered to adopt legislation for limited periods. This authority had come to an end in July 2008, but it had resulted in the improvement of the living conditions of the people, action in defence of the environment and greater dignity for men and women workers. During this period, the state ownership of strategic means of production had been affirmed, the privatizations of the 1980s and 1990s had been reversed, further measures had been adopted to improve the financial sustainability of the public social security system, provisions had been extended to combat outsourcing and precarious forms of work, all of which had been intended to promote dignity in work, decent work and the inclusion of sectors that had traditionally been excluded by bringing to an end the privileges of sectors that had exercised monopolistic and oligopolistic control over the economy. The complaints made by FEDECAMARAS that the Legislative Decrees were of a political nature and were intended to establish direct control of economic and social matters, which were government responsibilities, were by nature related to economic policy and did not lie within the matters covered by the Convention. Furthermore, FEDECAMARAS had only appealed to the Supreme Court of Justice with regard to three of the Legislative Decrees. There was broad consultation on draft legislation in the Bolivarian Republic of Venezuela. The National Assembly had to undertake public consultations known as "street parliaments", in which representatives of employers' organizations from major enterprises had not participated, despite calls being made for them to do so through the press and the television. He criticized the lack of balance, objectivity and impartiality in the comments of the Committee of Experts, in which it was stated that the only independent and representative organizations were FEDECAMARAS and the CTV, and the description of FEDEINDUSTRIA, CONFAGAN and EMPREVEN as organizations which followed Government policy. In particular, FEDEINDUSTRIA had been established for over

37 years and its members were small and medium-sized producers. He also regretted that appreciation had not been expressed of the progress achieved by participatory and inclusive social dialogue. In the field of legislation, the current Government had adopted, in consultation with all the social partners, the reform of the Regulations of the Basic Labour Act of 2006 and had approved the Regulations of the Act respecting the nutrition of workers, as well as the Regulations of the Act respecting occupational prevention conditions and environment. The Ministry of Labour was currently engaged in a process of social dialogue to reform the Social Security Act with a view to extending benefits for maternity and paternity leave.

With regard to acts of violence related to trade unions, he indicated that the highest authorities, starting with the President of the Republic, had publically repudiated such acts and had called for their urgent investigation, as they were against state policy. He recognized that the Government was the victim of the old trade union culture, which was very concerned with the distribution of jobs, particularly in the oil and construction sectors, which gave rise to disputes between and among unions. The Government had therefore taken the lead in collective bargaining in the oil and gas sector in 2005, which had made it possible to distribute jobs subject to the criteria of equality and transparency, thereby reducing incidences of the violence that had occurred in the past. He added that during collective bargaining in the construction sector a system would be promoted with the social partners concerned for the distribution of jobs in accordance with criteria of equality and transparency with a view to addressing the structural causes of the current situation of violence, including the transformation of the "closed shop". In other sectors, such as agriculture, violence had been led by landowners against revolutionary leaders who were fighting for the just distribution of land and for the effective application of the Act respecting lands and agrarian development, adopted by the Government in 2001, and which was intended to recuperate public property that was in the hands of private individuals. In the case of the assassinations of trade union leaders of the UNT Aragua, Mitsubishi and Toyota, the police had investigated the facts, identified the authors and instigators of the crimes, including police officers who had been involved, and the corresponding compensation for the families of victims was being determined. Finally, with regard to the bomb in the headquarters of FEDECAMARAS, the Office of the Public Prosecutor had indicated that the trial was in its preparatory phase and that arrest warrants would be issued against two suspects so that they could be brought before the courts. He emphasized that there was no policy of threats and persecution of trade union leaders and members. On many occasions, the legal measures adopted by the State had been intended to achieve compliance with the legislation and recuperate state property, collect interest payments and soft loans, tax and social security payments, control prices and production quotas, but had been represented as acts of retaliation and persecution.

The Government refuted that reference be made, including by the Committee of Experts to its democratic and participatory system as an imposed "regime". This was an additional illustration of the lack of balance, in partiality and objectivity, which employed the language of the political opposition in disregard of the Government that had been elected by the people in repeated elections observed by the international community. In conclusion, he emphasized that the Government had adopted positive measures and that internal mechanisms existed in the context of participatory democracy which provided a framework for broadly based social dialogue.

The Worker members indicated that the inclusion of the case of the Bolivarian Republic of Venezuela on the list of individual cases had not been their choice, although they had not managed to oppose the will of the Employer members on the matter. The case had raised and continued to raise controversy both within the country and in the ILO, and there was not even a common vision among Worker members on the situation with regard to compliance with the principles set out in the Convention.

The Constitution of 1999 and the Basic Labour Act favoured freedom of association of all workers, except for members of the armed forces. However, indicated by the Committee of Experts and the case law of the Committee on Freedom of Association, some provisions of the Basic Labour Act were in contradiction with the declared will of the Government to comply with freedom of association. The reform of the regulations of the Basic Labour Act in 2006 had brought certain improvements to the Act and had taken into account some of the ILO's recommendations. These improvements included the fixing, once a year, of a minimum wage, through national social dialogue; the freedom of trade unions to organize elections in conformity with their statutes; and the guarantee that trade union leaders were elected by a ballot of the trade union. Elected trade union leaders then became members of the executive board of the enterprise or establishment concerned. This approach was mandatory for enterprises, and other public sector bodies, as well as for private sector enterprises, which benefited from special state protection.

The regulations nevertheless contained some restrictions on freedom of association, including, the need to hold a trade union referendum to confirm the representativeness of trade union organizations in the case of collection bargaining or collective labour disputes. This procedure was entirely regulated by the Ministry of Labour, which could be interpreted as a devious means of allowing the State, the main employer in the country, to legitimize trade unions, or to intervene in their internal functioning. Labour disputes related to recruitment practices, especially in the construction and oil sectors, continued to raise serious concerns, especially in view of the violent acts that had occurred in various regions of the country. The right to strike had also been gradually restricted and acts of repression had been documented, as well as penal sanctions on those submitting trade union claims. It was to be hoped that the Government would give priority to addressing these issues and would be able to accept ILO technical assistance so as to continue the process of reforming of the Basic Labour Act, in line with the recommendations of the Committee of Experts.

The Employer members thanked the Government representative for his presence in the Committee and indicated that they had listened very carefully to everything he had said. However, they regretted that in his intervention he had not addressed the principal issues raised in the observation of the Committee of Experts, which related to fundamental aspects of the implementation of the Convention. Indeed these aspects were so central that if they were not present, the Convention was not applied. The Employer members added that, the Government representative appeared to challenge the criteria followed in selecting the present case for examination by the Committee. It should, however, be recalled that the procedure followed by the Committee was eminently transparent, since it was based on the comments of the Committee of Experts, the history of the discussion of the case in the Committee and the general discussion, with a clear indication of the criteria adopted for the selection of individual cases for examination.

The Employer members referred to their statement during the previous discussion of the case, in which they had reviewed the fundamental issues to be examined in the context of the case. They therefore regretted that there had been no improvement in the situation in relation to these aspects and deplored the fact that a country that had voluntarily ratified the Convention appeared to be making no effort to overcome the fundamental problems in its implementation raised year after year by the Committee of

Experts. When there was such disregard for the comments and recommendations of the supervisory bodies, it was absolutely normal and fully in compliance with the working methods of the Committee that the case was selected for examination by the Committee every year. They recalled that the case related to Government interference in the internal affairs of FEDECAMARAS, the destruction of property of FEDECAMARAS, the violation of fundamental civil liberties, the confiscation of private property, failure to consult the social partners in relation to the adoption of hundreds of decrees, severe limitations on the freedom of movement of employers and failure to comply with the ILO supervisory procedures. They observed that if the present case had affected the situation of trade unions it would certainly have been selected for examination by the Committee and recalled in this respect that employers' organizations enjoyed equal standing with trade unions in relation to the ILO's fundamental principles and its supervisory procedures.

The Employer members further recalled that this was the 13th occasion on which the case had been examined by the Committee and the 17th observation made by the Committee of Experts, which showed the longstanding failure of the Government to take the necessary action on the matters raised by the Committee of Experts which included the need: to adopt the Bill to amend the Basic Labour Act, to eliminate the restrictions placed on the exercise of the rights granted by the Convention to workers' and employers' organizations and the need for the National Electoral Council (CNE), which was not a judicial body, to cease interfering in trade union elections. Moreover, action was needed in relation to certain provisions of the regulations of the Basic Labour Act, dated 25 April 2006, that might restrict the rights of trade union and employers' organizations in their ability to engage in collective bargaining (section 115, sole paragraph of the regulations) and the possibility for compulsory arbitration in certain essential public services (section 152 of the regulations).

The existence of these and many other issues relating to the implementation of the Convention explained why it was so important for the Committee to discuss the application of the Convention by Venezuela. Indeed, the employers emphasized that, there had been no other case in the history of the ILO that was as important for the Employer members. They recalled that, when cases of interference in workers' organizations occurred, the Employer members supported the workers. The situation was particularly alarming because, while a certain effort would have been expected by the country to meet its international obligations, instead there appeared to have been a deterioration in the situation. The expropriation and/or confiscation of private property belonging to local and foreign companies without due compensation was escalating, especially in the case of companies in the politically sensitive oil, gas, food and farming industries, many of which were FEDECAMARAS members. Several farms belonging to employer leaders had been taken over by troops and civilian supporters of the Government.

The basic issue in the present case was that if there was no private sector, there was no tripartism. The case involved the most fundamental and sacred values of the ILO, namely freedom of association, social dialogue and tripartism. For the attainment of those values, it was crucial to protect civil liberties, freedom of speech and freedom of movement. Yet those conditions were not being met, with particular reference to freedom of speech, which was jeopardized, among other reasons, by Government control over the media. With regard to the vandalism and occupation of the premises of FEDECAMARAS, the perpetrators were well known, but there was no evidence of any investigation or prosecution. Although the Government representative had indicated that certain arrests had been made and that prosecution appeared to be in the process of being pursued, the Committee of Experts would need to examine this information.

They further emphasized that the case involved the violation of Article 3 of the Convention, which related to non-interference in the affairs of employers' and workers' organizations. After 14 years, it was clear that the Government did not understand the meaning of Article 3. In addition to interference in the affairs of employers' organizations, and particularly FEDECAMARAS, the Government had also interfered in the work of the present Committee by restricting the travel in 2007 of Ms Albis Muños, former President of FEDECAMARAS. They recalled that since 1995 they had been complaining of interference in the composition of the Venezuelan Employers' delegation to the Conference, and yet since 2004 the Credentials Committee had explicitly recognized FEDECAMARAS as the most representative employers' organization. Moreover, the Government had created parallel employer associations to replace and undermine FEDECAMARAS. Such actions were contrary to tripartism and freedom of association, and undermined social dialogue. The Employer members recalled that several hundred Decrees had been adopted without consultation and that for many years the minimum wage had been revised without consulting the employers. In 2007, the Government had increased the minimum wage by 25 per cent and had informed FEDECAMARAS of the decision only on the day of publication of the increase. Moreover, the seriousness of this case was highlighted by the fact that the former President of FEDECAMARAS, Carlos Fernandez, had been arrested and was in exile.

At its session in March 2009, the recommendations made to the Government by the Committee on Freedom of Association had included the following action: establish a high-level joint national committee in the country with the assistance of the ILO; establish a forum for social dialogue in accordance with ILO principles, with a tripartite composition respecting the representativeness of workers' and employers' organizations; convene the tripartite commission on minimum wages provided for in the Basic Labour Act; ensure that any legislation concerning labour, social and economic issues adopted in the context of the Enabling Act be first subject to genuine consultations with the most representative independent employers' and workers' organizations, while endeavouring to find shared solutions wherever possible; to take measures to step up independent investigations regarding the bombing of FEDECAMARAS premises, with a view to clarifying the facts, arresting the perpetrators and imposing severe penalties on them to prevent any recurrence of such crimes; step up the investigation into the attacks on FEDECAMARAS headquarters in May and November 2007, and conclude those investigations as a matter of urgency; and provide information regarding the ban on leaving the country imposed on 15 employers' leaders and revoke the warrant for the arrest of former FEDECAMARAS President Carlos Fernandez, so that he could return to the country without risk of reprisals. The Employer members urged the Government to take immediate steps to comply with Article 3 in all its aspects, and to ensure that the conditions for freedom of association were met through the protection of civil liberties and freedom of expression and the promotion of genuine, free and independent tripartite consultation and dialogue.

The Government member of Uruguay, speaking on behalf of the Group of Latin America and the Caribbean countries (GRULAC), recognized that the Government of the Bolivarian Republic of Venezuela had been conducting itself in a responsible manner and in a spirit of collaboration with the supervisory bodies of the ILO. He recalled that the Bolivarian Republic of Venezuela had received and responded positively to the two direct contact missions in 2002 and 2004 and the high-level mission of 2006. It was important to take into account the fact

that, as indicated in the report of the Committee of Experts, the draft Bill to amend the Basic Labour Act, which was before the legislature and which was still undergoing extensive consultation, gave effect to the observations made by the ILO supervisory bodies. The Committee of Experts had noted in its report that the Government had affirmed the existence of broad social dialogue including all the social partners, and had broadly welcomed the offer of technical assistance from the ILO. GRULAC was of the opinion that the progress made in relation to Convention No. 87 needed to be taken into account and trusted that the Government would continue to make progress in this respect. GRULAC expressed its surprise that the Government had been requested to appear before the Committee once again for the case to be examined. This case was selected, despite the fact that the case did not fulfil the principal criteria for selection established in document C.App./D.1, on the work of the Committee which had been approved on 4 June 2009. Finally, GRULAC recommended that consideration should be continued on the working methods of the Committee with a view to ensuring complete transparency and objectivity in the procedures that governed its work.

The Employer member of Brazil said that, when discussing freedom of association, it was necessary to realize that it could not exist in the absence of the other fundamental human rights from which it was inseparable. For employers, the right to economic initiative, a corollary of which was the right to property and freedom of expression and communication, was essential for the existence of freedom of association. Dictators always targeted communications as a key factor in social organization and used the media to intoxicate public opinion and thus impose regimes opposed to democracy. He expressed his strongest protest against the recent government acts against the media, including the closure of a television channel and the threat to close another one.

A Worker member of the Bolivarian Republic of Venezuela said that his country, in the same way as other countries in Latin America, was undergoing deep-rooted social, political, economic and cultural change resulting from the peoples' struggle to free themselves from the oppression of the neoliberal model, which only caused hunger, misery and exclusion. There were new social actors in the country, including the trade union movement, who were claiming an active role as protagonists in all areas; in this context, in April 2003, the National Workers' Union (UNT) confederation, was established. He indicated that the traditional trade unions and employers' organizations had subjected the country to a coup d'état and to economic sabotage, which had caused the country more than 25 trillion US dollars in economic losses in a political adventure of which the only purpose was to preserve privileges in total disregard for the suffering of the people.

He emphasized that it was necessary to explain to the Committee why the majority of the members of the UNT, CUTV and other independent federations did not agree with this international forum being used by national and foreign interests that were contrary to the interests of the majority of the population of Venezuela, by claiming that the country was in violation of the Convention. With reference to freedom of association, he expressed the commitment of these organizations to the ILO Constitution and the Convention as a whole, and particularly Articles 2, 3, 4, and 5.

All the trade union confederations had concluded agreements to hold elections autonomously and independently from the National Electoral Council (CNE). This was demonstrated by the adoption of the recent decision of the CNE (29 May 2009) which explicitly provided that the CNE was only to intervene at the request of a trade union.

He deemed it necessary to explain that the suspension of the elections of the United Federation of Venezuelan Petroleum Workers (FUTPV) was the result of a complaint by workers struggling to develop a participatory and transparent election. These workers had found out that many workers had been excluded from the final electoral roll – although the complete lists of the first-level trade unions to the Electoral Council had already been submitted, as well as the inclusion of persons on the list who did not work in the oil industry. The CNE had upheld the complaint and the election was expected to be held on 28 July.

He also emphasized that the 1999 Constitutional Assembly had adopted the present National Constitution, which in article 95 contained all the provisions on freedom of association in accordance with Convention No. 87. He recalled that 15 years ago those who today talked about freedom of association for electoral processes had never held free, democratic and transparent elections. Using terror and violence as their main weapon, they had imposed their dominance and alleged representativeness. Those who intended to participate had been persecuted, imprisoned, tortured and in many cases disappeared by the repressive agencies of those governments. He indicated that those claiming to represent the majority did not do so and were in violation of Articles 2, 3, 4, and 5 of the Convention, since the Comments communicated to the Committee of Experts had pointed out that the newly emerged trade union organizations were institutions that were dependent on the Government and were not autonomous. In other words, workers did not have the right to organize or establish trade unions or federations which were not aligned with the above organizations.

With reference to collective agreements, he said that a large number of collective agreements had been agreed upon, of which the most important were in the education sector, covering 500,000 workers, the university sector covering 70,000 workers, the chemical and pharmaceutical sector covering some 70,000 workers, the Caracas underground covering 6,000 workers, and the CVG-Ferrominera workers covering 4,000 workers. Other collective agreements were being negotiated in other sectors, including electricity, health and oil. All this was in addition to the hundreds of collective contracts that had been concluded between the first-level trade unions with various private sector enterprises. He affirmed that the negotiation of all the collective agreements that had expired would be continued.

He referred to significant progress in other areas, such as the Basic Act on occupational prevention, conditions and environment (LOPCYMAT), which required employers to provide for participation by women and men workers and to take into account their observations on matters of occupational safety. Women who had spent their whole lives in the household were now fully entitled to compensation through social benefits for the years of provision of services, in accordance with article 88 of the Constitution, which also provided for equality for men and women in respect of labour rights.

He underlined that during the early years of the current Government workers' and employers' confederations had been consulted to agree on increases in the minimum wage and other labour legislation, but some members in FEDECAMARAS and the CTV, who did not accept the political, economic and social transformation of the country, had avoided consensus.

It was easy to demonstrate that all the parties concerned had been consulted about the Basic Labour Act, as well as about the reform of the Social Security Act on the section relating to prenatal and postnatal maternity benefits, which provided for 140 days of full wages for women workers and 14 days of full wages for the spouse. Teachers had also been convened for consultations about the Education Act.

With reference to the allegations of hired assassins and killings of trade union leaders, he referred to the well-known cases of the UNT leaders who had been assassinated in the context of labour disputes with automobile and food industry transnationals, including the regrettable cases of Mitsubishi, Toyota and Alpina. In these cases, the workers had called on the investigation and judicial authorities to identify the murderers and the authors of the crimes had been prosecuted. Recently, a high-level forum with the participation of trade unions and the Ministry of the Interior and the Ministry of Justice, had been established to prevent such heinous practices from taking root in the country.

The speaker called on the Committee of Experts to request more specific information from those who had made these allegations including information on the names of the victims. He indicated that the workers were those who were interested in eradicating anything that smacked of the regrettable practice that had taken the lives of thousands of Colombian brothers. They were also those who were most concerned because their members were in the front line in fighting for workers' rights in all areas.

He also considered it important to indicate that the allegation according to which it was being attempted to replace trade unions with workers' councils did not correspond to reality and was another invention by those trade unionists who had never protected the rights of workers, and had confined themselves to making use of the workers. They did not suspect that they were not far from the uprising of the working class which would play its own role and trace its own destiny. Nobody could replace trade unions, as they were the means of combating against injustice and bureaucracy. For as long as exploitation, class struggle, the quest for greater flexibility, and the unfair distribution of wealth continued to exist, they would continue to be the fundamental weapon in combating them. What was what was of concern to the employers and those who were their allies, was the continued existence of trade unions in the country. He indicated that the existence of trade unions was guaranteed by the UNT and CUTV, but not by those who created trade unions to manipulate them at their will. Trade unions had to have a strategic vision that promoted the further strengthening of the ethical values and moral principles which made it possible to develop women and men to continue to achieve progress in the nationalistic and anti-imperialistic struggle, based on the Bolivarian ideology of the people for emancipation and social transformation. The social transformation that the history of the peoples of Latin America demanded could only be achieved through free participation, which allowed them to formulate criteria emerging from debate and discussion with all workers, without any exclusion whatsoever.

The Government member of Honduras concurred with the statement made by GRULAC. He acknowledged that the Government had made significant progress in the implementation of the Convention and had always pursued broad social dialogue in consultation with all the social partners. This was demonstrated by the consultation process to approve a new Basic Labour Act, which took into account the comments made by the ILO. He emphasized that the Government had cooperated in a responsible and transparent manner with the ILO supervisory bodies. This positive development raised questions concerning the call that had been made by the Conference Committee to examine this case in light of Convention No. 87. He was concerned with the constant selection of certain cases by the Committee, regardless of the progress made by governments. At the same time he was concerned that sufficient time was not taken to assess the results of implementing the recommendations and the technical assistance provided. He called for further consideration of the working methods of the Committee in order to achieve full transparency and objectivity in the procedures governing its work. The only dictatorship of which the workers were aware was the dictatorship of the market and of capitalism. Peoples with other economic, political and social experiences were those where there was self-determination by the people. Let us be free.

An observer representing the ITUC indicated, with reference to the violation of freedom of association in the Bolivarian Republic of Venezuela, that the Government had undertaken for years to amend the provisions that were contrary to the Convention, without having yet achieved major progress. In that sense, he noted that, with respect to article 293 of the Constitution, under which the Government controlled trade union elections, that it was claimed that this constitutional provision was being amended by a regulation. With regard to the Basic Labour Act, he recalled that in the previous discussion of the case, the Government had undertaken to discuss the Act. However, two years later, nothing had yet been discussed. Recently consultations had been initiated, but they had not covered the 2003 draft, on which there was a consensus among the social partners, and which had been the subject of consultations with the Office. With respect to the question of violence, he denounced the assassination of 69 trade union leaders and 26 workers, adding that the violence also took the form of the expropriation of trade union offices. He enumerated the cases in which various regional and district workers' federations had been affected. Moreover, he highlighted the impunity with respect to such acts of violence and intimidation, and indicated that the State could not avoid its responsibilities in this regard. He emphasized the absence of social dialogue: minimum wages were decided upon by the President and meetings for any consultations were called with little notice, or when the issues had already been decided upon. He also referred to the absence of freedom of expression, which had been clearly demonstrated by the closure of Radio Caracas TV and the current threat to close down Globovision. This not only prejudiced the right to work of the workers in these entities, but also freedom of association as organizations were prevented from using means of communication through which they could voice their opinions. He concluded by referring to the repression inflicted on workers during the 1 May commemorative celebration by the police and the national guard.

The Employer member of the Bolivarian Republic of Venezuela indicated that the Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS), which had been established 65 years ago, was the most representative organization of employers in the country and presented in 2003, under her presidency, with the IOE, complaint No. 2254 to the Committee on Freedom of Association. She regretted that five years later, when she already had two successors in the presidency, and one month before holding democratic elections, which was the pride of the independent employers, one was obliged to come once again before this tripartite body to examine the failure of the Government to comply with Conventions Nos 26, 87, 144 and 158, which had been ratified in 1944, 1982, 1983 and 1985, respectively.

She recalled that Case No. 2254 referred essentially to: government intervention restricting the right to organize and freedom of association; the absence of bipartite and tripartite consultations and social dialogue; and termination of employment at the initiative of the employer. In relation to the second point, FEDECAMARAS had constantly called upon the Government to restore social dialogue and tripartite consultation as the genuine and certain road to the sustainable socio-economic development of the country. A large number of laws had been adopted without complying with the obligation to enter into effective consultations. An attempt was being made to replace this with the so-called "street parliaments", which were

nothing more than proselytism by government parties, or through meetings in the National Assembly which were intended to impart information, and never as a means of deliberation. If through some public or private channel proposals were made, they were never taken into consideration. The most recent example was the Act which reserved for the State the assets and related services of primary hydrocarbon activities, published in the *Official Gazette* on 7 May 2009. This Act, which was unconstitutional, opened the way for the Government to engage in expropriation, which might more appropriately be termed confiscation, or nationalization using the terms of the Government. In this way, the Government was taking over the assets of enterprises operating in the area of oil-related services. On the day following the enactment of the Act, it had been decreed that the powerful state enterprise, Petróleos de Venezuela, would take control of 36 enterprises. Subsequently, on 13 and 19 May, more enterprises had been taken over, with the number now reaching 76 oil companies operating in Lake Maracaibo. These companies were in most cases small and medium-sized, most of which were nationally owned, although certain were foreign or joint ventures, including: services to transport personnel by boat, tugs, barges, port terminals and wharves, materials providers, ship maintenance, provision of diving equipment and water treatment and injection plants, 30 aquatic activity ports, dykes and shipbuilders and compressed gas plants. Many others were on the list, both in Lake Maracaibo and in other oil regions in the country. She noted that the expropriation mechanisms used were very sophisticated. First, tailor-made laws were prepared, and were then applied. It was all very "legal" and this type of legislation had three fundamental characteristics: greater ideology, greater control and greater centralization.

With reference to the fixing of minimum wages, she recalled that there had been no real tripartite consultation for nine years. In the Committee a few days ago it had been said that the rise of minimum wage was 30 per cent, but it had not been like that every year. This year the increase had been decreed in two parts: 10 per cent as of 1 May and 10 per cent as of 1 September. However, there had been no mention of the problem of inflation in the country, which had the highest rate of inflation in Latin America, and one of the highest in the world. According to government figures, inflation had reached 29 per cent the previous year, and it had already been necessary to change the estimates set out in the national budget this year.

She explained that no reference had been made to the most recent figures, or to the lists of laws that had already been approved in first reading, and some of which would already be enacted right after the Conference. The new laws would make the real situation even more difficult for the independent employers in her country. She said that the enactment of legislation such as the Basic Act respecting occupational prevention, conditions and environment (LOPCYMAT) was presented as an achievement. Admittedly, on paper, the Act represented progress. However, when the penalties were analysed, it could be seen that they were confiscatory, as the imposition of certain penalties and fines could easily be higher than the assets of any company. Moreover, what was more serious was that their application was subject to political manipulation. Legislation was therefore becoming a political instrument. This was also happening with tax legislation, as well as the very recent amendments, on two occasions, of the Act protecting persons in the purchase of goods and services (previously the Consumer Protection Act). The institutions responsible for its application, namely INSAPSEL, SENIAT and INDEPABIS, had become the most feared agencies in the country in view of their repressive attitude against independent companies. However, these agencies were not so diligent in the application of rules to state enterprises, as demonstrated by the increase in work-related accidents in the biggest company in the country, the PDVSA oil company.

She noted that the *Official Gazette* of 23 June 2008 had published the Presidential Decree issuing the new Act respecting the National Institute of Educational Cooperation (INCE), transforming it into the National Institute of Socialist Educational Cooperation (INCES). For decades, the INCE had been the model of tripartite cooperation, based on the model learned from the ILO, but now it had been converted into an ideological training centre run according to the criteria of the central Government.

She said that Venezuelan employers were under constant harassment through the violation of their fundamental civil freedoms and rights, principally as a result of the lack of social dialogue. There was a legal net around the national productive sector which limited investment in the country and condemned current society and future generations to dependence on a rentier economy that was subject to the fluctuations of raw material prices. In conclusion, she said that FEDECAMARAS had the obligation to ensure that this did not continue to happen. She called on the Government to bring an end to this harassment and to stop excluding the independent productive force in the country, so that everyone could work for the Venezuela that they all deserved.

Another Worker member of the Bolivarian Republic of Venezuela, member of the Venezuelan Workers' Confederation (CTV), supported the statement made by the worker of the National Union of Workers. He said that there was full freedom of association in his country and respect for the plurality within the diversity of the trade union movement. The social partners and trade unions were developing unity in the strategic and programmatic objectives of workers, which was achieved even at the grass roots level. He added that his Confederation had concluded many collective agreements and that others were ready for discussion in both the public and private sectors, in conformity with the legislation. Collective bargaining was carried out with the free participation of first-level trade unions and their members. Representatives of the CTV monopolized control over discussions in the public and private sectors. In the case of the private sector, the CTV had agreed with the employers in a completely undemocratic manner on the constant decline in the social and economic conditions of workers. He added that the CTV never held effective elections, but put forward programmes that had been decided upon and agreed by certain political parties. He therefore welcomed the recent adoption of the Regulations of the National Electoral Council (CNE) which provided that it was the trade unions that would decide freely and independently whether they would avail themselves of this supervisory body to ensure true democratic elections.

With regard to workers' councils, he emphasized that workers had taken control of various enterprises that were encouraging the establishment of such councils with a view to changing the structure of productive relations and furthering the direct participation of workers in the planning, implementation and supervision of production. He indicated in this context that social production enterprises were examples of the smooth articulation of claims to obtain social and economic rights for trade unions and the organization of production and social control through workers' councils. In that respect, he reaffirmed that workers would never allow trade unions to be replaced. With regard to the amendment to the Labour Act, he indicated that the Committee of Experts and the Committee needed to understand that the amendments had to be the outcome of discussions and debate in the country.

Another observer representing the ITUC indicated that the Constitution provided in article 293(6) that the electoral authority had the following functions: organizing the elections of trade unions, professional associations and

organizations with political aims, under the terms established by law. This constitutional text was in clear violation of the Convention and had been used for nine years to limit, intervene in and restrict the fundamental rights of Venezuelan workers and freedom of association. This practice was common throughout the public authorities and took the following form: (1) the disregard of trade union elections; (2) the intentional prohibition of trade union elections for political purposes; (3) the dismissal of trade union leaders after the removal of trade union protection; (4) the denial of the right to collective bargaining through the so-called "electoral postponements"; and (5) the freezing of trade union assets in the public and private sectors, even in the case of the most representative trade unions.

The Ministry of Labour also applied a policy of trade union exclusion by applying its administrative decisions through the resolutions of the National Electoral Council (CNE), which was not a judicial body, but formed part of another public authority body. This was a disproportionate practice of state intervention in the universal and democratic exercise of the right to freedom of association, collective bargaining and the right to strike. Moreover, the Government had not provided information to the supervisory bodies on the application of Conventions Nos 1, 41, 87, 98, 102, 111, 118, 121, 128, 130, 142, 144 and 158. Nor was it giving effect to the recommendations of the Committee on Freedom of Association in the cases presented to it, nor to the conclusions of the high-level mission which had visited the country in January 2006, or the comments made by the Committee since 2000.

With respect to the statement by the Government concerning the absence of the participation of the CNE from trade union elections: (1) it was known that an instruction, regulation or resolution of a public body administering elections did not prevail over the provisions of the Constitution; (2) the persistent and growing intervention by the CNE in trade union activities, had infringed the fundamental rights of hundreds of trade unions, thereby affecting thousands of men and women workers, for the simple reason that they did not share the Government's policy and believed in independent, autonomous and free trade unions.

He added that the permanent intervention by the executive in trade union autonomy, and the obligation to register with the CNE to engage in trade union activities had serious consequences. One of these concerned collective contracts. For example, in the absence of registration with the CNE, it was not possible to discuss collective contracts for public employees, oil workers, workers employed in the service of the State, electricity workers, workers in the telephone company and in basic services, workers employed in social security, employees of the Ministry of Health and many others. This affected over 1,500,000 men and women workers, without forgetting who were not dependent, those under service contracts and who were subcontracted, of whom there were also thousands in the public administration and in the private sector, and of course the unemployed. Those sectors represented over 65 per cent of the potentially active population or of those of working age.

The other aspect of this situation which could not be hidden was the criminalization of trade union activity by the public authorities. The majority of men and women workers who were affected by these restrictions had to engage in protest action to demand respect for their rights, the negotiation of collective agreements that had expired, compliance with freedom of association; the determination of the date for their elections; recognition of current trade union leaders and the constant endeavour to achieve respect for their civil, political and trade union rights, which had given rise to reactions by the public authorities, that had been violent and disproportionate.

It was therefore urgent to establish an institutional context at the national level which would engage in the sustainable development of in-depth and responsible social and labour dialogue aimed at achieving transparent coherence between the provisions of the Constitution, the requirements of international Conventions and the practices of the public authorities in the country with a view to achieving the comprehensive, rapid and permanent application of the fundamental Conventions related to freedom of association. He proposed that a new high-level mission should visit the country and prepare a report for examination by the Committee of Experts and the Committee on Freedom of Association, as well as the Committee.

Another Worker member of the Bolivarian Republic of Venezuela regretted that the examination of the case of Venezuela by the Committee had a political connotation which could not be separated from the events that had occurred in the country in 2002, in which context she was referring to the coup d'état, as the two essential actors in that event were continuing to use this forum for political purposes. She said that for six years Manuel Cova, representative of the CTV in her country, had been attending the meetings that the Ministry of Labour convened each year on the composition of the Venezuelan Workers' delegation, as indicated in the reports of those meetings. And, unfortunately, each year he was accredited along with the other representative of the CTV as a member of the delegation. Every year, the latter person, or the ITUC, formerly the ICFTU, challenged the Venezuelan Workers' delegation, and the two representatives of the CTV sent communications calling on the Ministry of Labour to invalidate the air tickets provided to them. However, the most serious element for Venezuelan workers was unfortunately that they were accredited as representatives of the ITUC and repeatedly each year two of the technical advisers to her delegation could not come, which had an enormous impact on its performance and participation at each annual Conference in every Committee, especially this year in the Committees on HIV/AIDS and Gender Equality.

With regard to the comments of the Committee of Experts on interference by the CNE in elections, there was a consensus among the five confederations in her country on this subject. She emphasized that this situation had its basis in the Constitution of the Bolivarian Republic of Venezuela and that constitutional reforms, in the same way as in Europe, had to be submitted to the popular will through a vote. She added that the National Assembly had included in the reforms proposed in the last consultation the reform of article 393, which referred to the CNE, but that unfortunately in the referendum on the constitutional reform held in 2007 the majority of the Venezuelan people had opposed this proposal. She observed that, for this reason, the UNT, the CUTV and the first-level unions were certain that, with the recent reform of the trade union electoral regulations of the CNE, which explicitly provided that the CNE would only intervene at the previous request of the unions, this observation of the Committee of Experts would be resolved.

With regard to collective bargaining, the Committee of Experts needed to recognize that in the case of the Venezuelan Teachers' Federation, which had presented one of the complaints on this subject, the recently concluded collective agreement for the primary teaching sector had just been signed, and that in the case of FETRACONSTRUCCION, of which the ITUC's Mr Cova was a member, had signed all the collective agreements and was included in the discussions that would soon begin on the recently concluded draft.

With reference to the accusations of alleged violence against trade unions and the murders of trade unionists, she regretted to have to report to the Committee that the person who was levelling accusations as an ITUC representative was the father of trade union violence in the

country, which was used as a mechanism to impede trade union democracy, the negotiation of collective agreements and to impose his hegemony through terror and violence.

With regard to the accusations of the expropriation of trade union premises in certain regions of the country, she indicated that these were the property of the various state authorities, granted to the CTV in the past to facilitate matters, although regrettably the corrupt practice of their sale, as in the case of FETRAFALCON among other unions, meant that the workers themselves and the Venezuelan people were demanding their recuperation. The representative of the ITUC would have to answer to Venezuelan workers for cases like this, including the recent liquidation of CTV social benefits and the management of the Venezuelan Workers' Bank.

In relation to the statements made by the Employer representative, she indicated that in her country the automobile, financial, construction, telecommunications, commercial and other sectors, as indicated each year by the spokespersons for their chambers of commerce, which were undoubtedly affiliated to FEDECAMARAS, had obtained enormous earnings and reported a growth in their economic activity. Moreover, the records in her country showed that around 1,000 business enterprises had been established. Regrettably, it was the employers who were in breach of the laws relating to occupational safety and health, the access of Venezuelan citizens to goods and services and social security contributions, among others.

Referring to the expropriations reported by the same speaker, she affirmed that they were not confiscations, nor had employers been abducted. There were repeated violations and failures of compliance in these sectors of the country and, as was even happening in the United States and Europe, where workers had taken control of enterprises with a view to keeping their jobs and ensuring that the enterprises continued producing, Venezuelan workers were taking control of production and recuperating enterprises. However, they were not doing this to replace employers, but to place the enterprises at the service of the Venezuelan people.

The Government had also recuperated oil, communications, electricity, cement, sugar refining, steel and other enterprises that had been privatized in the past. But in all cases, their transnational owners had been fully compensated for their costs.

In respect of the same speaker's statements concerning the confiscation of lands she indicated that, in the same way as in Europe and in other countries, the Government was empowered to recuperate idle lands so as to turn them to production, which had been done in her country to ensure food sovereignty. In this regard, she indicated that the provision of food depended fundamentally on imports and to the proportion of 95 per cent on private sector economic activity, which was making use of its domination of and the high price of food as political instruments against the people. The Venezuelan State and the workers had the responsibility to guarantee food production, over and above the action of employers. For all of these reasons, she believed that her country should no longer be included on the list of cases that were examined every year.

Finally, she reiterated the statements made in the general discussion concerning the working methods and mechanisms of the Office, which needed to be more transparent and democratic, as the National Union of Workers (UNT) was never consulted, asked for its views or provided with information as a contribution to the regular reports of the Committee of Experts. The latter's reports only reflected the minority view of sectors that had almost disappeared from the national trade union scene and were looking to the ILO to try and revive their situation in the country. The Lima Office also needed to take into account all trade union actors when planning events and providing technical assistance.

The Government member of Nicaragua expressed his solidarity with the Bolivarian Republic of Venezuela, which this year was once again under examination as a result of unjustified and politicized practices that were jeopardizing the important work of the Committee. Throughout the work of the Conference and the ILO, he had observed the responsible cooperative attitude and the goodwill of the current Government, despite the repeated attempts to boycott his administration and the widespread denigration campaigns that had jeopardized the institutional framework of the country. The general amnesty that had been ordered by the current Government was evidence of his political will and democratic convictions. The amnesty applied to all those who had participated in the coup attempt of 2002 and had been brought to trial. The national Parliament was also undertaking a process of consultation to adopt a new Basic Labour Act, incorporating the observations made by the social partners and the ILO supervisory bodies. He affirmed that the Venezuelan working class had obtained benefits over the last ten years, which constituted unprecedented progress in the history of the country's labour law. Even in times of crisis, the Government applied economic measures that were fair and aimed at the common good, and which were contrary to the neoliberal system, with satisfactory and genuine results: the minimum wage had been increased above the inflation rate; the public deficit had been reduced by 6.7 per cent; social investment had been maintained and efforts had been made to eliminate superfluous state agencies. It was important to note that Venezuela had its lowest unemployment rate for over 30 years (7.7 per cent), with the highest minimum wage in Latin America and the Caribbean of over 446 US dollars a month. He emphasized that Venezuelan law established no obstacles or complicated procedures for the full exercise of trade union rights. Over the past ten years there had been a 75 per cent increase in the number of registered trade unions, from 2,872 in 1998 to 5,037 currently. By means of collective agreements, workers had also achieved their highest ever level of benefits and labour claims. The Venezuelan economy had experienced sustained growth in the past five years, supported mainly by the private economy and was promoting the economic development of the Latin American region, through integration mechanisms such as the Bolivarian Alternative for Latin America and the Caribbean (ALBA), of which Nicaragua was a member, and the Union of Latin American Nations (UNASUR), Banco del Sur and PetroCaribe.

He concluded that the positive actions that the Government had been taking to fulfil its commitments and obligations deriving from ILO standards should be recognized today by the Committee. He reiterated that the complaints against Venezuela clearly involved issues of a political and economic nature, disguised as arguments linked to the alleged violation of freedom of association, the right to organize and the right to collective bargaining. It was inadmissible to manipulate the work of the Committee to such an extent. He regretted that this situation was occurring once again in the context of the Conference and that the call made by Nicaragua, together with other countries, to improve the working methods of the Committee in conformity with the principles, was being ignored. He hoped that this situation would not be repeated in the future.

The Employer member of Ecuador emphasized that workers' and employers' rights could only be effective when their other individual rights were respected, including freedom of expression and opinion. When these rights were not respected, there was no freedom of association. Moreover, for social dialogue to be genuine, it had to include the most representative workers' and employers' organizations. When the representativeness of the organizations was not taken into account, it was a false dialogue.

The so-called street parliaments negated the fundamental role of representative organizations and went against the very essence of the ILO. They could not be equated to social dialogue. He emphasized that the Government had to take into account the recommendations of the Committee on Freedom of Association and comply with the tripartite principle of the ILO, recognizing the representativeness of the social partners concerned, and setting aside harassment and interference in their affairs. The Committee needed to urge the Government to reactivate effective dialogue with valid representation with a view to entering into a genuine discussion of the various laws and regulations and the framework for productive activities.

The Government member of Cuba fully agreed with the statement by the representative of Uruguay, who had also spoken on behalf of GRULAC. He indicated that the inclusion of the Bolivarian Republic of Venezuela among the countries called upon to appear before the Committee was the result of unjustified and highly politicized treatment. The Committee of Experts had made observations which addressed legislative issues (alleged shortcomings in social dialogue) and other issues arising from ITUC comments and those of the employers' organization FEDECAMARAS. With reference to the allegations made by these organizations, he recalled what had happened in April 2002 when FEDECAMARAS, with the support of the Venezuelan Workers' Confederation (CTV), had instigated a bloody coup d'etat which had resulted in an interruption of democracy, and had suspended constitutional safeguards and citizens' rights for 48 hours, until they were removed by the people in order to reinstate the democratically elected president. He indicated that on that occasion, neither the Committee of Experts nor the Committee had asked the coup leaders for clarifications concerning these events, or on the strike in the oil industry that had caused thousands of small businesses to go bankrupt and left several thousands of workers without jobs. In contrast, the Committee had examined the case on eight occasions since 1999. He observed that several of the allegations reported by the Committee of Experts referred to issues of property and other matters that had nothing to do with ILO Conventions or workers' rights. At the very least, they represented the opposition of a minority, which felt that its former rights and privileges were being threatened by measures to redistribute wealth for the benefit of the great majority that had undertaken the Venezuelan revolution. Venezuelan laws did not obstruct the exercise of freedom of association. The number of trade union organizations and collective agreements had increased significantly in the past ten years, with demands and benefits that had never before been achieved. The country had experienced sustained growth in the last five years, which had made it possible to significantly improve social protection; the unemployment rate was at its lowest level and the minimum wage was the highest in Latin America and the Caribbean. From its beginnings, the Government had undertaken a practice of participatory and inclusive social dialogue, with opportunities for all social actors to express their opinions. Venezuelan legislation did not impose barriers or procedures for the exercise of freedom of association: in the past ten years only, the number of trade unions registered had risen from 2,872 to 5,037. The country had provided evidence that it was carrying out a comprehensive democratic process, which had been demonstrated by the various referendums on fundamental aspects of its political system. The comments of the trade union and employers' organizations reported by the Committee of Experts were intended to provoke a political confrontation within the mechanisms of this Committee. The potential consequences could seriously jeopardize the credibility of the ILO and its mechanisms. Just as freedom of association had to be exercised in a climate free of pressures and threats, so must these principles be respected by this Committee, where the decisions related to the inclusion of this case in the list had taken place in a climate that had also been poisoned by pressure, threats, and lack of transparency, which was inadmissible. He expressed the hope that the debate would clarify the facts and put a full stop to this recurring case, which year after year poisoned the working environment and dialogue of the Committee. Cuba would not desist in its efforts to reform the supervisory mechanisms of the ILO and make them more democratic and transparent

The Employer member of Argentina, in his capacity of Vice-President of the International Organization of Employers (IOE), and as employer Vice-President of the Governing Body, emphasized that this was the most important case in the history of the ILO for the Employer members. Freedom of association, which was of benefit to both workers and employers, was based on the right to life, respect for other human rights and the existence of the rule of law. In this context, when private property was confiscated and private initiative was not respected, there was a violation of the right to freedom of association of employers. Moreover, it undermined the very essence of the ILO. If the State was the only owner, then dialogue was no longer tripartite, but bipartite. Second, he expressed his concern that the transparency of the supervisory bodies was under challenge. He emphasized the need for them to be respected, even where there was at times disagreement with their conclusions, and expressed the full support of the Employer members for their transparency and independence. Employers had social responsibilities, including the responsibility to respect democracy. He said that it was important not to identify an individual, who may have been held responsible in accordance with the criminal law of the country, with the institution. In this respect, the IOE supported FEDECAMARAS as the most representative organization in the country and as a fundamental social partner in all Venezuelan bodies. The speaker emphasized that, while this case had been examined on many occasions, this was due to the continuing gravity of the case. He therefore called on the Government to accept a direct contact mission to make progress in developing social dialogue, which was the only way forward, and to refrain from interferences in the context of respect for the rights of workers and employers.

The Worker member of Spain, emphasizing the singular importance of the Convention, noted that freedom of association was an individual right in that it enabled workers and employers to decide whether or not to establish and join organizations, or to decide upon their dissolution. However, it was also a collective right. But the individual right was of no use if the trade union did not enjoy effective autonomy in its relations with enterprises and governments. In this respect, freedom of association could only be exercised if it was accompanied by other guarantees and rights, including protection against acts of violence, protection against anti-union discrimination, protection against acts of interference, the right to consultation in the preparation of legislation, the right to strike and the right to collective bargaining. Although it appeared elementary to recall these rights, it would appear that the discussion of the case was focused on other matters of a political nature, while fundamentally political arguments were also being advanced to oppose discussion of the case. He observed in this respect that, according to the ITUC, all the rights referred to above were violated in one manner or another in the country. The violations included the dismissal of almost 20,000 workers in the oil industry following a strike, with certain of them being maintained on a blacklist; increasing restrictions on the right to strike; the deterioration of collective bargaining and the right to negotiate in full freedom due to interference by the public authorities, including measures to undermine the acquired rights of metal, transport and oil workers and the renegotiation of approved collective

agreements; the devaluation of social dialogue to a mere formal act; the harassment of trade union members and premises; and, according to the ITUC, the murder of trade unionists and workers. The impunity enjoyed by those committing these acts meant that they tended to be repeated. Finally, there was no greater contradiction to the professions of support for freedom of association in the country than the plan to replace trade unions by "workers' councils", which would constitute a direct attack on trade union freedoms and independence.

The Government member of Ecuador endorsed the statement made by GRULAC. He welcomed the efforts made by the Government to comply with the recommendations of the ILO supervisory bodies and expressed support for the Government in its actions.

The Worker member of Uruguay observed that the objective of the Committee's work was to propose solutions to shortcomings in the application of ratified Conventions in a democratic manner. However, 35 workers federations from a number of countries had signed a letter indicating their concern at the discrepancies involved in the inclusion of this case on the list of cases to be examined by the Committee. This concern was based on the lack of consensus in the Workers' group for selection of the case; the differences of opinion amongst the Venezuelan trade union federations; the conviction that political objectives were being followed in this case, which should not occur in this Committee; and, finally, the violation of the working methods of the Conference through the distribution by an NGO of a pamphlet containing a declaration against the current Government. In conclusion, he noted that there was another case of importance, involving issues of life and death, particularly of trade union leaders, and truly constituted a case of which it could be said that there had been none more important in the history of the ILO.

The Employer member of Guatemala recalled that the very serious aspects of the present case had often been examined by the Committee on Freedom of Association. The most worrying aspect of the present case was the lack of interest shown by the Government in the recommendations made by the ILO supervisory bodies. The Government had not even replied to the very serious charges of harassment and persecution against the most representative independent organization of employers in the country, FEDECAMARAS. The report of the Committee of Experts referred to the direct attack against the headquarters of FEDECAMARAS in 2007 and an attempted bombing in 2008 in which the presumed attacker, a police inspector, had died. The Government's silence in this respect could only be interpreted as confirming an attitude that was, at the minimum, complacent towards the violence and intimidation used to attempt to undermine the exercise of the right to organize. The report of the Committee of Experts also contained information on the persecution of employers engaged in their activities. He called upon the Committee to do everything in its power to ensure the free exercise of freedom of association in a climate that was free of threats and violence, which was essential for the full implementation of the Convention. The very serious nature of the problems involved, combined with the Government's lack of interest in giving effect to the recommendations of the supervisory bodies, fully justified the examination of the case by the Conference Committee.

The Government member of Algeria indicated that this case provided an opportunity to improve understanding of the situation in the country and the progress achieved in relation to trade unions over the past ten years. It appeared that there had been a very clear development of trade union activity, as demonstrated by the wealth of detail provided by the Government, which illustrated its will to give effect to international labour standards. Reference should be made in this context to the formulation of a new Basic Labour Act which took into account the recommendations of the ILO supervisory bodies. Nevertheless, this was a long process requiring tripartite and even broader consultations, in which the technical assistance provided by the Office would be valuable.

The Worker member of the United States recalled the respect shown by the labour movement in his country for the democratic self-determination of the Venezuelan people and the outcome of democratic elections in the country. Trade unions in his country had always condemned the coup d'etat against the current President of the Republic several years ago and applauded his well-founded criticisms of the Washington Consensus and the failed Free Trade Area of the Americas. However, such recognition of the statements and social achievements of a government did not mean that a blind eye should be turned to its failure to comply with the Convention. He recalled that for most of the past decade, the Committee of Experts and the Committee had concluded that fundamental violations of the Convention would continue unless an amendment was made to article 293 of the Constitution to bring an end to the power of the National Electoral Council (CNE) to control and intervene in union elections. The importance of this issue was shown by the fact that the refusal of the CNE to approve the election process in many unions meant that their representative status was suspended, making it legally impossible for them to negotiate new collective agreements. The number of workers covered by collective agreements had declined, which was due to collective bargaining not being conducted effectively at the national level. The obstacles to freedom of association and effective collective bargaining were illustrated by the reports of the Federation of Telephone Workers that 243 collective agreements remained unsigned, while the Venezuelan Federation of Teachers faced outright refusal by the authorities to bargain. The use of the recently reformed Penal Code and of the Special Act on the people's defence against monopolies, speculation and boycotts to break strikes and peaceful protest action was also of grave concern. Under these provisions, leaders of the Sanitarios Maracay Union had been arrested in 2007 and 53 union members at the Orinoco Iron and Steel Company had been arrested in March 2009 following a 48-hour strike. In view of the murders of 19 trade union leaders and ten other workers the previous year and the recent assassinations of four trade union leaders, he urged the Government to take responsibility for resolving the persistent issue of attacks on trade unionists. If the examination of this case by the Committee led to an improvement in any of these issues, much would have been gained by the inclusion of this case on the list of individual cases.

The Government member of the Syrian Arab Republic indicated that his Government was of the view that the accusations of violations of the Convention levelled against the current Government were of a political nature. He called upon the social partners to engage in social dialogue, taking into account the national interest of the people, so as to reach a satisfactory national solution. He encouraged the Committee to continue separating legal issues from political matters and expressed appreciation of the progress made by the Government in relation to workers' rights, the improvement of living conditions and social protection. Finally, he called on the Committee to give the Government the opportunity so that the measures that it had taken could have their full effect.

The Worker member of Brazil expressed her total opposition to the inclusion of the case on the list of countries that were not in compliance with the Convention. She affirmed once again that this was obviously an eminently political case that had nothing to do with the ILO instruments or tripartism, and even less to do with the rights and interests of workers. She denounced and repudiated the fact that, in the context of the ILO, the opinion of the majority of workers in favour of the social revolution in the Bolivarian Republic of Venezuela was being ignored

and that defamatory pamphlets were being disseminated for vile political purposes against the revolutionary Government, signed by NGOs that did not represent workers, countries or employers. What was even worse was that people who were actually delinquents and terrorists were being presented as heroes. She said that it was essential for the workers and the Committee as a whole to have a better understanding of the situation in the Bolivarian Republic of Venezuela in order to avoid falling into the traps set by those who were diverting the attention of the ILO away from the mission for which it had been created, namely to promote social justice. The country was probably the most democratic country in Latin America, with more rights for workers and where the people's will had the greatest opportunity to express itself. There had been ten elections in the past ten years. The State was actively and steadily intervening to improve the living conditions of the people, guarantee employment and increase wages; it had the highest minimum wage in Latin America, which guaranteed consumption, promoting development and avoiding the extremely serious crisis from affecting the country. At the present time, while the neoliberal system was falling apart, it was essential for all to know that the Bolivarian Republic of Venezuela was confronting the crisis with greater social justice. The Director-General of the ILO had proposed that the results of this Conference should contribute to a "Global Jobs Pact". This proposal was totally feasible and necessary today. To put it in practice, a certain number of conditions were indispensable and every day more evident to all: (1) that the State should strengthen the internal market by improving wages and supporting national enterprises that invested in production and increased employment, rather than devoting national resources to their foreign branches; (2) that the State should assume its role and prevent transnational monopolies from stifling the market, continuing to promote unequal trade practices between countries, which meant that the wealth that was generated by the brutal exploitation of workers for the purposes of financial speculation was unproductive; and (3) that there should be dialogue between the various actors, as well as between workers, without anyone imposing their economic or ideological hegemony. She referred to Brazil where the workers' trade union confederations had united, irrespective of ideologies, to defend jobs and wages, demand a reduction in interest rates and defend Brazil's oil and oil companies that were under threat from transnationals. The confederations were united to defend what was probably the most important victory for the Brazilian people, the election of the current President, who had started the recovery of the Brazilian State so as to place it at the service of the interests of the people and the nation.

The Employer member of Spain said that there were too many serious and persistent violations of the rights of employers' organizations in the country: the bomb attack against the headquarters of FEDECÁMARAS; acts of violence against employers' leaders and violations of private property in the agriculture and stock-raising sectors; land invasions and confiscations, or expropriations without compensation, in spite of judicial rulings to return the lands to their owners; and the kidnapping of sugar producers. The observations of both the Committee of Experts, the Committee on Freedom of Association and this Committee, referred to these incidents. The growing lack of independence of the judiciary made it more difficult for these cases to be investigated with the necessary impartiality. He recalled that the direct or indirect promotion of a climate that was hostile to the activities of employers' organizations was one of the worst forms of violation of the Convention. Furthermore, he recalled that the creation of a climate that was favourable to freedom of expression and respect for the opinions of representatives of employers' and trade union organizations, irrespective of their differences of views, was the pillar or the prerequisite for freedom of association and the right to organize to succeed in practice, which was not the case in the country. The disqualification, threats and confiscation of business leaders by the Head of State reflected the Government's level of commitment to the Convention and its principles. This type of behaviour was not unique in the international community, nor was the elimination of the independent media through which organizations could express their views. Moreover, the financing and creation of parallel employer organizations intended to challenge the representativeness of the most representative employers' organization, and in which two government posts were included, was another item on which the Government had not replied, as noted by the Committee on Freedom of Association. The absence of freedom of movement of employers' leaders in the past and the present, in respect of whom an arrest warrant had been issued and remained by force, was another indication of the level of the Government's commitment to the ILO principles. The regulations that had been adopted without consulting the most representative employers' organization, and which directly affected the essential elements of industrial relations, showed the lack of commitment to social dialogue and the absence of respect for employers' organizations. He recalled how important it was for the Government to demonstrate a clear and serious commitment to the principles enshrined in the Convention. She referred to the role that the ILO had to play in defence of trade unions and employers' organizations that were being harassed and persecuted in the exercise of their functions, and the importance of using all the supervisory mechanisms to ensure compliance with the Convention.

The Government member of Bolivia firmly supported the statement made by GRULAC. He indicated that his Government had been surprised that since 2002 the Bolivarian Republic of Venezuela had had to appear before this Committee every year except for the last year, which meant that other important cases had been set aside. The speaker hoped that the work of this Committee was not being used inappropriately for political purposes, as this would constitute an alarming precedent. He indicated that, as GRULAC had affirmed, the Government had given clear indications of its willingness to apply both the Conventions and the recommendations made by the Committee of Experts. He proceeded to say that everyone was aware of the progress made by the Government on matters of social legislation and workers' protection. As a result of the application of those policies, the country had succeeded in achieving several of the Millennium Development Goals before the rest of the world. In reference to Convention No. 87, the number of trade unions had doubled in the past eight years. To conclude, he supported GRULAC's request that this Committee should continue to further the analysis of the working methods, particularly those relating to achieving greater transparency in the procedures for selecting cases.

The Worker member of Italy, underlining the value and quality of the work of the Committee of Experts, which could not be called into question without undermining the validity of the work of the Committee itself, said that the independence of the Committee of Experts enabled balanced choice and discussion of cases, despite the reluctance of some governments to submit to examination by the Committee. Each country's population decided on how it should be governed, and fruitful discussion therefore required the Committee to ignore ideology and focus on facts. Vetoes on specific cases and accusations of an unbalanced approach would not benefit the Committee's work, nor was it useful to confuse social initiatives with the implementation of a Convention. Cases were selected in a balanced manner, and the speaker endorsed the validity of such a process in aiming to help governments to overcome problems of implementation or violations of Conventions. Various methods had been chosen to

achieve that goal. The speaker recalled that the Committee of Experts had underlined that the Bill to reform the Basic Labour Act and related constitutional reforms were still pending. Despite amendments to the Basic Labour Act in 2006, elections of trade union leaders were still confirmed by referendum, a mechanism regulated by the Ministry of Labour, which left many trade unions unable to operate. This constituted indirect interference by the State in trade union activity, which trade unions around the world could not accept. In addition, the right to strike had been limited and strikes held had resulted in some criminal convictions. In view of the ITUC, "the use of trade union assassinations was aggravating the climate of violence and insecurity, which was extremely detrimental to the exercise of trade union activities". The speaker also stressed the human dimension of such acts, which should be duly investigated by the Ministry of Justice. She noted that in Italy, despite divergences of opinion between the Government and trade unions, independence and trade union pluralism were still widely considered a benefit, not a constraint. Social dialogue and collective bargaining at all levels were conducted freely by representatives of different trade unions even within the same enterprise. Workers' representatives were entitled to sign collective agreements and participate in the consultation process without government authorization, and representativeness was not subject to certification or any decision by the authorities. The speaker mentioned that the Committee of Experts had underlined the absence of tripartite consultation, particularly in the definition of regulations pertaining to labour issues and in social dialogue. Tripartite consultation and social dialogue had to become legitimate instruments in which all trade unions were able to play a role. It was therefore important for the Government to restrict its comments to issues raised by the Committee of Experts, to comply fully with the Convention and to submit a full report to the ILO in that regard in 2010.

The Government member of China highlighted the measures taken in recent years by the Government to implement recommendations made by the Committee of Experts, which should be generally recognized and encouraged. The ILO should provide technical assistance to help in capacity-building in the country. As long as the ILO and the Bolivarian Republic of Venezuela continued to strengthen their mutual trust and pursue dialogue and cooperation, the issues and challenges it faced in ensuring freedom of association and collective bargaining would be appropriately addressed.

The Worker member of Benin stated that the discussion of this case should have been dealt with from an international perspective and that it was necessary to understand that, what was at stake, was the final confrontation between the model based on private property on the means of production and the socialist model. Workers had always been deprived of liberty by the bourgeoisie and the employers, and the present accusations put forward against this Government were a little like setting a thief to catch a thief. Those accusations against the Bolivarian Republic of Venezuela showed quite strongly that, in reality, the actual economic crisis had marked the failure of capitalism and that humanity was at a cross-road. However, the country was actually a champion of the new era which rang the death knell of a model based on private property as the means of production, which was characterized by the monopolizing of these means by a minority.

The Government member of Sri Lanka welcomed the efforts of the Government in promoting industrial relations and economic growth and expressed support for the statements made on behalf of GRULAC, as well as the statement by the Government of the Bolivarian Republic of Venezuela.

The Worker member of Ecuador indicated that there was a political, economic and social problem as regards the list of individual cases, and that the ILO would have to face this problem. He added that workers did not want that social confrontations as had occurred in Peru would ever take place, and appealed to the international organizations not to take sides, but rather to seek unity. The speaker stressed that workers were concerned about the loss of employment. The actual economic crisis which led to the loss of many jobs had been caused by the international "usurers". He appealed to the ILO to ensure the respect of Conventions Nos 87 and 98 and hoped that the situation would change and that all aggressions and abuses would be considered in a negative sense. In the process of elaboration of a list of individual cases, the ILO needed to avoid any unfairness. Considering that the declarations made before the Committee were forgotten, as soon as the delegates returned to their countries, the speaker urged the governments, employers and workers to behave honestly in order to define correct policies. He concluded by saying that the ILO belonged to all and that it was necessary to work on the basis of principles of ethics.

The Worker member of the Syrian Arab Republic stated that the Committee of Experts must not intervene in political affairs. The workers and the Government agreed that progress had been achieved regarding the respect of workers' rights. In the field of freedom of association, there was no obstacle to the establishment of trade unions, and collective agreements were respected. Moreover, a draft Labour Code which took into account the comments made by the Committee of Experts on the application of the Convention was under examination by the Parliament. The speaker requested the Office to provide technical and material assistance to the Government in order to implement its new legislation, as well as the recommendations by the Committee of Experts.

The observer representing the International Trade Union Confederation, using his right to reply, indicated that he had been accused by a Worker member in promoting trade union violence in the country, which had caused the death of workers and trade union leaders. He warned that, after his return to the country, he could suffer the consequences. The speaker also indicated that he was representing the ITUC because in his country, it was the Government who designated the Workers' delegation. He rejected the accusations against him and stated that it was the State who was responsible for the situation in the country; its idleness therefore indicated its support for such practices.

The Government representative of the Bolivarian Republic of Venezuela said that the Government had dignified the working and living conditions of Venezuelan workers. In order to do this, working conditions had had to be completely reviewed, as previous Governments had taken measures towards labour flexibility that had affected workers. The Government now had to respond to the negative actions of multinational enterprises. In his opinion, the discussion of this case was a debate on humanity. He continued by saying that the forces that had generated the crisis, those responsible for the so-called financial "bubble", wanted to make workers pay. He considered that what was under debate were the root causes that had provoked the crisis. During the 1990s, essential public services in the country had been privatized and the ILO had not made any comment. Nor had the Committee of Experts on the Application of Conventions and Recommendations commented on the Regulations of the Basic Labour Act of 1999, despite the fact that it had been communicated to the ILO by the previous Government. For information purposes, the communication would be provided by which it had been sent to the ILO by the last Minister of Labour on 1 February 1999, the day before Hugo Chávez had taken office as President. Nevertheless, following a long period of silence which indicated approval (ten years), the Committee of Experts had made comments on provisions that the present Government had

not introduced into this law, such as those respecting trade union elections, compulsory arbitration in essential enterprises and representativeness. It was strange that comments had not been made some years earlier, and that they had only been made when his Government had abolished so-called temporary work agencies, which were means of making conditions of employment more precarious. With regard to these comments by the Committee of Experts, which had not been made at the appropriate time, his country would seek clarification from the Office. He stated that, as GRULAC had asserted, the case was political because his Government was defending an alternative world to capitalism. He said that workers had warmly welcomed the statement made by GRULAC. Many workers of the world indicated that the list of individual cases of the Committee should be elaborated in a more transparent manner, respecting the established criteria. The Government was committed to participatory democracy and would defend that ideal in all international forums. Furthermore, he rejected the statement that only one employers' organization existed in the Bolivarian Republic of Venezuela and recalled that his country had an important history of trade unionism. He concluded by stating that, within the framework of the recommendation made by the member countries of GRULAC, his Government was fully resolved to collaborate with the Office in moving forward.

The Worker members, while having noted the information provided to the Committee, hoped that the Government would communicate to the Committee of Experts all the necessary information to make it clear that, a Bill to amend the Basic Labour Act was in conformity with the provisions of the Convention, and that all the amendments of the social and labour legislation took place after broad consultations with the social partners and took into account their contributions. The Worker members also hoped that the Government would request technical assistance in order to respond to all the pending issues, including the establishment of social dialogue which should be as efficient as possible.

The Employer members stressed that the discussion was not about the merits of different economic systems but rather about the existence of free, open and democratic societies. The Government had given no evidence that it intended or was willing to apply and implement the Convention. Many Government members had raised the issue of the criteria according to which the case had been selected for discussion. The Employer members highlighted that, while some cases selected met only one of the eight criteria set out in the Committee's methods of work, six of the criteria applied to the case of application of the Convention in the Bolivarian Republic of Venezuela.

They further drew attention to the fact that the Government representative had not addressed the two main fundamental issues relating to the case: the need to ensure respect for civil liberties, freedom of speech and freedom of movement as a prerequisite for freedom of association; and the non-interference in the internal affairs of employers' and workers' organizations. These were not issues of a political nature, given that the sine qua non of a free, open and democratic society was freedom of association without interference. The systematic destruction of the most representative employers' organization in the country, FEDECAMARAS, was a matter of grave concern. The rights enshrined in Convention No. 87 applied to democratic and authoritarian societies alike.

The Employer members also highlighted the case of Ms Albis Muñoz, which had been discussed in the Committee in 2004, 2005, 2006 and 2007. It was a significant case, due to the systematic violations of the Convention involved and constituted a serious breach of the principle of freedom of association. The Committee's conclusions should emphasize that civil liberties, freedom of speech and freedom of movement were essential prerequisites to freedom of association, since those conditions did not exist in the Bolivarian Republic of Venezuela and interference by the Government in the internal affairs of FEDECAMARAS continued. Furthermore, it should be underlined that Article 3 of the Convention protected both workers' and employers' organizations. The Committee of Experts should therefore be invited to address all issues relating to Article 3 in respect of both types of organizations. The Conference Committee should also recognize that scant attempts to comply with, and implement, the Convention had been made by the Government in terms of freedom of association, particularly with regard to employers. As a minimum, a high-level tripartite mission should be sent to the country to examine the situation.

The Employer members expressed regret that the Government had ignored not only the recommendations made by the various ILO supervisory bodies for more than ten years but also the recommendations of two direct contact missions and one high-level technical assistance mission. ILO technical assistance had been offered with a view to establishing a system of labour relations based on the principles of the Constitution of the ILO and its fundamental Conventions, so that social dialogue could be consolidated and placed on a permanent footing. The Committee on Freedom of Association had requested that, as a first step, the National Tripartite Committee (as provided for in the Labour Code) be reconvened. The Employer members reiterated that recommendation, further suggesting the establishment of a national, high-level joint committee with the assistance of the ILO, to examine each and every one of the allegations presented to the Committee on Freedom of Association, in order to resolve problems through direct dialogue. They considered, nonetheless, that the Government persistently ignored recommendations on fundamental issues, and were of the view that the case was beyond resolution through technical assistance. The Committee's present discussion marked a low point in the case. Many Government members had commented on the need for transparency. What was certainly clear was that the Government did not respect the supervisory bodies of the ILO. The Committee would usually note such continuous failure to implement a Convention in a special paragraph. The Employer members recalled that, within the ILO, the most serious failures were subject to complaints under article 26 of the Constitution of the ILO. A complaint under article 26 had been filed in respect of the Bolivarian Republic of Venezuela in June 2004. Taking into account the necessity of obtaining an objective assessment of the current situation, in particular, with regard to employers' organizations and their rights, and of obtaining as much information as possible on all the matters at hand, the Employer members expressed the view that the Committee should recommend in its conclusions that the Governing Body send a direct contacts mission to the country before deciding on action to be taken in respect of that complaint.

Conclusions

The Committee noted the information communicated by the Government representative, as well as the discussion that followed. The Committee also took note of the cases currently before the Committee on Freedom of Association. These cases were submitted by workers' and employers' organizations and were categorized as serious and urgent.

The Committee noted that the Committee of Experts' comments concerned acts of violence against numerous union leaders, detention of trade unionists and acts of violence against the headquarters of the most representative employers' organization FEDECAMARAS, also significant legislative restrictions concerning the right of workers and employers to establish the organizations of their own choosing, the right of organizations to draw up their constitutions and to freely elect their representatives and the right to organize their own activities without interference by the authorities.

It further commented on the lack of recognition of the results of union elections, inadequate social dialogue and the lack of protection of civil liberties including the right to freedom and protection of individuals.

The Committee noted the statements by the Government representative to the effect that respect for freedom of association was demonstrated by the high number of trade unions established, collective agreements and their coverage, and the high number of strikes that had been called. With regard to the Bill to amend the Basic Labour Act on which the ILO had been commenting since 2004, the National Assembly had initiated a new process of public consultation. With reference to the National Electoral Council (CNE), provisions had been issued in May 2009 which would enter into force in August, copies of which would be provided to the Office; these provisions recognized the principle of the alternation and re-election of leaders and, in the context of the competence endowed upon the CNE by the Constitution for the organization of trade union elections, envisaged the provision of technical assistance only at the request of the trade union organizations, and the review of elections on the basis of challenges made by members. He had added that Resolution No. 2538 had been issued in accordance with the Basic Labour Act, in conformity with existing jurisprudence and the recommendations of the Credentials Committee in relation to the determination of the representative status of trade unions; furthermore, the Government had guaranteed the confidentiality of the data of trade union members and there had been no complaints or cases of discrimination in this respect. With regard to social dialogue, the Government rejected social dialogue involving the highest and elite organizations and had replaced it by inclusive dialogue that recognized all the social partners. It regretted that the Committee of Experts did not appreciate the progress achieved in respect of social dialogue as draft legislation was the subject of broad consultations. He had also indicated that in July 2008 the enabling legislation which had been adopted by the Legislative Assembly empowering the Government to issue legislation for a limited period had come to an end. With reference to acts of violence against trade union movement, the President of the Republic had publicly repudiated them and had required an investigation, as they did not form part of state policy. In the case of the murders of certain trade union leaders, investigations had resulted in the arrest of those responsible, including a number of police officers. Orders had also been issued to capture and detain those suspected of the attack on the headquarters of FEDECAMARAS and there was no policy of threats or persecution against union leaders and the branches. Finally, the Government representative indicated that he agreed with GRULAC's recommendations that the Government should collaborate with the Office to continue making progress in respect of freedom of association.

The Committee wished at the outset to recall that, despite the variety of the interventions made during the discussions, the debate before it was not about economic systems but about the full respect for freedom of association for all workers and employers, a necessary prerequisite for a free and democratic society. These conclusions therefore remained uniquely within the purview of Convention No. 87.

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

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

On the issue of social dialogue on questions concerning the rights of workers and employers and their organizations, the Committee regretted that the Government did not convoke the tripartite commission on minimum wages provided for in the legislation and that it continued to ignore the urgent calls to promote meaningful dialogue with the most representative social partners. The Committee also regretted to note that no formal bodies for tripartite social dialogue yet existed, despite the repeated calls by the ILO supervisory bodies to this effect.

The Committee urged the Government to take the necessary measures without delay to ensure that intervention of the National Electoral Council on proceedings of union elections, including its intervention in cases of complaints, was only possible when the organization explicitly so requests. It called upon the Government to take active steps to amend all the legislative provisions incompatible with the Convention to which the Committee of Experts had objected. The Committee requested the Government to intensify the social dialogue with representative organizations of workers and employers, including FEDECAMARAS, and to ensure that this organization was not marginalized in respect of all matters of concern to it. The Committee requested a follow-up to the 2006 high-level mission to assist the Government and the social partners to improve social dialogue, including through the creation of a national tripartite committee, and to resolve all of the outstanding matters brought before the supervisory bodies. The Committee requested the Government to send a full report this year to the Committee of Experts and firmly hoped that the Government would achieve tangible progress in the application of the Convention in law and practice.

Convention No. 97: Migration for Employment (Revised), 1949

ISRAEL (ratification: 1953)

A Government representative indicated that the Committee of Experts, in its observation, had initially requested the Government to reply to its comments in 2010. Nonetheless, his Government had been asked to prepare for a discussion before this year's Conference Committee. Due to the wide range of issues raised and the short notice given to his Government, he wished to stress that the response below was incomplete, and that supplementary information would follow.

The Government representative provided updated statistical information on the number of migrant workers. Over 90,000 temporary foreign workers were legally employed in Israel in 2008–09, of which 50,000 in the care-giving sector, 28,000 in agriculture and 10,000 in the construction sector.

As to the equal treatment to be extended to migrant workers in law and practice, he stated that laws applying to Israeli workers equally applied to foreign workers, and that the Foreign Workers' Act provided additional protection in terms of medical insurance, housing and written detailed contract. Employers were required to provide foreign workers with all labour rights accorded by law

and to sign a commitment to pay them in accordance with national legislation. The speaker indicated that, in 2008–09, the newly formed Population, Immigration and Border Authority (PIBA) in the Ministry of Interior had become the competent authority for issues involving migrant workers; thus replacing the Foreign Workers' Unit in the Ministry of Industry, Trade and Labour. According to the official statistics on enforcement of labour laws relating to the employment of foreign workers, the number of investigations opened against employers suspected of violations was 3,111 in 2007 and 2,685 in 2008, the number of criminal indictments against employers and employment companies was 693 in 2007 and 4,400 in 2008, and the number of judgements rendered was 48 in 2007 and 49 in 2008.

Furthermore, the Government representative stated that Israel was striving to reduce migrant workers' dependency on employers. He indicated that the procedures limiting the freedom of migrant workers to change employers had been revoked. Migrant workers could presently look for alternative employment after registering this change of status with the Ministry of the Interior. Following the decision of the High Court of Justice that had declared the procedures binding foreign workers to an individual employer illegal, new systems had been adopted in Government Resolution 447–448. Those systems allowed for even greater facility to change the employer and were in the process of implementation. Workers deciding to leave their employer would no longer have to register with the Ministry of Interior but rather with an employment company (in the construction industry), or with recruitment agencies (in homecare and agriculture). In the construction industry, the system of registration by a limited number of closely supervised and licensed companies had successfully been in place since 2005. The new system of homecare workers registered by licensed recruitment agencies, which was gradually being implemented since September 2008, would improve visa portability of those workers and the supervision of employment. In agriculture, the system of registration of foreign workers by recruitment agencies had been delayed, inter alia, due to the transfer of the competent authority, and was expected to be put into place late 2009 or beginning 2010.

Lastly, with regard to health insurance and social security, mandatory insurance coverage for temporary workers included all services to which Israeli workers were entitled, except those irrelevant to temporary workers who arrived in Israel for short periods of time (such as psychiatric treatment, health issues which originated before arrival in Israel and fertility treatments). The health insurance had to be paid for by the employer who could deduct a limited percentage of the monthly premium from the worker's salary. Foreign workers were entitled to all labour rights and privileges accorded by Israeli law, and, in addition, were fully insured in a variety of branches including maternity, employer bankruptcy and work accidents.

The Employer members recalled that Israel had ratified Convention No. 97 in 1953, and that the application of the Convention by Israel had been examined by the Committee of Experts for the first time. The observation of the Committee of Experts related to the principle of equal treatment enounced in Article 6 of the Convention, and the issues raised mainly concerned two points: the issue of the conditionality of residence permits upon work for a specific employer; and the issue of the application of the social security system to migrant workers.

They recalled that regarding the first point, the Committee of Experts had noted a 2006 decision of the High Court of Justice, which had held that the automatic loss of the residence permit in the event of job loss violated the dignity and liberty of migrant workers. The Committee of Experts had deduced that, in practice, migrant workers did not benefit from the protection provided by national legislation. The Employer members believed that this was a possible but not imperative conclusion, and that further practical information was required on the issue.

The Committee of Experts had further referred to Government Resolution 447–448 of 2006, which set out new modalities for employing migrant workers in the caregiving and agricultural sectors with a view to increasing the protection of migrant workers and to simplifying the process of changing employers. In this regard, the Employer members thanked the Government for the particulars supplied concerning the Resolution and its implementation.

The Committee of Experts had also noted the new legislation prohibiting private agencies from charging migrant workers abusive recruitment fees, the establishment of an Ombudsperson to deal with complaints, and the 2006 official statistics of 3,743 new cases opened and 5,861 cases with fines imposed against employers for offences related to migrant workers. The Committee of Experts had deduced that the figures demonstrated the attention paid by the authorities to law enforcement but also suggested a high-level of non-compliance with the law. The Employer members considered that the 2007 and 2008 statistics and the information given by the Government representative on the contracting of private law firms to deal with the cases, illustrated the Government's will to improve enforcement.

Concerning the second issue, the Committee of Experts had referred to section 1D(a) of the Foreign Workers' Act, which provided that employers had to arrange, at their own expense, medical insurance for foreign workers. Moreover, an additional regulation listed the services to be included in the insurance and provided for exceptions and limitations with regard to certain services, including entitlements related to medical conditions existing before the migrant worker took up work in Israel. The Committee of Experts had considered the above provisions as contrary to the Convention, without, however, mentioning that Article 6(1)(b) of the Convention allowed for possible exceptions from the principle of equal treatment, as far as social security was concerned, for instance in case of special arrangements in the national law of immigration countries concerning benefits payable wholly out of public funds. Albeit improbable, the Employer members believed that there was a need to examine whether the above exception was applicable in this case. In view of the Government representative's comments, it even appeared doubtful whether there was any inequality of treatment whatsoever.

Therefore, the Employer members felt that additional information was needed concerning the national social security system in general and the health insurance system and its applicability to migrant workers in particular, as well as information as to whether the cited provisions were still in force. In any case, the Committee of Experts had asked the Government to communicate more detailed information in 2010. They considered that, given that the present case was being examined for the very first time, the Government should be given the opportunity to supplement the already supplied information in order to clarify the outstanding points.

The Worker members considered it opportune to be able to debate Convention No. 97 concerning migrant workers at the Conference Committee. Migration had surged throughout the world. The principal question raised by this case was the issue of treatment of migrant workers vis-à-vis national workers. Article 6 of Convention No. 97 was not ambiguous. It provided that a country should not, in law or in practice, provide to immigrants, who were lawfully within its territory, treatment less favourable than that which it applied to its own nationals. Yet, Israel's legislation violated the principle of non-discrimination provided for in this Article on three matters: residence, employment and social protection.

With respect to residence, the Worker members stated that the national legislation established a link with the employment held by the migrant worker. It meant that if this worker lost or left his or her job, the worker would also lose his or her residence permit, thus becoming an illegal immigrant. In such a situation, the employer enjoyed excessive powers, and the employment relationship could be akin to forced labour. The High Court of Justice of Israel had ruled, in 2006, that linking residence permits and employment constituted a violation of the freedom of migrant workers contrary to the principle of equal treatment and, thus, to the provisions of Convention No. 97.

As regards employment of migrant workers, the Worker members indicated that despite the creation by the Government of a system which allowed registration with the Ministry of Labour for migrant workers in search of employment, and the establishment of an Ombudsperson for treatment of complaints filed by those workers concerning discrimination, the increasing number of complaints received appeared to indicate the extent of existing discrimination. They further highlighted that the new measures only applied to the health and the agricultural sectors.

Concerning health insurance, the Worker members recalled that in Israel, it was the employer who paid the health insurance for foreign workers whom he or she employed. There were further exceptions and limitations on services offered to foreign workers. The health system, therefore, was different from that for national workers.

To conclude, the Worker members highlighted that Convention No. 97 did not apply to irregular migrant workers or frontier workers, whose number, according to reliable estimates, was larger than that of regular migrants.

The Worker member of Indonesia highlighted the importance of discussing the plight faced by migrant workers due to sponsorship systems, short-term employment and residence permits. It was estimated that there had been about 189,000 migrant workers in Israel in 2006.

She recalled that, before 2005, migrant workers had been bound to their employer already before arrival, with the end of the employment agreement entailing the immediate revocation of the residence permit. In many instances, this dependency on the employer had exposed migrant workers to abuse, underpayment, delay in payments, lack of social protection, forced overtime and other exploitative conditions. Situations amounting to forced labour had also been reported. She attested to the difficulty of ending labour relationships, even though exploitative, owing to the importance of remittances for families in the countries of origin and the obligation to reimburse debts taken to pay employment agency fees.

Following the ground-breaking decision of the High Court of Justice in 2006, a new arrangement had been put in place, in which migrant workers were tied to an employment agency instead, but could easily change the employer. She reported that Kav Laoved and Workers' Hotline, two Israeli organizations working to help migrant workers, had carried out research about the conditions of migrant workers in Israel before and after the introduction of the new system. They had found that most migrant workers did neither receive proper information about working conditions before leaving their country of origin nor a copy of the signed employment contract. Most of them were required to pay extremely high fees to brokers (US$700 to US$10,000), and those fees had risen by more than 66 per cent with the introduction of the new system of registration with employment agencies. In the construction sector, migrant workers on average only received 85 per cent of the minimum wage, and, in the homecare sector, they were also paid well below that amount. The most exploitative conditions were endured by migrant workers in agriculture, mostly originating from Thailand, of which 80 per cent complained about months of wage arrears. Another problem was the enforcement of migrant workers' rights due to underfunding or inadequacy of existing complaint mechanisms.

The Worker member therefore urged the Government to repeal the sponsorship system and again review its legislation and practice to ensure full compliance with the decision of the High Court of Justice and the principle of equal treatment enshrined in the Convention.

The Worker member of Italy stated that migration of workers to richer countries was a growing phenomenon due to the increasing uncertain economic, social and environmental conditions in their home countries. Migrant workers who left their countries, including those workers who reached Israel and the Gulf countries, with the hope of fair contractual and living conditions were quite often trapped in exploiting situations in which fundamental human and workers' rights were entirely denied, as highlighted earlier by the Worker member of Indonesia. Freedom of movement was limited, very little social protection was offered compared to Israeli workers, working hours were long and they faced the risk of becoming illegal due to the restrictive migration legislation. Thousands of migrants were undocumented workers without a contract with an employment agency nor a visa. They faced the same conditions in virtually all Middle Eastern countries because they were recruited overseas by local contractors who often did not grant them real rights.

She stated that in the 1990s, Israel had opened its borders to migrant workers from China, Romania, Sri Lanka, Thailand and Turkey in order to replace Palestinian workers. Thousands of foreign workers currently lived and worked in Israel. The report of the Committee of Experts highlighted only part of the problems they faced. In 2006, after the decision of the High Court of Justice, the Government had introduced new rules in order to address the issue of "binding agreement", which directly linked the workers to the employer, exposing the workers to confiscation of their passports, non-payment of minimum wages, mistreatment and high threat of becoming illegal. In many cases, even today, migrant workers were obliged to work for the same employer, even if their working conditions were poor and salaries were low. They were practically bound to their job due to the complexity of the labour market, difficulties in finding a new job and the fact that migrant workers, if they became redundant, were not entitled to unemployment benefits, as opposed to Israeli workers. On top of this, after six months of unemployment, they lost their resident permit. As a result, many workers who had lawfully arrived in Israel had since then lost their legal status running the risk of being expelled from the country.

She added that migrant workers were very often confronted with the non-implementation of the protective legislation which had to apply to all workers, particularly with respect to salaries. If a great number of Israeli workers already earned less than the minimum wage, migrant workers, who were more vulnerable, were being paid 40 per cent less than that of Israeli workers doing similar jobs. This had been confirmed by a study in 2006 by the Research Department of the Bank of Israel, which affirmed that the cost of hiring migrant workers in agriculture was 40 per cent lower than that of Israeli workers. The Ministry of Finance had explained that the reason for this lower cost was that migrant workers agreed to work twice as long as Israeli workers.

The speaker indicated that many migrant workers did not have access to effective and comprehensive social protection measures. The package available to them did not include coverage for illnesses, unemployment or old age, it covered occupational accidents and maternity leave, but not care expenses. She noted that employers' contributions to the national insurance scheme amounted to 2 per cent of the salary of migrant workers, while, in case of Israeli workers, they had to pay 7.6 per cent of their salaries. In 2003, the Economic Arrangements Law

had amended the National Insurance Law providing that holders of a temporary residence visa would not be considered as "residents" eligible for social security or health-care benefits. Furthermore, it was virtually impossible to obtain Israeli citizenship; a similar point raised also in the case of Italy. The national legislation did not grant citizenship or residence to non-Jews, apart from specific exceptions such as a family relationship with an Israeli citizen. As a result, migrant workers living in Israel for years could not obtain the same civil rights as Israeli citizens.

She indicated that some of the most critical violations of fundamental rights provided for in the Convention had been rectified thanks to the efforts of Israeli trade unions and other NGOs, but there were still numerous cases of violations. Some of the legal provisions remained restrictive. Some employers and employment agencies exposed migrant workers to very hard working and living conditions. This was illustrated by the case of some Thai workers who had claimed that despite an army order not to work near the Lebanese border they had been forced to work there by their employer. Such behaviour was in violation of an agreement signed between the Government and the trade unions (the Histadrut), which required employers to pay the workers' salaries if they could not report to work, due to army orders. She called on the Government to review the sponsorship system and its legislation in order to bring it into conformity with Convention No. 97.

The Worker member of France observed that generally, the situation of migrant workers deteriorated in the world and even more significantly in Europe. This case was particularly rich in examples illustrative of infringements of Convention No. 97. In this case, the Committee of Experts had recalled that the High Court of Justice had considered that in Israel the power of employers with respect to migrant workers was excessive and infringed the dignity and freedom of those workers. Moreover, the Minister of Interior had excessive power to determine conditions to grant a residence permit, which was nevertheless limited by the general principles of law, including the principle of non-discrimination between Israeli workers and foreign workers. Convention No. 97 enounced this principle under Article 6 and provided that equality had to exist not only in law but also in practice.

The speaker recalled that the Committee of Experts had recognized the Government's recent measures for the protection of the rights of migrant workers, but had acknowledged that considering the number of complaints and fines, additional measures might need to be taken. In addition, the Committee of Experts had examined the legitimacy of a system of social protection specifically for migrant workers, which indicated the political will to treat migrant workers differently. In his view, the Government should not maintain such distinction which was unnecessary and potentially discriminatory. On the contrary, the Government needed to review national legislation in this regard.

Considering that the elements presented by the Government before this Committee were very succinct, he expressed the hope, that in its report to the Committee of Experts, which was due in 2010 the Government would communicate enough particulars, such as, for instance, on family allowances, maternity benefits and the provision of health-care, in order to allow a detailed assessment. He emphasized that the notion of decent work had to be materialized through equality of treatment between migrant and national workers.

The Government member of the Syrian Arab Republic and **the Worker member of the Syrian Arab Republic** wished to raise the question of the situation of the Palestinian workers in the occupied Arab territories.

The Employer members raised a point of order, considering that the issue raised by the previous speakers was outside the framework of the discussion.

The Chairperson asked the speakers to stick to the question of migrant workers in Israel in the context of the application of Convention No. 97.

The Government representative of Israel, having listened with interest to the observations made by the Employer members and by each and every Worker member, reminded the Committee that the elements of response presented by his Government were not complete, and that complementary information would be submitted after consultations with other relevant authorities. The speaker stressed that the rights of migrant workers constituted a high priority for Israel. He expressed his Government's commitment to making all necessary efforts to ensure equal treatment of foreign workers and the effective enforcement of their rights.

The Employer members thanked the Government representative for the information provided to the Conference Committee, in spite of the fact that initially a reply had only been requested for 2010. They expressed the hope that the Government would submit full and detailed information on the issues raised in the observation, so that the Committee of Experts could carry out a more in-depth analysis of the situation of migrant workers in Israel.

The Worker members stated that, in the case under discussion, the infringement of the principle of non-discrimination against migrant workers was obvious. Consequently, they addressed to the Government three requests: (1) to take additional measures to ensure for migrant workers a social treatment equal to that provided for its own citizens; (2) to ensure that the principle of non-discrimination against migrant workers was respected in all sectors of activities; and (3) to furnish, for the next session of the Committee of Experts, information in writing, indicating precisely the number of migrant workers (by sex, sector of activity and country of origin) employed in Israel, as well as the measures taken in the health and agricultural sectors.

Conclusions

The Committee noted the statement of the Government representative and the discussion that followed. The Committee observed that the Committee of Experts had referred to the need to ensure that all migrant workers lawfully in the country benefited from the rights and protection available under the legislation, in practice, and enjoyed equal treatment with respect to the matters set out in Article 6(1)(a)–(d) of the Convention. In this regard, the Committee of Experts had noted that following a decision of the High Court of Justice in the case of Kav LaOved Workers Hotline and others v. Government of Israel, the Government had taken measures regarding migrant workers employed in the caregiving and agricultural sector, with a view to increasing the protection of migrant workers and simplifying the process of changing employers. It had also noted the establishment of an Ombudsperson to deal with complaints from migrant workers. With regard to social security, the Committee of Experts had addressed certain restrictions concerning the health insurance system for migrant workers established under the Foreign Workers Act and the Foreign Workers Order.

The Committee noted the statistical data provided by the Government concerning the employment of temporary workers in certain economic sectors in 2008–09, and on the enforcement of the Foreign Workers Law and the Minimum Wage Law in 2007–08. The Government had also provided information on the measures taken to give effect to the decision of the High Court of Justice to reduce the dependency of migrant workers on their employers. The Committee noted, in particular, that the new system of employment of foreign workers introduced by Government Resolution No. 447–448 of 2006 had entered into force for the caregiv-

ing sector and was to be extended to the agricultural sector in 2009. Measures had also been taken to reduce the dependency of foreign workers on their employers in the small manufacturing and ethnic restaurants sector. The Committee further noted the information provided by the Government concerning the health insurance system for migrant workers.

The Committee noted the Government's commitment to implement the Convention. While welcoming the range of measures taken to protect migrant workers and reduce their dependence on their employers, the Committee noted that challenges possibly remained in fully applying the Convention, including with respect to social security, as well as in certain sectors. The Committee requested the Government to provide further information on the impact of the measures to reduce migrant workers' dependence on their employers, and the manner in which the Government was ensuring that migrant workers lawfully in the country enjoyed equal treatment, in law and in practice, with Israeli nationals with respect to the matters set out in Article 6(1)(a)–(d) of the Convention. The Committee asked the Government to provide full particulars on the application of the social security system, in particular the health insurance system, to migrant workers. The Government was also requested to supply statistical information, disaggregated by sex and origin and sector of activity, on the actual number of migrants working in Israel. The Committee also requested the Government to provide additional information on the implementation of the measures taken to ensure the application of the Convention with respect to migrants employed in the agricultural, caregiving, construction and manufacturing sectors, and the results achieved.

The Committee asked the Government to include in its report on the application of the Convention, due in 2010, full information in reply to all the matters raised by this Committee and in the comments of the Committee of Experts.

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

COSTA RICA (ratification: 1960)

A Government representative said that his Government had taken office in 2006 and would end its mandate in 2010. In 2006, his Government had requested a high-level mission to establish contacts with workers, employers, members of Parliament and other relevant sectors in Costa Rica. In October 2006, the Higher Labour Council, a tripartite body, had concluded two agreements, the first to promote a draft reform of labour procedures on a tripartite basis and with ILO assistance, and the other to move forward on the remaining Bills relating to freedom of association.

However, over the three next years there had been the debate concerning the Free Trade Area of the Americas (FTAA) negotiations with the United States, which was Costa Rica's main trading partner as trade with that country represented 55 per cent of Costa Rica's foreign trade. The discussion on the FTAA had divided the country, with approximately 50 per cent in favour and 50 per cent against. It had been necessary to hold a referendum, in which those in favour had won. Following the referendum, with the sword of Damocles of the deadline to approve the FTAA, it had been necessary to focus on the adoption of a series of legislative and practical measures to comply with the treaty, which required a qualified majority. The FTAA had finally entered into force on 1 January 2009.

This had rendered it difficult to make progress on the adoption of the draft texts referred to by the Committee of Experts. There was consensus in respect of the draft texts and he expressed the hope that they would be adopted before the end of the Government's mandate. He was convinced that, in the context of the globalized economy, workers' rights were human rights. He emphasized the will of his Government to fulfil the commitments that had been made and to give full effect to the Convention. In short, these were the reasons why the Government had not been able to adopt the draft texts in question over the past three years.

The Worker members indicated that the case of Costa Rica had been examined by the Committee in 2001, 2002, 2004 and 2006 and that a high-level mission had visited the country in 2006. In 2007, the Government had requested technical assistance from the Office, claiming that it was about to solve the problems in the implementation of the Convention and to promote tripartite dialogue. It had not been possible to reach agreement to examine this case in 2008 despite the very firm request made by the Committee of Experts and workers' organizations. In view of the seriousness of the situation and the persistent shortcomings, the Worker members warned that it would insist on the case being examined in 2009.

A major problem which was a direct threat to collective bargaining was the direct agreements and unfair anti-union practices that allowed non-unionized workers to elect the majority of a permanent workers' committee which represented their interests in relation to the employer and could coexist with a union in an enterprise. The slowness and ineffectiveness of recourse procedures and compensation in the event of anti-union acts were also a cause for concern.

In addition, they noted that the culture of solidarism was a cancer which threatened collective bargaining in South and Central America. Supporters of solidarism were currently the main opponents of unions. While union activists faced daily obstacles in the exercise of the right to unionize, the solidarists were free to engage in anti-union activities within the enterprise. The number of solidarists associations was four times that of unions.

With regard to compliance with the Convention in export processing zones, the Committee of Experts had noted complaints that related to long-standing issues, and had referred to cases before the Committee on Freedom of Association which confirmed the significant number of trade unionists dismissed. Moreover, the Supreme Court had declared certain provisions of institutional or public sector enterprise collective agreements to be unconstitutional. It had found that these provisions needed to meet certain criteria of proportionality and rationality, which contradicted the efforts announced by the Government. The considerable delay in adopting the proposed reform showed the lack of willingness to move forward. The case law of the Constitutional Court was very restrictive in matters of labour legislation, freedom of association and collective bargaining. The Government had announced that the case law had changed in at least one case and that the Higher Labour Council, a tripartite body, had revived the activities of a special committee to study and analyse the draft Bill on the reform of labour procedures to resolve the problem of the slowness of procedures in relation to anti-union discrimination and to strengthen the right to collective bargaining in the public sector. The slowness of the courts was currently being addressed by the judicial authorities, and considerable human resources had been allocated to the matter. These points were identical to those raised during the mission that had visited San José in October 2006 and the trade union rights situation remained precarious in Costa Rica.

With regard to the direct negotiation of agreements with non-unionized workers, a recent study by Adrian Goldin had shown that there were currently 74 direct agreements in force compared with only 13 collective agreements. The study revealed that it was the employers who offered and supported these agreements and took the initiative of dialogue for that purpose, and that cases of interference by employers in the election of standing committees had been observed. Furthermore, the ballot was not secret and

some voters might have been intimidated. The very concept of permanent workers' committees and the long-standing practices adopted for the establishment of such committees were a clear obstacle to the provision of basic democratic guarantees and the respect for the essential conditions of independence and representativeness. Permanent workers' committees had neither the resources nor the skills needed to engage in dialogue with employers in such a manner as to provide some balance in negotiations. In general, these committees had been used to prevent the establishment of trade unions or to hinder their activities. In view of all these elements, they reserved the possibility of calling for a special paragraph.

The Employer members thanked the Government representative for his statement and recalled that the discussion concerned Convention No. 98, and that its context was therefore narrower than the broader issues raised by the application of Convention No. 87. They noted that the Government representative had described the reasons why the draft reform Bill had not been enacted, although it was not clear why a trade issue would be an obstacle to its enactment. It appeared that the draft reform Bill was now ready, and they urged the Government to enact it as soon as possible.

The Employer members noted that this case had been discussed for a number of years, and recalled the four main problems that had been raised by the Committee of Experts. The first of these concerned the slowness of the procedures available in cases of anti-union acts. They assumed that the draft Bill addressed this issue, but this would have to be confirmed when it was examined by the Committee of Experts. Regarding the restriction of collective bargaining in the public sector, the comments made by the Committee of Experts had been quite limited in scope, even more so than in the 2004 observation. With reference to the declaration of clauses in collective agreements as being unconstitutional, they noted that this occasionally occurred under other legal systems and that constitutional provisions were clearly binding on all parties. The fourth issue raised by the Committee of Experts had been the high number of direct agreements as compared with the number of collective agreements. The Employer members noted that this was not in itself a violation of the Convention, which merely called for the promotion of voluntary collective bargaining. The Government needed to provide a report to the Committee of Experts in due time, which should include the text of the draft reform Bill and clarify its intentions on the above four issues. In its conclusions, the Committee should urge the Government to enact the legislation that had been prepared.

The Worker member of Costa Rica, with reference to the comments of the Committee of Experts concerning a series of dismissals, said that 26 dismissed workers of an electrical cooperative were still without work because they had participated in a solidarity strike with the leaders of a branch of the SITET, who had also been dismissed for joining the union, and that the Secretaries-General of the CGT, the Trade Union of the National Insurance Institute (UPINS), and of the Secretariat of Education of the latter had also been dismissed. These were dismissals for political reasons because of their opposition to the opening of insurance services required by the free trade agreement with the United States. This was inconsistent with the Workers' Representatives Recommendation, 1971 (No. 143), which provided that, for the dismissal of a trade union leader there should be consultation with, an advisory opinion from, or agreement of an independent body, public or private, or a joint body, before the dismissal of a workers' representative became final, but this requirement had not been given effect. Furthermore, the state institutions were refusing to register AFUMITRA, and UNEC had lodged a complaint with the labour inspectorate.

He referred to the rulings of the Constitutional Court concerning the public sector, where the Convention was disregarded. Although the Government had indicated that there were regulations respecting collective bargaining in the public sector, these regulations contained many restrictions, which he proceeded to list. The regulations also applied to institutions governed by labour law, such as the Petroleum, Chemical and Similar Workers' Union (SITRAPEQUIA), which had already been mentioned in the 2008 report. Moreover, negotiations were extremely slow and, for example, SITRARENA had been unable to enter into negotiations for over a year. The Committee of Experts had indicated that Costa Rica Union of Chambers and Associations of Private Enterprises (UCCAEP), which represented most of the employers, had indicated that legislation existed to protect workers from anti-union discrimination and that the judicial authorities could authorize their reinstatement. However, the high-level mission had found that judicial proceedings lasted four years and he asked how workers and their families would be able to eat during this period. The last high-level mission that had taken place in October had noted that the history of observations by the supervisory bodies to which effect had not been given meant that progress could only be confirmed when the necessary draft legislation had been adopted. He added that the reinforcement and approval of collective bargaining in the public sector could have an impact on the complex issue of appeals against and the annulment of certain clauses of collective agreements in the public sector. According to the report of the high-level mission, the Minister had indicated in an interview that he was personally in favour of the solidarist movement, although he did not agree with its use to weaken the trade union movement. He observed that no progress had been made in the adoption of any of the draft texts by the Legislative Assembly, and that Conventions Nos 151 and 154 and the draft reform of the General Act respecting the Public Administration had been shelved since 2005. Nor had the Legislative Assembly agreed to establish a joint commission to discuss the draft procedural reform. The only draft text under discussion by the Legislative Plenary was Act No. 13.475 on trade union rights, although it was resolutely opposed by the Union of Chambers of Commerce. The Government still had not expressed support for the draft text. He added that the Government had the power to determine the legislative agenda in extraordinary sessions, but that it had not submitted any of the draft texts in question, despite the commitments made to the 2006 Conference Committee and the high-level mission. Nevertheless, in December 2008, the Government had proposed a reform of article 64 of the Political Constitution, which required the State to promote the establishment of cooperatives and solidarist associations as a means of facilitating improvements in the living conditions for workers. The Committee still remembered Case No. 1483 concerning the use of the solidarist movement to destroy trade unions. The ILO had adopted a position, but now the Government intended to give these organizations a status in the Constitution and promote them. Such was the response of the current Government to the ILO supervisory bodies. In conclusion, he said that the reiterated rulings of the Constitutional Court implied that it disregarded the ILO on a technical pretext and threatened its effectiveness.

The Worker member of Colombia regretted to state that, according to information from the Committee of Experts and the ILO high-level mission that had visited the country, both the Government and employers were engaging in anti-union practices to avoid the development of trade unionism. Proof of this was the statement by the Minister of Labour, who had met the ILO high-level mission in October 2006. He had indicated, without qualification, that he was personally in favour of the solidarity association approach: a social movement for workers with

400,000 members, which existed across the country, had resources, education programmes and housing, and was a much more attractive package for workers than trade unions were. The speaker indicated that, according to the report of the Committee of Experts, there was still an enormous gap between legislation and practice in Costa Rica, and the most impoverished sectors were paying the price. He felt that, if such practices continued, trade unions would soon become museum pieces, and assured that this would not happen because international trade unionism and the members of the Committee would stop them. He considered that workers could not continue to allow such attacks. The speaker invited the members of the Committee to consider the report of the Committee of Experts, which, with great clarity, described the crisis facing public sector workers, whose rights to organize and bargain collectively were not being respected. He denounced that, well into the twenty-first century, the achievements and victories of workers through collective labour agreements were being portrayed as illegal and unconstitutional. Firstly, this practice was contrary to ILO Conventions and Recommendations, and, secondly it was neither convenient nor intelligent for the rights of the working class to be affected in such a way. Although he had profound respect for the sovereignty of Costa Rica, he expressed his surprise at the fact that the Constitutional Court had declared a series of achievements by workers through collective bargaining unconstitutional.

In concluding, the speaker asked the Government and employers on behalf of the Latin American and Caribbean working classes, when they would keep the promises they had made to the Committee, and why the core Conventions were neither applied nor enforced.

The Worker member of Germany stated that persecution and discrimination of trade unionists in the private sector was part of day-to-day life in Costa Rica. She pointed out that trade unionism in the public sector equally faced serious problems. Less than a dozen workers' organizations in the public sector were able to bargain collectively in conformity with core international labour standards. Given that national legislation considerably restricted collective bargaining of civil servants, less and less unions could exercise that right.

Moreover, the speaker referred to instances in the public sector where trade unionism had entailed dismissals. She wished to provide details on the cases concerning Ms Alicia Vargas and Mr Luis Alberto Salas Sarkis, employees of the National Insurance Institute (INS) and members of the National Insurance Institute Staff Union (UPINS), which had already been mentioned by the Worker member of Costa Rica. Since 2006, the repeated accusations of corruption made against the management of the INS had led to the persecution of trade unionists and had finally culminated in the dismissal of the UPINS official responsible for women's affairs, Ms Alicia Vargas, and the UPINS Secretary-General, Mr Luis Alberto Salas Sarkis. Following those events, the President of the INS had offered to Mr Luis Alberto Salas Sarkis to reemploy his colleague, Ms Alicia Vargas, on condition that he would resign from his position as UPINS Secretary-General. The speaker qualified the behaviour as clear blackmail and was particularly preoccupied by the fact that the dubious offer had been made in the presence of the Minister of Labour.

On behalf of the Confederation of German Trade Unions (DGB), she requested the Government to take a stand on the issue and ensure that such unacceptable violation of freedom of association would not recur. She added that the precise expectations for government action had already been elaborated upon by the Worker member of Costa Rica.

The Worker member of Honduras stated that membership in the ILO, as well as the international solidarity of workers, enabled workers to express their opinions concerning problems of a national character which existed both in their own country and in other countries of the world. The speaker asserted that, after careful examination of the presentation of the situation by the Government, it was hard to believe that the Free Trade Agreement could constitute any reason or provide any excuse for the non-compliance or non-respect of the commitments undertaken by the Government following the Committee of Experts' comments.

Regarding the persecution of trade union leaders in Honduras, the speaker pointed out that his country was in solidarity with the trade union movement. His country favoured a regional trade union strategy that could defend workers' rights in Central America and counterbalance the "manoeuvres" of the State against the labour movement, since the difficulties faced by the trade union movement in one country could affect the labour movement in its entirety.

The Worker member of the United States drew attention to the fact that, for most of the last 20 years, the Committee of Experts and the Conference Committee had been asking the Government of Costa Rica to bring its legislation and practice into conformity with Convention No. 98. The repeated promises of the Government, however, remained unfulfilled, notwithstanding Costa Rica's otherwise admirable tradition of peace, democracy and the rule of law. The Committee on Freedom of Association had reviewed 20 complaints involving Costa Rica in the last decade and the country had received from the ILO a direct contacts mission in 2001, an advisory mission in 2005 and a high-level technical mission in 2006, yet problems of non-compliance with Convention No. 98 still persisted.

The problems faced included anti-union dismissals and retaliation, especially in the private sector; lack of effective remedies for such unlawful retribution; and the phenomenon of employer-controlled direct agreements and employer-dominated "solidarity associations", also known as company unionism. Those three elements explained the egregiously low rate of trade union membership and collective bargaining in Costa Rica, as reflected in a unionization rate of little more than 3 per cent in the private sector, including small agricultural producers affiliated with Costa Rican trade union organizations. The Costa Rican Confederation of Workers (CTRN) reported that unionization was around 1 per cent in the construction industry, practically zero in the commercial, hotel and restaurant sectors, and absolutely non-existent in export processing zones (EPZs), despite the valiant efforts of Costa Rican EPZ workers at genuine self-organization. No trade unions operated in Costa Rica's EPZs as a result of the hostile environment for organizing.

The speaker recalled the Government's assertion to the Committee of Experts that the issue of "slowness of justice", which hindered compliance with Convention No. 98, was being tackled by the judicial authority, with additional human resources allocated and special courts and alternative dispute settlement mechanisms created. Nevertheless, the fundamental problem observed by the high-level technical mission in 2006 – that an administrative procedure to certify an unlawful anti-union reprisal had first to be completed, which often took longer than the two-month limit prescribed by the Constitutional Court – had yet to be solved. Even once a case reached the courts, it generally took four years to obtain a judgement, a delay which was fatal to the success of unions organizing campaigns, or other collective action. For example, the case of workers at the FERTICA fertilizer enterprise, which involved unlawful dismissal of unionists, had not yet been resolved, even after ten years. In May 2008, the Inter-American Commission on Human Rights had reviewed the case, but there had been no progress to date. Regrettably, the Costa Rican business community was actively opposing badly needed strengthening of trade union immunity, calling it anti-competitive.

He reiterated that although the 1984 Act on company unions formally prohibited employer-dominated solidarity organizations from bargaining to conclude collective agreements, the legal loophole of direct agreements effectively pre-empted authentic self-organization and collective bargaining of workers. Such was the situation dominating Costa Rica's private sector. According to the 2008 Human Rights Report of the United States State Department, solidarity associations had prevented 352,000 workers from having access to legitimate union representatives. The Committee of Experts' findings dispelled any doubt that solidarity associations and direct agreements were anything other than illegitimate company unionism. Instead of proposing to recognize and consecrate such practices in the Constitution, the Government should promote constitutional guarantees for genuine trade unionism and collective bargaining. The speaker considered that it was time for the Conference Committee to ensure that the Government acted on its commitments, and echoed calls for a special paragraph on the issue.

The Employer member of Costa Rica recalled that this case related to Convention No. 98. She made a number of comments about the Committee of Experts' observations indicating, inter alia, that in 2007 the employers had requested the Executive to establish a tripartite commission to analyse the draft reform on labour procedures. This Bill envisaged, inter alia: legislation respecting collective labour rights; arbitration procedures in cases of juridical labour disputes; the simplification of the procedures for direct agreements, conciliation and arbitration applicable to economic and social labour disputes; the introduction of a procedure to qualify work stoppage movements; and the settlement of economic and social conflicts in the public sector.

She said that the employer sector had participated in all the various forums on the elaboration of the Bill, which was of great importance to them. It constituted a comprehensive reform which could help solve the problem of the slowness of judicial proceedings. As a Costa Rican employers' representative, she wished to invite the workers once again to reactivate the work done through dialogue and to submit a draft text to the Congress with the consensus of both sectors, which would require the technical assistance of the ILO. Moreover, with reference to the independent studies and investigations that the Committee had requested in 2006 on the imbalance between the number of collective and direct agreements, she said that in Costa Rica freedom of association existed as a constitutional principle. She also indicated that Convention No. 98 did not stipulate the appropriate proportion of direct versus collective agreements. Employers in this respect gave priority to direct agreements with workers. She added that they respected the decision of workers to form associations, but what was important was to solve labour disputes, whether by means of direct or collective agreements. This was particularly important at times like this when many people were being left without formal employment. As employers they felt a great responsibility to contribute to mitigating the impacts of the crisis.

With reference to the conclusions of the report of the consultant, Adrian Goldin, she said that the employers did not endorse these conclusions as the report did not faithfully reflect their position and was full of unfounded assumptions, inaccuracies and subjective criteria. She recalled that, since 1943, the notion of a direct agreement existed under the Labour Code, and that the permanent workers' committees constituted entities that were recognized by the ILO, according to Article 3, paragraph (b), of Convention No. 135. However, they were not alluded to in the consultant's report.

In conclusion, she expressed concern at this forum being used to manipulate social and political opinions about Costa Rica and at the fact that in the past few days legal reforms were being promoted which infringed on the freedom of enterprises, under the pretext that this forum would condemn the enterprises in her country.

The Government representative of Costa Rica said that, in his country, as in any democratic society, the process of turning political will into an effective legal reality was sometimes slow.

The speaker stated that Costa Rica shared with the ILO a common belief in defending social dialogue, peace and democracy, as instruments for achieving the effective application of international labour standards. He recalled that the Government was conscious that the efforts needed to solve the problems facing its country had to be coordinated and, to that end, had made various requests for technical cooperation and assistance from the ILO to carry out an intensive training and information campaign for government actors, employers, workers and society as a whole.

The Government representative recalled that the Committee of Experts had drawn the Government's attention to three issues: first, the slowness of proceedings in the event of anti-union acts and legal restrictions on the right to collective bargaining in the public sector; second, restrictions resulting from various legal rulings on the right to bargain collectively and the subjection of collective bargaining in the public sector to criteria of proportionality and rationality; and third, the disproportion between the number of collective agreements and direct agreements in the private sector.

With regard to the first issue, the speaker stated that the Government took note of the comments made with respect to the urgency of approving the various draft acts under consideration that were intended to solve the problem of the slowness and ineffectiveness of administrative and legal proceedings in cases of anti-union practices and collective bargaining in the public sector. In that regard, it should be recalled that the Government had made great efforts to promote the application of those draft acts. Problems arising from the approval of the Free Trade Agreement, combined with the situation created by the global financial crisis for Costa Rican families, workers and enterprises in general, had entailed the need for significant measures at national level to reactivate the economy, which had meant that the draft acts on anti-union discrimination and collective bargaining in the public sector had not been examined with due rapidity. The Government was confident that, once both things had been dealt with, particularly the economic crisis, the draft acts would be approved in the near future.

The Government representative added that, at present, the draft Act to reform labour procedures was being examined by the Permanent Commission on Legal Affairs of the Legislative Assembly. The Bill was a comprehensive proposal incorporating recommendations made by the ILO Committee on Freedom of Association on matters of concern to the country and represented the result of a wide consultation process. The Bill addressed the issue of the slowness of proceedings in cases of anti-union acts and strengthened the right to bargain collectively in the public sector. In essence, it was intended to simplify and facilitate legal proceedings, including in relation to anti-union acts. In addition, the Permanent Commission on Legal Affairs of the Legislative Assembly was examining a draft Act on negotiating collective agreements in the public sector, along with the possibility of adding a new subsection to section 112 of the General Act on Public Administration. The Government hoped that, once the draft acts in question had been analysed and studied, they would soon be approved.

With regard to the slowness of administrative and legal proceedings in cases of anti-union persecution, the Government representative stated that the Supreme Court of Justice had made significant efforts to solve those problems. To that end, it had devoted more human resources

to labour jurisdiction and enhanced the performance of judges by increasing connections with other bodies so as to speed up judicial proceedings. The judicial authorities had thereby been able to considerably reduce the average duration of proceedings. Furthermore, efforts were being made to strengthen alternative means of resolving administrative disputes, in addition to the existing judicial process, in order to free up judicial pathways and facilitate conflict resolution procedures.

With regard to the second issue mentioned above, the Government representative stated that, in his country, international labour standards played an important role in preparing acts, policies and judicial rulings, bearing in mind that they would all have an impact on working conditions and labour relations. The Government recognized that the right to work was dynamic and constantly evolving, and that relevant legal provisions should therefore be revised periodically and adapted to the specific reality of the changes taking place in production processes. In that regard, he said that the Government would spare no effort in defending labour rights, thereby reaffirming its commitment to supporting institutional strengthening and policy improvement to achieve social justice.

The speaker said that, in recent years, the ILO supervisory bodies had observed discrepancies between national legislation and practice, on the one hand, and international standards, on the other, with regard to the right of public servants not employed in the state administration to bargain collectively. Nevertheless, the Government wished to highlight the progress made over the period, for example, the intensive process of training and information undertaken with ILO assistance and the legal advances in labour matters. The Government representative added that the Government had stressed the importance of reviewing the 1998 ILO Declaration on Fundamental Principles and Rights at Work and its application by all member States of the Organization, and was confident that problems related to the Declaration and any other international labour standards could be overcome through international cooperation and technical assistance from the ILO.

With regard to the third matter mentioned above, i.e. the problem presented by direct agreements with non-unionized workers, the speaker felt that, although various reasons existed to promote direct agreements, collective bargaining held a privileged position, obliging the labour inspection services to reject a direct agreement, if a trade union existed that was entitled to negotiate a collective agreement. He stated that the Government was doing everything possible to implement the Committee of Experts' recommendation concerning the importance of remedying the existing imbalance between the number of collective agreements and direct agreements. Any problems triggered by such imbalance would be dealt with specifically and efficiently through the adoption of positive measures, to strengthen trade union activity and promote collective bargaining.

The Government representative declared that, with a view to finding a satisfactory solution to the current situation through genuine social dialogue in which all social actors participated, the Government formally requested assistance from the ILO to avoid permanent workers' committees and direct agreements having any anti-union impact in practice. Lastly, the speaker reiterated the Government's will to evaluate its efforts to date and to solve the problems that the Committee had highlighted.

The Worker members deplored the comments made by the Employer member of Costa Rica, which were eminently against the very spirit of Convention No. 98. They requested that the case of Costa Rica be included in a special paragraph in the report of the Committee for the reasons of: the gravity and history of the case, the persistence of the Government in not realizing the results of efforts made though various visits, missions or assistance received, the total lack of political will of the Government which had manifested itself more clearly in the course of the discussion and the supplementary elements brought up through the discussion.

The legislative reforms and the change in national practices was of the greatest interest to workers. Therefore, the Worker members expressed their hope that in the conclusions, the Government would be requested to submit to the next session of the Committee of Experts, in 2009, a report concerning the measures taken to adapt its legislation to be in conformity with Convention No. 98, in line with the guidance received for a long time, and a plan of action indicating the results already obtained. This information would be discussed at the next session of the Conference Committee in 2010.

The Employer members, expressing appreciation for the final information provided by the Government, said it was clear that the new draft Act addressed both Conventions Nos 87 and 98. Nevertheless, the present case covered only Convention No. 98, which was a brief Convention dealing with the right to organize and to bargain collectively, rather than the broader application of trade union rights. They indicated that it was clearly essential for the Government to give priority to enacting the draft Act as soon as possible.

Conclusions

The Committee took note of the Government representative's statements and the discussion that followed.

The Committee of Experts had raised, on numerous occasions, problems with respect to the slowness and inefficiency of the proceedings for sanctions and reparations in cases of anti-union acts, the cancellation of provisions in certain collective bargaining conventions and the huge disparity between the number of collective agreements and the number of direct agreements concluded with non-unionized workers.

The Committee noted that the Government representative referred to the tripartite commission's activities and certain measures to accelerate the labour justice system proceedings, and recalled the legislative bills based on tripartite consensus, implementing the Committee of Experts' comments, which had been before the Congress of the Republic for many years.

The Committee noted the Government's commitment to create a bipartisan congressional committee with participation of all the State powers and the social partners to promote the adoption of the abovementioned bills, with ILO technical assistance. It also noted the information on Supreme Court decisions relating to collective bargaining in the public sector.

The Committee observed the continuing allegations raised relating to the threat which persisted in relation to any meaningful collective bargaining with trade unions and the anti-union climate in the country.

The Committee observed that, despite the fact that the problems raised had persisted for several years and that the case had been discussed on several occasions, there had been no significant progress in the application of the Convention in law or in practice. The Committee urged the Government to take concrete steps as a matter of urgency to turn its promises into reality, including the setting up, without delay, of the congressional committee. The Committee expressed the firm hope that it would therefore be in a position to observe substantial and tangible progress in the application of the Convention in the very near future and trusted that the bills upon which tripartite consensus had been reached, would be adopted without delay. It also trusted that the report due this year to the Committee of Experts would include a copy of the bills so that the Committee of Experts could verify their conformity with the Convention. The Committee expected that the Government's report would provide information on the tangible progress made in law and in practice.

The Committee asked the Government to submit, this year, a detailed time schedule of steps taken and future steps so that the legislative reforms were made a reality.

Convention No. 100: Equal Remuneration, 1951

MAURITANIA (ratification: 2001)

A Government representative stated that Mauritania had been a Member of the ILO since 1961 and had ratified, to date, some 40 conventions, including the eight fundamental Conventions. It was and would remain strongly committed to the values of justice and social peace, which had been the foundation of the ILO throughout its 90 years of existence. The Government was committed to translating these Conventions into national law, enforcing them and submitting regular reports on their implementation. Mauritania had also provided, in a timely manner, all reports due for the year 2008 in accordance with article 22 of the ILO Constitution and the lack of response to the observations of the Committee of Experts on Convention No. 100 was due to a simple omission.

He stated that the claims that women were marginalized in Mauritania were unfounded and that the emancipation of Mauritanian women was a firm reality; women were present in all areas of decision-making. The democratic institutions were characterized by a significant proportion of women, particularly in the National Assembly (17 per cent) and the Senate, as well as in municipal councils (30 per cent). There had been a minister responsible for promoting women's position in society for over 20 years. Many women had held, and still held, ministerial posts as well as senior positions within the State, such as ambassadors, general secretaries to ministers, heads of ministerial departments, and governors of *Wilayas*. There was also a significant female presence in the national guard and the police forces. Similarly women were also present in the national army working as doctors.

With regard to legislation, Article 191 of the Labour Code referred to Article 37 of the General Collective Labour Agreement, which clearly set out the principle of equal pay for work of equal value. In other words, for equal conditions of work and of productivity, salaries were equal for all workers regardless of their background, gender, age or status.

In response to comments from the General Confederation of Workers of Mauritania (CGTM), the speaker indicated that Mauritania was respectful of the law. In this sense, despite economic and financial difficulties, the Ministry of Labour had proceeded this year with the recruitment of 20 labour inspectors and 20 labour controllers that were currently being trained at the National School for Administration. Regarding the comments of the Committee on the Elimination of Discrimination against Women (CEDAW), the doors were open to direct contact since the principle of equal pay for work of equal value was respected. Any victim of non-observance of this principle could go to court and it was in the interests of law enforcement that the Government had strengthened the capacity of its labour administration. In addition, the Government had requested ILO assistance to ensure that any misunderstanding concerning the Convention's application would be addressed.

In conclusion, the speaker referred to the ILO Declaration on Fundamental Principles and Rights at Work of 1998, which held that the Conventions it referred to were universal and applied to all peoples and all States, regardless of their level of economic development. Mauritania was fully committed to this principle and, within the framework of the revision of the Labour Code, the necessary amendments would be made so that all provisions were in conformity with the ILO Conventions to which Mauritania was a party. In addition, efforts made by the Government, with the technical support from the ILO Subregional Office in Dakar, for the establishment of an information system and a database of labour statistics would provide as soon as possible reliable statistical information and thus respond to questions relating to wage levels. Finally, the speaker indicated that the Government would spare no effort to reflect the comments of the Committee regarding the application of Convention No. 100.

The Worker members recalled that Mauritania had not ratified Convention No. 100, which had been adopted in 1951, until 2001. For member States, two obligations resulted from the ratification of this Convention: firstly, to promote and ensure equal remuneration for men and women workers for work of equal value; and, secondly, to encourage the objective appraisal of jobs. Convention No. 100 echoed the ILO Constitution of 1919, which already called for the rapid improvement of the conditions of employment, especially through its recognition of the principle of equal remuneration for work of equal value. After studying the report of the Committee of Experts and the observations formulated both by ITUC and Mauritanian trade union organizations, one was forced to observe that the aim of equal remuneration for men and women was still far from being achieved.

The CGTM had observed that, on average, the income of women was 60 per cent less than that of men. The typical reply to such criticism was that women worked in different professions and exercised different functions and that the situations were therefore not comparable. Without denying that this could be partly true, it had to be stated that, for a number of reasons, Mauritanian women did not have sufficient access to better employment that met with better remuneration. Those reasons were a lower school enrolment rate; a school record, which did not correspond to the actual or future demand of the labour market; cultural or religious inhibitions and hesitations; an absence of women from better-paid professions in the commercial sector and the absence of nursery schools and other facilities for the day care of children. These factors still represented only one aspect of the truth since, even if holding similar positions, women were often less remunerated than men. According to the *Global Gender Gap Report* published by the World Economic Forum in 2008, for similar work, women in Mauritania earned 35 per cent less than men – a percentage identical to the one indicated in the same report of 2006. This gap was also mentioned in the report "Gender equality at the heart of decent work" which would be submitted to this session of the Conference, and, which indicated that in 2005, women had a yearly income of US$1,489 while men annually earned US$2,996, thus a ratio of 1 to 2. Furthermore, the part of Mauritania's female population living under the poverty line, often employed in the informal economy, by far exceeded that of the male population.

It was, however, not only a question of regulation: it was not sufficient to lay down general principles of equality and non-discrimination in laws. Even the best anti-discriminatory laws also needed effective action ensuring their implementation. Key elements in this respect were an education policy and a policy in relation to the labour market aimed at enabling women to find decent work; a control policy safeguarding the application of the principle of equality; a follow-up to the progress achieved which should be made effective on the basis of credible statistics open to all. The importance of the last element should not be neglected. Finally, to really improve the situation of women, it was important to guarantee transparency and to offer tools to civil society and to the social partners, which would enable them to evaluate the situation on the ground and would serve as the objective basis for negotiations and the elaboration of implementation policies.

Favourable progress had been made between 2001 and 2008 after the ratification of Convention No. 100. In this

respect, the Worker members referred to the adoption of the National Strategy for the Advancement of Women for the period 2005–08, the ratification of the United Nations Convention on the Elimination of All Forms of Discrimination against Women, the political will demonstrated for the elimination of discrimination against women and the adoption of the necessary measures to strengthen the position of women in the labour market. This progress had also been raised by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) in its report of 11 June 2007, but the report had also made a number of recommendations aimed at launching more concrete initiatives. The CEDAW had also asked the Government to undertake immediate specific measures, with an implementing mechanism to ensure that women had the same rights as men in employment, in particular a guarantee of equal pay for equal work and for work of equal value. The Committee of Experts requested that the national legislation be amended to give full expression to the principle of equal pay in both the private and the public sector.

However, since the coup of August 2008, the situation in Mauritania was completely disrupted. The wage negotiations that were in progress between workers, employers and the Government had since stalled and it was important to take this into account in the conclusions of the Committee. In fact, Article 4 of the Convention clearly stated that each member State had to cooperate with organizations of employers and workers concerned to give effect to the provisions of the Convention. It was misleading to believe that it was possible to reduce the wage gap between men and women in the labour market without real social dialogue. It was hoped that after the elections that had been deferred until 18 July 2009, the country would return as soon as possible to the constitutional order. Because it was only in such a framework and with the restoration of social dialogue that the conditions would be met to improve the situation of women in the labour market. It was clear that the follow-up to recommendations of the Committee would depend to a large extent on the political developments in the country. The Worker members expressed the hope that the political situation in Mauritania would quickly go back to normal and the Government would thus be able to implement, in collaboration with the social partners, a policy aimed at improving the position of women in the labour market, particularly through a rigorous application of the right to equal pay for equal work.

For this reason, the Worker members supported the request of the Committee of Experts relating to the adaptation of national legislation to give full expression to the principle of Convention No. 100, with the technical assistance of the Office. They asked the Government to provide reports and information necessary to follow up on this matter and to revive the wage negotiations with the representative organizations of workers and employers, with particular attention to reducing the wage gap between men and women. It was very important not to limit activities in this area to the formal economy. In fact, a large proportion of women worked in the informal sector and an appropriate policy was necessary in this field, first in order to ensure respect for equality in the informal sector and, more importantly, for the transition of women into the formal economy, which offered more protection and social guarantees for the application of labour standards.

The Employer members noted that although the observation of the Committee of Experts relating to this case was brief, it was an important case because it concerned a fundamental Convention, it related to the important principle of equal pay for work of equal value and the Committee of Experts had given it a double footnote. Moreover, it was a recent case, as Mauritania had only ratified Convention No. 100 in 2001 and the Committee of Experts had only made three comments on the application of the Convention so far. In 2005, the Committee of Experts had noted the brief first report of the Government and requested detailed information on the conditions of women in the labour market. This data was important in order to understand the pay practice of women versus men in different, similar and the same occupations. The Employer members considered the stated existing wage gap of 50 per cent enormous, especially for workers in the same occupations. Once a statistical analysis had been carried out, one had to consider what could be done to close the wage gap. The last comment of the Committee of Experts highlighted that the principle of equal remuneration for work of equal value was not clearly established in the Labour Code. It was evident that the Government needed assistance not only in relation to data collection, but also regarding the alignment of national law and practice with the provisions of Convention No. 100. This case was discussed at an early stage and the Government therefore had an opportunity to be shortly in a position to ensure full compliance with the Convention.

The Worker member of Mauritania, speaking on behalf of the ITUC, declared that the laws in Mauritania were generally satisfactory, except the provisions relating to widowhood. Indeed, the practice posed many problems. A new approach was needed that would reduce the vast wage gap that currently existed between men and women. In addition to their limited access to employment, women suffered serious discrimination in terms of internal promotion simply because they were women. He noted also the exclusions of women workers from strategic sectors of the economy such as mining, oil and processing enterprises. Discrimination upon recruitment and lack of childcare facilities in enterprises and public administrations constituted also disadvantageous factors for women workers. Social dialogue was necessary to find adequate mechanisms. This dialogue had been interrupted by the military coup his country had experienced in June 2008. The hope was revived upon the signature of the agreement between the various protagonists of the crisis, which provided for a joint administration in the transition period and free and transparent presidential elections on 18 July 2009. The speaker hoped that after this election, the Government would engage in dialogue with trade unions and employers in order to develop a policy that was in conformity with Convention No. 100, in particular by setting up a national observatory relating to discrimination and the adoption of more restrictive laws and regulations for offenders of the provisions of the Convention.

The Government representative of Mauritania recognized the difficulties facing the country regarding the sending of reliable statistical information. He acknowledged that Mauritania was going through a difficult situation. However, the Government was confident and indicated that it would soon be able to take the measures necessary to comply with the Convention.

The Employer members maintained that the Government clearly needed ILO assistance in order to report timely to the Committee of Experts on data, as well as law and practice regarding the application of Convention No. 100.

The Worker members expressed support for the Committee of Experts' request that the national legislation be amended, in order to give full expression to the principle of the Convention. The Government had agreed to accept technical assistance from the Office and needed to provide the requested reports, as well as detailed and transparent information that would allow for a monitoring of the situation and furnish an objective basis for salary negotiations. The Government further needed to initiate a dialogue on wages with representative employers' and workers' organizations with a view to reducing the gender gap between women and men. The Worker members considered, finally, that appropriate measures should also be taken with respect to women in the informal economy.

Conclusions

The Committee noted the statement of the Government representative and the discussion that followed. The Committee observed that the Committee of Experts had referred to the significant gender segregation of the labour market and the very considerable remuneration gap between men and women, attaining on average 60 per cent. The Committee of Experts had also drawn attention to the provisions of the Labour Code and Act No. 93-03 on the public service and the need to ensure that full legislative expression was given to the principle of equal remuneration for men and women for work of equal value set out in the Convention.

The Committee took note of the information provided by the Government concerning the representation of women in the labour market, including in state institutions and in high-level posts in the civil service. It also noted the Government's commitment to bringing the legislation into conformity with the Convention and its request for technical assistance in this regard.

The Committee stressed the important role of employers' and workers' organizations in giving effect to the Convention, set out in Article 4. In this context, the Committee urged the Government to reinstate genuine social dialogue in the country, including on the issue of ensuring equal remuneration for men and women for work of equal value and decreasing the wage gap.

The Committee urged the Government to amend its national legislation so as to ensure that full expression was given to the principle of the Convention, in both the public and private sectors. The Committee also urged the Government to examine the causes of the very high remuneration gap that existed between men and women in the country, and to take the necessary measures, including through a broader range of opportunities for education and training, in consultation with employers' and workers' organizations, to reduce this gap, including in the informal economy, and to increase women's opportunities to access a wider range of jobs and occupations, including those with higher levels of remuneration.

While noting the information provided by the Government regarding the increased representation of women in posts of responsibility, the Committee considered that substantial efforts were necessary to significantly reduce, in an effective and verifiable manner, the existing remuneration gap between men and women. In this context, the Committee noted the ongoing efforts regarding the development of a labour market information system, and stressed the importance of the collection and analysis of detailed statistical data on the distribution of men and women in the various economic sectors, jobs and occupations and their corresponding levels of remuneration.

The Committee requested that, once a climate conducive to social dialogue was re-established, ILO technical assistance be provided regarding data collection and analysis and to assist the Government, in collaboration with the social partners, to bring its law and practice fully into line with the Convention. The Committee requested the Government to provide full information to the Committee of Experts in its report when it was next due on all the matters raised by the Committee.

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

ISLAMIC REPUBLIC OF IRAN (ratification: 1964)

A Government representative welcomed the invitation to review the application of the Convention by his country. The judicious and constructive observations and recommendations of the Committee of Experts were a point of reference for appraising the implementation of international labour standards. He also expressed appreciation for the general indication by the Committee of Experts with reference to Article 2 of the Convention, that account should be taken of national conditions and practice in the implementation of the Convention. His Government had constantly strived to meet the objectives of the Convention and the national Constitution and other laws and regulations, such as article 101 of the Fourth Five-Year Economic Development Plan and the Charter of Citizenry Rights which provided a solid foundation for the implementation of the Convention. He added that until the ideal of full implementation of the provisions of the Convention could be achieved, greater coordination and closer cooperation between the various governmental bodies and the social partners was required. The Government had initiated a comprehensive scheme to raise the awareness of the relevant authorities and the administration concerning the urgent need to repeal and amend the legal and administrative provisions that were not in conformity with the Convention. However, this would be a time-consuming task and the Government looked forward to intensified ILO technical cooperation.

He acknowledged that despite the earnest efforts to provide a comprehensive mid-term assessment of the concrete steps taken to bring the law and practice into line with ILO Conventions, the Government had failed to discharge this undertaking the previous year. Efforts were also being made to submit as soon as possible the overdue comprehensive report of the latest measures with detailed figures disaggregated by gender, ethnicity and religion. In the meantime, the Government had continued its efforts to meet the objectives concerning a national equality policy, equal opportunities and treatment for men and women, and the newly emerging social dialogue and to address discriminatory laws and regulations and discrimination on the basis of religion and ethnicity.

Recalling that in 2006 the Conference Committee had requested the Government to take urgent action on all the outstanding issues, the Government was committed to bringing the relevant legislation and practice into line with the Convention by 2010. One of the main instruments was the Charter of Citizenry Rights which placed significant importance on the promotion, respect for and observance of human rights, especially of minorities. It provided for indiscriminate protection of individual, social and political liberties and religious and ethnic rights for all citizens of the Islamic Republic of Iran, irrespective of their gender, colour, creed and social extraction, and called for the elimination of any type of ethnic and group discrimination in the legal and judicial fields and in practice.

With regard to violations of civil and legal rights, he indicated that the number of cases under investigation had decreased: 8,555 in 2003, compared with 8,966 in 2002. Information on cases of violations of the law and legal procedures between 2003 and 2008, disaggregated by sanctions imposed on judges at fault would be provided to the Office in the near future. He recalled that any infringement of constitutional law or any form of discrimination against nationals of the Islamic Republic of Iran was strictly forbidden. Irrespective of one's social extraction, colour, creed, race or origin, punishment and penalties were equally applied. The courts addressed any such infringement immediately. The judiciary had held four training courses for judges and attorneys on citizens' rights, in particular during the process of issuing judicial verdicts. In addition to those efforts, the judiciary had also amended or revoked some of the laws, regulations and instructions which contravened citizens' rights in order to bring them into further compliance with the provisions of the Convention. These procedures involved nullifying administrative orders of various authorities, including the police, improving the right to judicial recourse and improving social security protection of disadvantaged rural groups. He was confident that the Committee would take note of these concrete steps.

Another issue taken up by the Committee of Experts concerned equal opportunities in the treatment of men and women in education. It had been alleged that quotas restricting women's access to university had been secretly applied since 2006 in up to 39 fields of study. However, the college entrance examination for the admission of new university entrants had always been a measure for the planning of human resources. All practices in respect of human resources planning were extensively discussed in a highly specialized working group of the Cabinet of Ministers and the Parliamentary Commission of Education. In 1983, almost 32 per cent of university places had been occupied by women students; by 2007, this figure had more than doubled, and now stood at 65 per cent. This drastic increase could be attributed to many factors, including empowerment and capacity-building policies for women and their own aspirations to break out of traditional role models. Statistics on participation in entrance examinations and admission to university during the period 2001–08, disaggregated by gender, revealed that contrary to the alleged secret discriminatory quota system against women, there had always been a relative balance in the numbers of entrants admitted.

He openly admitted that there was a quota system in 39 different educational fields and indicated that the logic behind this seemingly controversial issue was the very essence of Article 2 of the Convention, insofar as it concerned the application of methods appropriate to national conditions and practice, to maintain an equitable equilibrium between entrants to develop gender-balanced human resources and ensure access to employment opportunities. The Government had decided to opt for a very fair and justifiable quota system to initially secure an even share of around 30 to 40 per cent open only to one gender. The remaining 20 to 40 per cent were filled solely on merits. The records showed that this had led to a significant surplus of one or other gender in certain professions in certain years, resulting in shortage, for example, of adequate numbers of male doctors or female engineers. When such gender-based shortages occurred, positive action was taken. Examples of fields of study where quota systems existed were textile engineering, mathematics, economics, natural resources engineering, computer engineering, law, journalism, education and political science. Positive action was taken to achieve a reasonable balance, particularly in disciplines where men would otherwise have a monopoly due to their superiority in such areas as mathematics and engineering. Through the quota system, women were therefore given a fair chance to compete, in disciplines where men were stronger, against other girls with more or less the same educational skills, academic background and personal inclinations.

With regard to the measures taken to bring law and practice into conformity with the Convention, he admitted that this had yet to be fully undertaken with respect to the criminal laws of the country. Nevertheless, two important initiatives had been taken to introduce the principles and contents of the Convention to the public, and especially to judges and attorneys, as well as into the channels for legal recourse against discrimination-related offences. The first focused on training, through the publication of educational pamphlets and brochures and the production of educational programmes for radio and television, preparing the ground for cultural orientation, while holding training courses for the public. Special training courses had also been held for judges and attorneys. Second, legal clinics had been set up to provide legal advice through a telephone helpline and an Internet page to persons whose rights had been infringed. Training had also been provided through a UNDP project for provincial judicial authorities in provinces inhabited by minorities, to combat discrimination amongst tribal, racial, religious and ethnic minorities. In the context of the project, the principles and application of the Convention were thoroughly discussed and ILO assistance had been sought. Further training measures for Iranian judges on international labour standards had also been agreed upon with the Office.

The establishment of the Supervisory Board on Discriminatory Conduct was another concrete step taken by the judiciary to ensure the implementation of the Convention. Based on the Law to Investigate Infringements of Administrative Rules, a Supervisory Board had been established, composed of one representative of the judiciary and three representatives assigned by the Cabinet of Ministers or heads of independent government bodies. The Supervisory Board scrutinized the verdicts issued by the committees and/or appeal bodies and was authorized to revoke such verdicts, where necessary. Among other complaints, the Board had recently addressed formal accusations from ethnic and religious minorities in the provinces of Khuzestan, Kurdistan, Sistan and Baluchistan. Those cases were a clear indication of his country's determination to fulfil its obligations under the Convention.

Another Government representative, Deputy Minister for Parliament, Legal and International Affairs, added that his country was very diverse, both ethnically and linguistically, and that its population included Arab groups, Turkmens, Persians, Kurds, Baluchi, etc., without this having any negative implications in terms of peaceful cohabitation among Iranian citizens. There was no discrimination whatsoever with regard to access to university, to public administration or to ministerial and diplomatic posts. Equity was fully respected.

The Government representative who first took the floor, further observed that another means of protection was article 171 of the Constitution, which protected the rights of persons sustaining material and non-material damages due to errors committed by judges. Those who had committed the errors were liable for compensation for the losses. Otherwise, the State would be liable to compensate the losses and ensure the acquittal of the defendant to restore his or her credibility. The Government was committed to equality among all human beings and the restoration of justice. It had established the Women's Juridical Studies Committee in the judiciary, which was responsible for conducting studies on the current situation with respect to the implementation of the Iranian Constitution and human rights principles, and identifying best practices relating to the challenges ahead in respect of reform measures, existing, theoretical and practical issues and juridical, procedural and structural problems.

With regard to discrimination on the basis of religion, he referred to article 12 of the Iranian Constitution, according to which the followers of the officially recognized religions in every region of the country, where a religious minority existed, had the right to refer their disputes to special courts, which ruled according to their own religious beliefs. In order to strengthen and unify non-discriminatory legal procedures, a commission had been established composed of representatives of three bodies, minorities and women. The commission proposed plans on combating evident discriminatory practices, and where action was not taken to improve the situation, it was empowered to institute legal proceedings. Dispute Settlement Councils for Formal and Informal Religious Minorities had also been established composed of representatives of minorities, including Zoroastrians, Assyrians, Armenians and Saebin Mandani. In addition, the judiciary had indicated in a bill presented to the Islamic Consultative Assembly that any kind of discrimination related to tribal and group affiliations should be eliminated from judicial and legal proceedings.

Despite all these achievements, which demonstrated the Government's will to comply with ILO standards and the comments of the supervisory bodies' requests, he acknowledged that the issues that had arisen for over 25 years could not all be resolved in a short period of time. It was necessary to revise and repeal certain laws,

doctrines and unjustifiable institutionalized behaviour. Any serious corrective approach always called for a conciliatory, collaborative and tolerant environment. He hoped that the tangible measures taken to revise laws and regulations would allow his country to meet its obligations. Albeit gradual, the progress achieved should be appreciated.

He indicated that, in view of the need for a comprehensive law prohibiting all forms of discrimination in employment and education to compensate for any misinterpretation and misapplication of the constitutional law, the Government had submitted a Bill on Non-Discrimination in Employment and Education, which guaranteed to all Iranian nationals, irrespective of their gender, colour, creed, race, language, religion, ethnic and social background, equal access to education, vocational training, and any other social service leading to productive employment. The Bill categorically prohibited any form of distinction, preference and discrimination and the imposition of any limitation in access to free and formal education at the different levels, including higher education. It required equal access to technical and vocational training and job and employment opportunities for all nationals. Once approved, the Bill would pave the way to better compliance with the terms of the Convention. Article 4 of the Bill required the Government to either amend or abrogate all administrative laws and regulations falling within its mandate, which contradicted the provisions of the Bill, within six months of its entry into force. Other laws and regulations, whose amendment or abrogation needed Parliamentary approval, would also be identified and submitted to Parliament for action. The Government urged the Office to provide technical assistance to raise awareness concerning the ILO's objectives and particularly the application of standards and the need to bring national law into line with the provisions of Conventions, where appropriate.

With reference to the activities of the Centre for Women's and Family Affairs, he indicated that, with a view to raising women's status at all social levels and enabling them to play a more substantial socio-economic role in all spheres, it had undertaken various programmes throughout the country. Certain government organizations had also been specifically established to deal with the different aspects of women's affairs, including the Women's Socio-Cultural Council and the Center for Women's and Family Affairs which were among the most renowned.

With a view to improving the socio-economic status of women and empowering them to break away from their traditional roles in society, the Government was investing heavily in the education of young women aged 15 to 24. The literacy rates of young men and women had reached 98 and 96 per cent, respectively, in 2005, thus closing the huge gap which had existed in the past. It was estimated that by the year 2009, young women's literacy would reach 100 per cent. The imbalance in the number of boys and girls at school had now almost been redressed and stood at 51.82 and 48.19 per cent, respectively, in 2005. As for university students, the longstanding imbalance in favour of men had taken a totally different direction. In 2008, almost 65 per cent of university places had been taken by young women, leaving only 35 per cent of higher education opportunities for men. Educated women were also managing to enter into long-established male occupations, such as polytechnic schools, the engineering sector, the oil, gas and petrochemical industries, law, economics, commerce and computer and information technology. They had further established themselves in the world of business, and some had become well-known entrepreneurs.

The new generation of highly educated women had also ventured into politics, which had traditionally been regarded as a male world. The proportion of women parliamentary candidates had increased from 3.02 per cent in 1980 to 9.89 per cent in 2005, with 12 women being elected. Although their progress in Parliament was not as rapid as that in universities, it was still steady and steadfast. There also had been a very significant increase in the number of women in managerial positions, particularly in middle-ranking ones. Their participation in academia had increased from only 1 per cent in 1979 to almost 30 per cent last year. Almost 40 per cent of highly specialized medical doctors of the country were women, and in gynaecology the proportion of female practitioners was almost 98 per cent.

In addition, many women were now entering the judiciary, which had recruited 20 women applicants through open entrance examinations in the previous year. In 2006, another 29 women students had been admitted to the College of Judicial Studies. More women were due to be recruited as judges, directors and legal advisers in the judiciary, while hundreds of young women lawyers were working in courts all over the country. He indicated that the latest statistics on the situation of women workers would be provided in future reports on the implementation of the Convention.

He further recalled that substantial resources were also allocated for the protection of women, their empowerment and poverty elimination programmes. In almost all government agencies dealing with social protection and welfare, specific departments exclusively addressed women's affairs. The National Welfare Organization, the National Organization for Youth, the Rural Women's Cooperative, the Nomads Affairs Organization, the Imams Welfare and Relief Committee, the National Education Campaign Organization and the Red Crescent Organization were all active in dealing with women's welfare and promotion.

Women were present at all levels of decision-making and public administration. All ministers were required to have a woman adviser on their management team, as a result of which over 40 women were vigilantly supervising women's programmes throughout the administration. Special advisers exclusively addressing women's affairs had also been appointed in all provinces, counties and townships to assist women's empowerment and poverty alleviation programmes. Women's promotion programmes also focused on: granting loans with low interest rates to women heads of household; promoting and extending support to women's entrepreneurship programmes; establishing specialized job creation centres for women and training women trainers to administer them; providing training courses to prepare women to attend women's assemblies and conferences; holding regular exhibitions for the promotion of women's entrepreneurship; exempting women entrepreneurs and job creators from income tax; providing technical guidance and support and helping women entrepreneurs conduct feasibility studies on small and medium enterprise (SME) projects; conducting surveys on the balance between work and family; holding on-the-job training courses for women managers and directors; establishing specialized women entrepreneurs associations; establishing special technical and vocational training centres for women; providing special grants for women job-seekers; empowering female heads of household; conducting special training courses for women's NGOs and providing legal assistance to women. In addition, to curb poverty among women, the National Welfare Organization had been entrusted with the responsibility of helping women heads of households and abandoned women integrate into the labour market through appropriate technical and vocational training programmes. Hundreds of women's NGOs and other social welfare groups also supported those programmes.

One of the most successful welfare and relief organizations had been founded by Imam Khomeini. The Imam Relief and Welfare Committee, together with the Bank of Agriculture, had regularly provided microfinance credits

to women workers and women heads of households for small business projects in such fields as agriculture, animal husbandry and food processing. Rural women comprised 12 million of the Islamic Republic of Iran's population and thus played a very significant role in the national economy, especially in agriculture and handicrafts. However, as they were mostly active in the informal economy, they were very vulnerable to the effects of economic and social crises, and were particularly at risk of unemployment and underemployment. The Rural Women's Cooperative Organization had been established to provide sustainable employment opportunities for rural women and over 170 women's cooperatives now had 34,000 women members in 807 villages across the country. The Government had also recently launched further initiatives to expand women cooperatives.

With regard to the prevalence of discriminatory job advertisements, he referred to the circulars requiring all administrative bodies to ensure justice in employment and the selection of the most appropriate candidates. In particular, Circular No. 18326 required the inclusion of minorities in advertisements so that Iranian religious minorities could enjoy their constitutional rights to equal treatment and employment. The Labour Inspectorate under the Ministry of Labour also ensured that Iranian minorities had equal and indiscriminate access to employment opportunities.

Labour inspectors also addressed complaints of sexual harassment in the workplace. So far, no such case had occurred and no complaints had been lodged. Such cases seldom occurred in the workplace, due to the Islamic and national Iranian culture and the very negative social consequences of such harassment for the perpetrators.

With regard to amending discriminatory regulations on social security, which currently favoured the husband over the wife in terms of pension and child benefits, the Government, in collaboration with the social partners, had launched a global plan for social security, which also included the above amendment. However, he categorically denied the existence of administrative rules restricting the employment of wives of government employees. He also denied the unfounded information brought to the attention of the ILO mission to the Islamic Republic of Iran in November 2007 alleging the existence of legal barriers to the hiring of women above the age of 30. Neither the labour law nor other laws and regulations concerning recruitment and employment made any reference whatsoever to excluding women above the age of 30 from applications for jobs. Article 14(a) of the State Employment Law clearly limited the employment age to a minimum of 18 and a maximum of 40 years. The maximum age of employment could be exceptionally extended for a period of five years in cases where the Government recruited its staff for the second time.

He also referred to certain complaints that were reported to have reached the Office concerning the processing of cases of religious minorities in the judiciary. Among the eight complaints received in this respect, six concerned the Baha'i sect. With regard to the alleged non-admission of the members of the Baha'i sect to the Vocational Training Centre (TVTO), he noted that the circular issued by the Deputy Minister of Labour strongly forbade any such discrimination. Believers of the Baha'i faith, like other Iranian nationals, were therefore entitled to apply for training opportunities in the TVTO.

The Government ensured that members of religious minorities could learn about faith, practise their rituals and maintain their language and cultural values. In addition to having access to free education at all university levels, the members of religious minorities traditionally had their own primary and secondary schooling, although they could also attend public schools. They were provided with individual religious teaching, practised their specific cultural rules and more, and acquired their linguistic skills in absolute freedom. The Ministry of Education recruited and fully trained the most appropriate and academically qualified teachers among the minority candidates.

With a view to amending and repealing the laws and regulations limiting women's access to judiciary posts, a Bill had been submitted to the Parliament in 2007 specifying the required qualifications of judges irrespective of their gender. Article 163 of the Iranian Constitution, defining the qualifications of judges, made no reference to their gender. Moreover, a Bill on the protection of the family that was before Parliament, provided that any court hearing related to a family dispute should be presided over by a minimum of one woman judge, and would automatically repeal Decree No. 55090. Currently, 459 women judges were assigned to different positions in the judiciary. Women also held positions as investigators and prosecutors. A few had been appointed directors of judicial administrations in provinces and presided over their male colleagues. Recalling the information provided to the high-level delegation in November 2007, he indicated that two women judges had been assigned to the court of appeal. In Tehran Province alone, there were 112 women judges.

Regarding the observations of the Committee of Experts on the situation of ethnic minorities, he emphasized that Iranian culture was the result of the integration and interaction of common interests and beliefs, customs and traditions and a common historical background of different ethnic minorities residing on the plateau of the Islamic Republic of Iran. This culture was symptomatic of the nation's profound historical, cultural and ideological legacy.

The latest national statistics of managers in the provinces with ethnic minorities revealed that in the Turk-Kurd province of Western Azerbaijan, 83.7 per cent of managers were chosen from the two Turk and Kurd minorities. In Kemianshah Province with its mixture of Kurdish minorities, 86.7 per cent of managers were national Kurdish residents. In Kurdistan Province, 78.8 per cent of the managers were of different Kurdish minorities. In Sistan and Baluchistan Province, where two ethnic and religious minorities of Baluchi and Sistani had peacefully coexisted for thousands of years, 65.6 per cent of managerial positions were distributed among natives. This showed that the Government had done its best to promote the indiscriminate access of ethnic minorities to high- and medium-level managerial positions.

Regarding the observations of the Committee of Experts on the Baha'i and the concerns expressed in respect to their access to education and vocational training, he reported that a circular had been issued recently by the President of the TVTO re-emphasizing the free access of all Iranian nationals to vocational training. The circular had been issued in compliance with the government policy for the protection of the rights of all Iranian nationals, irrespective of their beliefs, colour, creed, religion and gender.

In conclusion, he emphasized that the non-recognition of a religious minority in the country did not imply the non-recognition of their rights or the existence of discrimination against them. He added that a more detailed account of the status of the Baha'i would be contained in the next report on the application of the Convention submitted to the Office. He added that, in view of the great importance attached by his Government to the Convention, he reaffirmed his country's commitment to address concerns raised by the Committee of Experts and looked forward to further cooperation in this regard.

The Employer members noted the Government's commitment to social dialogue with the social partners, last expressed in 2008. They voiced concern that despite these expressions of commitment the Government had interfered with the Iran Confederation of Employers' Associations (ICEA), thus violating the principles of freedom of

association. The Committee of Experts observed that there had been no improvement in the social dialogue situation in the country. The Employer members reminded the Government that without respect for the freedom of association of both workers' and employers' organizations, meaningful social dialogue was not possible. They also recalled that the Convention required member States to pursue a policy of equality of opportunity and treatment in respect of employment under its direct control, and that it should seek the cooperation of employers' and workers' organizations in promoting acceptance and observance of this policy. Since 2006, the Committee had also urged the Government to repeal or amend all laws restricting women's employment, including regarding the role of female judges, the obligatory dress code, the right of a husband to object to his wife taking up a profession, the discriminatory application of social security legislation, and the barriers in law and practice to women being hired after the age of 30 or 40. The Government had committed itself to bringing all relevant legislation and practice in line with the Convention no later than 2010.

In this respect the Government had provided the Committee of Experts with information on five projects on legislation to address the discriminatory laws and practices mentioned above. While none of this draft legislation so far had come into effect, the Employer members expected that these laws would actually be enacted. In the past, the Government had been requested, both by the Committee of Experts and by the Conference Committee, to provide detailed reports on measures taken in law and in practice to prohibit discrimination, and to provide relevant statistics. So far, this had not happened and the Employer members urged the Government to provide all the requested information, to permit an evaluation of the situation in the country. Finally, concerning the situation of the Baha'i minority, they noted that the Government appeared to have taken no action on this matter, despite the urgency expressed previously by the Committee.

The Worker members emphasized that it would have been preferable for the Government to have communicated its information to the secretariat before the examination of the case by the Committee, so that a written document could have been prepared in advance.

In 2006, the Conference Committee had examined the application of Convention No.111 by the Islamic Republic of Iran. It had on that occasion regretted to note that no progress had been made in amending or repealing legislation that was contrary to the Convention. It had urged the Government to ensure that the laws and regulations restricting women's employment, including those regarding the role of female judges, the obligatory dress code, the right of a husband to object to his wife taking up a profession or job and the application of social security legislation to women, should be brought into conformity with the Convention without delay.

The Committee had examined the case under discussion on several occasions. Moreover, the country had regularly been the recipient of ILO assistance. In 2008, the Committee had urged the Government to take urgent action on all the outstanding issues, with a view to fulfilling its promises of 2006. In 2008, the Worker members had requested that the case be mentioned in a special paragraph in the Committee's report, but that had not been accepted. The Government had been requested to supply comprehensive and detailed information on a number of issues to be taken up at the November 2008 session of the Committee of Experts. Those issues had again been raised in the Committee of Experts' observation, which also included a double footnote.

As part of its Economic, Social and Cultural Development Plan (2005–10), the Government had undertaken to take measures, notably in the legislative field, to implement the principles embodied in the Convention. The measures were to have been introduced before 2010. The Committee of Expert's observation, however, showed that no such measures had been taken. The Committee of Experts had in fact on several occasions noted with regret that, despite its repeated requests, no progress had been made whatsoever, and that the Government had merely reiterated its commitment or indicated that there had been difficulty in obtaining the information that had been requested since 2006. Furthermore, the Committee of Experts noted with regret that no amendment had been made to the legislation and that no measure, aimed for example at combating discrimination against women, had been adopted, although a technical assistance mission had taken place.

The Worker members also referred to the issues raised by the Committee of Experts, namely legislative developments, the national equality policy, equal opportunities and treatment for men and women, and discriminatory legislation.

Regarding changes in the legislation, the Government had indicated that a comprehensive Bill prohibiting any form of discrimination in employment and education had been drafted. Infringements of the law were to be subject to very heavy fines and sanctions. However, the Committee of Experts noted that the Bill had not yet been forwarded to the Office. It was regrettable, moreover, that the Government had not made the Bill available precisely when the Conference Committee was examining the case.

As to the national equality policy, the Committee of Experts' observation referred to the Charter of Citizenry Rights cited in article 100 of the Economic, Social and Cultural Development Plan, and to article 130 of the Plan empowering the judiciary to take measures towards the elimination of all types of discrimination in the legal and judicial field. According to information supplied by the Government to the Committee of Experts, the Charter of Citizenry Rights had been approved by Parliament in 2007. Yet it had still not been communicated to the ILO, nor had the details of its application, notably with regard to any action taken against judges and public officials who did not comply with its provisions.

With regard to equal opportunity and treatment of men and women, the Committee of Experts' observation noted that the statistics it had been repeatedly calling for on the unemployment rate of women, and on improved access of women to employment and occupation, through increasing access to university and technical and vocational training, had not been communicated. Moreover, an increasing number of women were working in temporary jobs and contract employment, and thus were not covered by legal entitlements and facilities, including maternity protection. The existing imbalance in women's participation in the labour market in comparison with that of men, was a direct result of cultural, religious, economic and historical factors. The Government preferred to indicate that it was difficult for women to balance work and family responsibilities, rather than to take advantage of the outcome of various workshops that had been held at the provincial level with a view, among other things, to teaching Iranian women how best to do so. Finally, on the subject of discriminatory legislation, the Committee of Experts had for several years been stressing the need to repeal or amend discriminatory laws and regulations, such as the provisions of the Civil Code restricting women's access to employment, certain provisions of the social security legislation, the provision concerning women's access to the judiciary, the dress code and the age barrier to women's employment. In June 2008, the Conference Committee had expressed deep regret that, despite the Government's statements that it was committed to repealing laws and regulations that violated the Convention, progress in that regard had been slow and insufficient. In that respect, too, there had apparently been no progress.

In 2006 and 2008, the Committee of Experts had noted that the situation of recognized and unrecognized reli-

gious minorities, in particular the Baha'i, as well as that of ethnic minorities, appeared to be very serious. Their situation was still serious, as the Government had taken no steps to eliminate discrimination against the Baha'i and had provided no statistics on the employment situation of the Azeries, the Kurds and the Turks. In addition, the Committee of Experts had noted the absence of any social dialogue conducive to a constructive discussion on the elimination of all forms of discrimination referred to above.

In conclusion, the Worker members expressed the hope that the Committee's conclusions would reflect the profound lack of confidence in the Government's statements.

The Government member of Canada remained troubled by reports of continuing discrimination in employment and occupation against women and religious and ethnic minorities. Iranian laws continued to discriminate against women; and women's participation in decision-making positions in the Islamic Republic of Iran was limited and, apparently, decreasing. Women's rights movement activists, including organizers of the "million signatures campaign", were routinely harassed and detained by Iranian authorities. Discrimination against religious and ethnic minorities, such as the Baha'i, persisted despite international efforts. Members of the Baha'i faith continued to be denied employment, government benefits, and access to higher education. Seven members of the Baha'i leadership group had been detained without charges, and without access to legal counsel, for more than a year. The Government did not provide the information requested on this question. It was hard to understand that basic statistics requested by the Committee were unavailable from a country as manifestly capable as the Islamic Republic of Iran. He asked the Government, first of all, to address the numerous requests for information in a timely manner, to bring its legislation and practice into conformity with the Convention, to cooperate fully and to respond substantively to the observation of the Committee.

The Government representative raised a point of order, requesting that the Government member of Canada not expand his intervention beyond the subjects raised by the Committee of Experts. Consequently, the Government member of Canada was asked by the Chairperson to limit his observations to the issue under discussion.

The Worker member of the Netherlands remarked that last year the Government was requested to provide three types of information: on existing and drafted legislation to prohibit discrimination against all citizens; on progress in amending specifically discriminatory elements in the legislation; and detailed statistics. The experts had received none of it. They had not received information on the elements of the Fourth Economic, Social and Cultural Development Plan, nor had they received a copy of the Charter of Citizenry Rights. It was now becoming all the more urgent to receive the statistical information requested, in order to be able to assess the situation, since there was reason to believe that the education and employment situation for women was actually deteriorating.

Last year, the Government had reported on progress with regard to access of women to universities and higher education, as well as programmes to provide vocational training to women. The Government had failed however to provide the requested statistical information. It was imperative that this statistical information was made available, as it appeared that quotas to limit female attendance at university had been imposed. These quotas would limit the proportion of women allowed to study, in some cases to 10 per cent. Any quota that would limit the participation of women by 10 per cent could not be considered as positive discrimination, as the Government was suggesting. Data on the vocational training programmes were also missing. The Government had furthermore failed to provide information on the number of women actually finding employment after their education or training. Last year's employment figures were as low as 15 per cent.

The Committee needed to know how the current economic crisis affected the employment of women, and to receive information on the number of women employed and also their contracts and working conditions. Already, employees in workplaces with less than five workers or in export processing zones were not covered by law. If the draft legislation, which also excluded temporary workers, was adopted, up to 90 per cent of workers in the Islamic Republic of Iran, many of these women, might not be protected by the country's labour law. Last year, the Government was criticized for limiting employment of women in the public sector to 30 years or in some cases 35 years. The Government was stating that the correct age was 40 or 45 years. But even then, women were prevented from being employed during the largest part of their potential working life. In 2008, the adviser to the Ministry of Industry and Mining made public that the Government was drafting a bill that would limit working hours for women with children by at least one hour per child. This would not only limit women's access to the labour market, but also their earning capacity. A government policy or a legal limitation to working hours specifically for women would be highly discriminatory and in serious violation of Convention No. 111. Also, the Government had not reported on the access of workers to child-care facilities, and no information had been given on the financial support that workers received to make use of those facilities. In the online newsletter of the International Transport Workers' Federation, Maysour Osanloo, President of the Tehron Bus Workers' Union, explained how he negotiated US$40 per month for childcare for 200 women workers. She understood that this was exceptional. The speaker regretted that it was very difficult to find independent statistics, and that the organizations that might be able to provide information were facing extreme constraints in operating. The leaders of independent trade union organizations were in prison and women's organizations were also not allowed to report freely.

There was equally a lack of information and reason for increased concern with regard to discrimination in employment and education of the non-recognized religious minority of the Baha'i. The Government had stated during the last meeting of this Committee that the Baha'i enjoyed full rights to higher education. In 2004 and 2005, the Baha'i had been allowed to take the national university entrance exams without having to denounce their religious affiliation. In 2006, over 800 had taken the exams, half of them had passed but only 300 had been admitted. By January 2007, 160 of those had been expelled. Expulsion of students from higher education for being identified as Baha'i continued in 2009. Students in primary and secondary schools were also reported as having been expelled from school. She knew of four cases in Karaj and Kashan and two cases in Tehran and Karaj. Baha'i continued to be restricted in their freedom to pursue a decent living. According to information received by the speaker, in Khorramabad, private sector employers had been summoned to the Intelligence Ministry and pressured to dismiss their Baha'i employees. Official instructions had been given to police headquarters in Rafsanjan to ensure that the number of Baha'i who engaged in any business and the amount of income earned by them was strictly limited. This atmosphere of discrimination had been worsened by the declaration of the Government that all Baha'i administrative arrangements were illegal. The informal structures (Yaran and Khademin), by which the Baha'i were represented and by which they could promote their participation in education and in the labour market, could no longer be in place. Reports had been received that members of these structures had been arrested and sentenced on the ground that these structures had been declared illegal. She urged the Government to repeal this

declaration and promote a safe environment for Baha'i to participate in education and the labour market.

To send a clear message to the Government of the Islamic Republic of Iran, to underline that the Committee took the Government's promises of 2006 very seriously, and to recall that the Government had until 1 September 2009 to meet its promises, the speaker requested that this case be mentioned in a special paragraph of the Committee's report.

The Worker member of Canada added his voice to the concerns expressed by other speakers over the discrimination of women in employment in the Islamic Republic of Iran. Between 1990 and 2003, GDP had grown annually by 2.4 per cent resulting in a 24 per cent inflation rate and requiring more married women to get a job, just to cover the gaps in family incomes. Fifteen per cent of the formal economy was now composed of women, meaning that only 3.5 million Iranian women compared to 23.5 million men were salaried workers entitled to holidays, maternity leave and pensions provided by the labour law. The situation was aggravated by the fact that women who left home to work were still legally obliged to provide day-care at the same time.

The speaker pointed out that a tug of war was taking place with some pushing for law reform to remove employment barriers, while others wanted more restrictions for women to stay at home. Fortunately, the literacy rate in the Islamic Republic of Iran was 94 per cent for both men and women, which meant that there were indeed opportunities for women to education, but these were skewed towards areas of learning or caring functions of society and not to core industrial or economic decision-making functions. Sixty-four per cent of female students actually reached higher education, where well over 60 per cent of the university population studying medicine, humanities, arts and science-support functions were women, compared to 20 or 30 per cent in technical, engineering or agriculture studies. These same rough proportions were then reflected in women working in corresponding government ministries, where up to 45 per cent of staff were women, compared to industry where they made up 12 per cent of the workforce and were unrepresented in corresponding ministries.

Finally, the speaker pointed out that female discrimination was deep-seated in school text books, and at all levels of compulsory education. Since 2006, 50 women involved in a campaign to collect 1 million signatures in support of improving women's rights had been detained, with several receiving suspended prison terms. Hence, he implored the Government to amend labour laws with ILO assistance, and to fully implement the core labour standards.

The Worker member of Pakistan pointed out that Convention No. 111 was a core Convention ratified by the Government of the Islamic Republic of Iran. The Committee of Experts had repeatedly asked the Government to provide information and data in relation to the application of the Convention. The Government had indicated that it would provide such information as well as accept technical cooperation. He accordingly urged the Government to respect its international obligations.

The Government representative of the Islamic Republic of Iran observed that despite all goodwill, his country would not be able to cover the gap in employment between men and women in the next few years. The prevailing role model had been established thousands of years ago. People could not be coerced into how to run their households, and there were many obstacles to changing existing legislation. Whereas in other countries, legislation had to pass two chambers of parliament, in the Islamic Republic of Iran it had to pass three. This made the process more complicated. Also, there appeared to be some misunderstanding regarding section 1117 of the Civil Code which had, in any case, fallen into abeyance. Given that the social security issue was new before the Committee, the speaker was aware that he should have submitted the relevant information in advance in writing. The situation of women in his country was by far not so gloomy as certain people liked to describe it. In no way were they oppressed, but forward looking and enthusiastic about their future. Many discriminatory laws had been repealed and progress in that respect was continuing. Regarding the Charter of Citizenry Rights, a number of judges who had not respected it had been brought to court for its breach. The issue of the Baha'i community was rooted in history, but being addressed. The Government was looking into any discrimination occurring in the process of repelling Baha'i students. The case of a Baha'i institute whose land had been seized had been adjudicated and the land returned. Many Baha'is were running very lucrative businesses and had easy access to credit and loan. Licences for starting businesses were freely granted. The negative statistics on Baha'is were inflated. As regards the information on Baha'is imprisoned without judgement, which he had just received, he would report the issue to his Government where the matter would be brought to the judiciary.

The Worker members stated that the previous year, owing to the absence of any noticeable progress in the implementation of Convention No. 111, as well as the lack of will by the Government to provide the information requested by the Committee of Experts, it had been necessary to include a special paragraph on the case in the report of the Committee. However, considering that the discussions in 2008 had been based on a mid-term report on the measures taken within the framework of the plan for socio-economic and cultural development (2005–10), the Committee had expressed confidence in the Government and allowed it a certain leeway to intensify its efforts and meet the objectives of the plan before the 2010 deadline. However, no such effort had been seen; the Government had not demonstrated its goodwill. It was hoped that the Government would provide to the Committee of Experts at its next session information on all the issues that the Committee had raised since 2006. The Worker members requested that the case be included in a special paragraph in the report of the Committee.

The Employer members suggested that, in the conclusions, the Government be requested to provide the required information to the ILO, including the statistics that the Committee of Experts had asked for on a number of occasions, to enable it to assess the situation. The conclusions should also reflect that employers and workers should be free to establish organizations consistent with the principles of freedom of association.

Conclusions

The Committee noted the statement of the Government representative and the discussion that followed.

The Committee noted that the Committee of Experts had raised a number of issues, including the lack of any improvement in the social dialogue situation in the country; the need for information on the practical measures to implement the national plans and policies relevant to equality in employment and occupation, and the results achieved; the situation of women in vocational training and employment; discriminatory job advertisements; discriminatory laws and regulations; the situation of unrecognized religious minorities, in particular the Baha'i, and ethnic minorities; and the importance of accessible dispute resolution mechanisms. The Committee of Experts, having noted the Government's indication that a comprehensive Bill prohibiting any form of discrimination in employment and education had been drafted, he expressed the hope that every effort would be made to adopt in the near future a comprehensive law on non-discrimination which was fully in conformity with the Convention.

The Committee took note of the Government's statement that it would provide full information, including detailed statistics, on all the issues raised by this Committee in 2006 and 2008 and by the Committee of Experts. The Government stated that the Charter of Citizenry Rights had been a successful instrument to ensure the protection of rights including non-discrimination, and that it had been used to discipline judges who had not adequately ensured the rights of citizens. The Government also submitted information on training provided to judges on citizens' rights and referred to a joint project with the United Nations Development Programme on human rights promotion and development of justice. The Government indicated that the judiciary had declared null and void a range of administrative orders. On the issue of quotas regarding the access of women and men to university, the Government acknowledged that such quotas existed in 39 fields of study, stating that the aim was to balance the participation of women and men. The Government also provided information on certain cases relating to the infringement of the rights of minorities and discrimination against women. Information on programmes to promote women in employment and as entrepreneurs was also provided. Regarding the Baha'i, the Government referred to one recent case ruling in favour of a Baha'i institution that had complained that its land had been unlawfully seized. The Government acknowledged that, due to the cultural and historical fabric of society meant that progress in bringing law and practice into conformity with the Convention would be slow, but expressed its commitment to continuing to move forward in that direction. The Government asked for coordination and closer cooperation among various governmental bodies and the national social partners, as well as assistance from the ILO.

The Committee regretted that there was an ongoing need to discuss this case regularly, given the absence of progress on the range of issues that had been raised over the years. It noted that during its most recent examination in June 2008, it had requested the Government to take urgent action on all the outstanding issues with a view to fulfilling its promises of 2006 that it would bring all the relevant legislation and practice into line with the Convention by no later than 2010, and had requested the Government to provide complete and detailed information for examination by the Committee of Experts at its November 2008 session in reply to all the pending issues. The Committee noted with concern the lack of information that had been provided to the Committee of Experts, despite this specific request, and the range of serious issues that remained outstanding.

The Committee expressed its deep concern that due to the continuing context of repression of freedom of association in the country, meaningful social dialogue on these issues at the national level had not been possible.

The Committee, while acknowledging that certain achievements had been made in the past in respect of education, vocational training and employment of women, remained concerned at the lack of evidence of any real progress made with respect to their situation in the labour market. Detailed information on the number of women actually finding employment after their education and training was still lacking, and concerns remained with respect to existing and draft legislation limiting women's employment. The Committee also noted the need for information on the quota system in universities and how it was applied in practice, as well as information on the impact on women's employment of the recent bill limiting working hours for women with children. The Committee noted that the outstanding issues raised by the Committee of Experts in this regard remained unanswered. The Committee expressed continuing concern about the situation of religious and ethnic minorities with regard to their equal access to employment and occupation, and the failure to provide adequate statistical information in this regard. It concluded that the Baha'i continued to be subjected to discrimination as regards access to education and employment without any significant measures being taken by the Government to bring discriminatory practices, including on the part of the authorities, to an end.

The Committee urged the Government to take immediate and urgent action to ensure the full application of the Convention, both in law and practice, and to establish genuine social dialogue in this context. The Committee urged the Government to provide full, objective and verifiable information in its report of 2009 on the application of the Convention, in reply to the issues raised by this Committee and by the Committee of Experts. It expressed the firm hope that such information would evidence that concrete progress had been made on all the matters raised.

The Committee decided to include its conclusions in a special paragraph of its report.

REPUBLIC OF KOREA (ratification: 1998)

The Government communicated the following written information:

Migrant workers management system in the Republic of Korea

Development of the labour migration policy in the Republic of Korea

From a country sending its workers abroad in the 1960s and the 1970s, the Republic of Korea turned into a receiving country in the 1990s. Based on its unique experience as both a sending and receiving country, the Government had been developing labour migration policy taking into consideration not only the national economic needs of introducing foreign workers but also due protection of foreign workers' rights.

In 1993, the Industrial Trainee System (ITS) was established to address labour shortages faced especially by small and medium-sized enterprises. After ten years of its operation of the ITS, the Government introduced the Employment Permit System (EPS) in 2004 through the "Act on the Employment of Foreign Workers". The EPS was designed to address the shortcomings of the ITS, such as irregularities in the sending and receiving process and disruption of domestic labour markets, thereby improving the management system of migrant workers. Since 2004, the EPS had become the only channel through which low-skilled migrant workers were granted permission to work in the Republic of Korea. The merits of EPS, compared with ITS, could be summarized as follows:

- Under the EPS system, transparency in the sending and receiving process was ensured and irregularities were reduced as the sending and receiving process was conducted only by public organizations as stated in the Memorandum of Understanding (MOU) signed between the two governments.
- Labour laws, including the Industrial Compensation Insurance Act, the Minimum Wage Act, and the Labour Standard Act, were equally applied to migrant workers and Korean nationals to protect migrant workers' rights.
- Labour quota for foreign workers was determined each year based on the labour supply and demand to receive appropriate number of foreign workers for SMEs facing labour shortages while protecting employment opportunities for Korean nationals.

As of 2009, the Korean Government had signed the MOU with 15 countries and a total of 191,592 workers entered the Republic of Korea from 14 countries from 2004 to March 2009.

After only three years since the introduction of the EPS, a remarkable progress had been made especially with regard to the reduction of the number of workers absent without leave, cases of overdue wages and amount of average sending cost.

Results of survey on the implementation of the EPS in its third year (2007)

	Workers absent without leave (%)	Workers experienced overdue wage (%)	Average sending cost (US$)
ITS	50.5	36.8	3 509
EPS	3.3	9.0	1 097

Change of workplace and other rights of migrant workers

Under the EPS, migrant workers were required to work at the workplace where they were placed initially. However, in case it was deemed impossible for migrant workers to maintain employment relations at the workplace where they were assigned, they were allowed to change workplaces for up to 3–4 times. The legitimate reasons for changing workplace were as follows:

- In case of cancellation of the labour contract by the employer or legitimate refusal to renew the contract on expiry.
- In case migrant workers could no longer work at the workplace due to reasons not attributable to them, such as suspension of business or workplace shut down.
- In case of cancellation of employment permit to hire foreign workers or imposition of an employment limit on the employer.
- In case the worker was injured, and was not able to continue working in the initial workplace.

In addition to the abovementioned cases, a revised bill was drawn up and submitted to the National Assembly in November 2008 to include other cases in which the workers were allowed to change workplaces. These included cases where working conditions differed from the terms provided in the labour contract and where employers treated workers unfairly including through the violation of the labour contract. In order to change workplaces, workers only needed to submit an application for changing workplace to a local jobcentre where cases were reviewed and approved. As of March 2009, 130,000 cases of workplace changes had been reported, illustrating that in practice, workers were allowed to change workplaces as long as they had legitimate reasons.

Labour inspection and monitoring for migrant workers' rights were conducted mainly on small-sized businesses and counselling service was provided to address difficulties faced by migrant workers in a way to strengthen protection of human rights of migrant workers.

Mandatory insurances – return cost insurance for return flight ticket, casualty insurance for accident and death unrelated to work, guarantee insurance for overdue wage, and departure guarantee insurance for severance pay – were other measures to protect workers and support their stay and return process.

Some five migrant worker support centres were currently in operation to provide: counselling services in workers' native languages; Korean language courses; computer skills programmes, etc. The Government was planning to set up more centres and diversify the services.

Equality of opportunity and treatment of women and men

Eliminating gender discrimination in employment

In order to guarantee equal opportunity and treatment between men and women in employment, the Government enacted "the Act on Equal Employment and Support for Work-Family Reconciliation." The Act prohibited discrimination in recruitment and hiring, wages and other welfare benefits, education, assignment, dismissal, etc. It also prohibited sexual harassment, imposed a fine for any violation and obliged employers to provide preventive education. In addition, the Affirmative Action Scheme had been implemented in government subsidiaries, government-invested institutions, and private companies of a certain size or larger, since 2006, in order to proactively increase female participation in the workplace. Under this scheme, the organizations were required to submit and carry out an affirmative action plan and to increase the proportion of their female workers and managers in case the current figures were less than 60 per cent of the average numbers in the companies of a similar size, which were in the same or similar industry.

Since the introduction of the Affirmative Action Scheme, the proportion of female workers and managers was gradually increasing in those workplaces.

Female employment at workplaces subject to the Affirmative Action Scheme

Year	Female employment rate (%)	Female managers (%)	Remarks
2006	30.7	10.2	1 000 employees or more
2007	32.3	11.0	1 000 employees or more
2008	32.4	12.0	500 employees or more
	35.0	13.2	1 000 employees or more

In order to monitor the improvements, the Government had announced the employment equality index by gender every year since 2006. The index had been on the rise from 55.7 per cent in 2006, to 57.1 per cent in 2008. The employment equality index by gender showed relative employment status of female or male wageworkers. It consisted of four sub-indices – labour participation index, labour compensation index, labour status index, and job security index – and a composite index that was a weighted average of the four sub-indices.

The Government also provided standardized interview guidelines to be referred to in the recruitment procedure and distributed self-inspection checklists, etc. to firmly establish the principle of equal pay for work of equal value. It was also strengthening guidance and inspections for workplaces to ensure that any unlawful acts with regard to maternity protection, gender discrimination and equal pay for work of equal value were not committed under the pretext of the economic recession, etc. In addition, the Government referred to measures protecting maternity, paternity and supporting reconciliation of work and family life.

Promoting female employment and supporting skills development

In order to promote female employment, the Government had established a work net and employment service centres for women. It also subsidized setting up facilities favourable for female employment and consulting services aimed at expanding female employment. Meanwhile, the Government had designated private employment service agencies as "return-to-work centres for women" and through such centres, offered comprehensive employment services including job counselling, vocational training and job placement services. The Government had designated and operated 72 such centres in 2009 and by 2012 the number of centres would increase by 100. The Government also promoted participation of unemployed women in vocational training, and provided

specialized training for vulnerable groups, such as career-break women and unemployed female household heads. Besides, it used the Individual Training Accounts to expand the participation of unemployed women in vocational training.

With a view to increasing jobs for women, the Government was fostering social enterprises engaged in patient-care and child-care services, which were favourable for female employment (218 in 2008, 400 in 2009). In 2009, 1.5 trillion won of its budget would be injected, with a target of creating 161,000 social service jobs suitable for women, such as patient caring, post-partum care of mothers and their newborn babies, and baby-sitting, etc.

Additional grounds of discrimination

Age

With the aim of banning age discrimination, the "Aged Employment Promotion Act" was amended into "the Act on Age Discrimination Prohibition in Employment and Aged Employment Promotion" in March 2008. The Act prohibited age discrimination in every aspect of employment including recruitment, hiring, wages, welfare benefits, education, training, assignment, transfer, promotion, retirement and dismissal. It also stipulated a procedure by which any victim of such discrimination could file for a remedy with the Human Rights Commission, and penal provisions such as imposing a fine for a violation. Meanwhile, the Government provided subsidies for companies that extended retirement age limits, adopted a wage peak system, employed large numbers of aged workers, etc. In 2008, a total of 273,945 people received 48 billion won in these subsidies.

Disability

In order to promote employment of the disabled, the Government enacted "the Act on Employment Promotion and Vocational Rehabilitation for Disabled Persons" in 1990. Under the Act, the State and local governments were mandatorily required to hire three per cent or more of their employees from the disabled, and to regularly submit related employment plans. Private companies with 50 full-time workers or more, too, were mandatorily required to hire at least two per cent of their employees from the disabled. An employer who failed to meet the mandatory employment quota was imposed corresponding levies. The number and percentage of disabled workers employed by companies subject to mandatory employment requirement were 10,461 persons in 1991 (0.43 per cent) and 89,546 in 2007 (1.54 per cent).

A legal framework for prohibiting any discrimination against the disabled was set up through the enactment of "the Anti-Discrimination and Remedy for Persons with Disability Act" in 2008. It prohibited discrimination against the disabled in hiring, promotion, dismissal, etc. and compulsorily required employers to provide technical aids and equipment for workers with disabilities. In case of a violation, a remedy could be sought through the National Human Rights Commission, etc.

Employment status

In December 2006, to balance worker protection and labour market flexibility, the Government enacted "the Act on Protection, etc., of Fixed-term and Part-time Employees." The Act came after intensive debates and fact-finding surveys organized mainly by the Tripartite Commission and further discussion in the National Assembly for another two years. The Act stipulated the ban on undue discrimination against fixed-term and part-time workers and provided an effective remedial procedure to redress such discrimination. In particular, the Government introduced a system that allowed workers, subject to discrimination, to directly request a redress to the Labour Relations Commissions. An opinion survey found that this system had the effect of preventing discrimination in advance as it prompted companies to voluntarily improve employment conditions. However, the system was still in its early stages and partially applied. Once decisions and rulings by the Labour Relations Commissions and the courts were accumulated to provide standardized criteria for judgement, the system was expected to play an important role in improving employment conditions for workers in diverse employment status. In order to prevent abuses and to enhance the effectiveness of the remedial procedure, the Act obliged the employers to state the terms of employment contracts in writing and to make efforts to preferentially employ fixed-term and part-time workers already working in the workplace concerned when hiring regular workers.

In addition, before the Committee, **a Government representative** stated that since ratifying Convention No. 111 in 1998, the Government had been striving to implement the latter while bearing in mind the principles of equality of opportunity and the elimination of discrimination in employment and occupation, as enshrined in the Declaration of Philadelphia and the Universal Declaration of Human Rights.

With respect to migrant workers, the Government had enacted the "Act on the Employment of Foreign Workers" in August 2003, which introduced the Employment Permit System (EPS). The EPS was introduced to provide a legal framework for the employment of migrant workers and their effective management at the government level. The EPS had two distinctive features: firstly, it ensured transparency in the receiving and sending procedures. Based on the Memorandum of Understanding (MOU) concluded between the Ministry of Labour of the Republic of Korea and the relevant ministry of the sending country, the receiving and sending process was carried out on a government-to-government basis, thereby blocking the involvement of private recruiting agencies, which often engaged in irregularities. Secondly, under the EPS any unreasonable discrimination against migrant workers was prohibited: the labour laws, including the Industrial Accident Compensation Insurance Act, the Minimum Wage Act, and the Labour Standards Act were equally applied to migrant workers and Korean nationals. At present, the Government had signed MOUs with 15 countries.

She added that under the EPS, foreign workers were in principle permitted to change workplaces up to three times, and four times at most during their three years of stay. As the EPS was designed to grant employment permits to the employer, workers who entered the Republic of Korea under it were, in principle, required to work for the employer with whom they initially signed employment contracts. She recalled that one conclusion of the 40th session of the ILC stated that it seemed necessary to make exceptions to allow for the continuation of restrictions on the access of non-nationals to employment. Another conclusion stated that the foreign worker was restricted to a particular post or sector of employment and he might change his employment only with the permission of the competent authorities … this system facilitated manpower movement across frontiers which might otherwise not occur, and did not seem to give rise to serious objections so long as it is confined to the initial period of a foreign worker's stay. The EPS nevertheless allowed a certain degree of flexibility for the purpose of protecting migrant workers' human rights. For instance, it allowed migrant workers to change their workplaces for the following reasons: when workers were not able to continue working at the current workplace due to reasons not attributable to them, such as employers' refusal to renew the contract, cancellation of the current contract, or business shutdown or suspension; when the employment per-

mit was cancelled due to employers' violation of labour-related laws and working conditions; when workers were unable to work in the current workplace due to injury.

Additionally, the Bill revising the EPS that was submitted to the National Assembly in November 2008 provided for greater flexibility. The revised Bill enabled migrant workers to change workplaces in case working conditions differed significantly from the terms provided for in the employment contract, or in case the worker had been subjected to unfair treatment, including the violation of agreed-upon working conditions. As of March 2009, about 130,000 workers had changed workplaces, demonstrating that in practice, workers were allowed workplace transfers in most cases when they had legitimate reasons. In case a migrant worker's rights were violated, he or she could file a complaint at a regional labour office under the Ministry of Labour. In 2008, out of 4,251 cases filed to regional labour offices, 2,475 were settled through the administrative process and 1,754 cases through the judicial process. The regional labour offices also conducted labour inspections in the workplaces where migrant workers were concentrated; inspections were conducted in 713 workplaces in 2007 and 934 in 2008, and corrections were made with respect to such matters as overdue payments and violation of working hours and leave. Additionally, 81 job centres across the nation dispensed guidance and monitored workplaces covered by the EPS.

With regard to the information on court cases concerning discrimination requested by the Committee of Experts, she regretted that the disaggregated statistics were not available. However, the data from the National Human Rights Commission showed that a total of 64 cases were filed from 2001 to June 2009 concerning discrimination in employment based on national origin, ethnicity, race, and colour. Among them, three cases were cited, 51 cases dismissed, and four cases settled during investigation. The cited cases were disposed of with recommendations for policy improvement, mutual consent, or recommendations for corrective measures. She stated that the Government was also proactively assisting EPS workers to adapt to their workplaces. Beginning this year, the Government was providing support for cultural events for migrant workers, in cooperation with the embassies of the sending countries, and undertaking outreach programmes to provide counselling and basic medical services. Through a returnee support programme called "Happy Return" vocational training was being provided to returning workers, as well as job placement services with Korean businesses operating in their home countries.

As concerned gender equality, she noted that the employment rate of women continued to grow from 53.1 per cent in 2006 to 53.2 per cent in 2007, although at a very slow pace, as mentioned in the Committee of Experts' report. However, due to the recent economic situation the number had fallen to 52.4 per cent as of April 2009. Nevertheless, there had been a significant change in the female employment rate in the civil service; the percentage of women in the civil service was 3.6 times higher than the 3 per cent figure of 1999, a decade ago. The "employment target system for gender equality" implemented by the Government since 2003 was considered to have played an important role in this increase. Since March 2006, the Government had also implemented the "affirmative action scheme", which required public organizations and private companies of a certain size to maintain the proportion of female workers and managers at 60 per cent or higher than the average of the companies of a similar size in the same or similar industry. In case of failure to meet the requirement, they should draw up and report a plan to improve the situation. As a result of the scheme, the proportion of female managers in workplaces with 1,000 employees or more rose 2 per cent yearly, to 13.2 per cent in 2008.

In order to monitor compliance with the ban on gender discrimination in employment, the Government had established a comprehensive plan for guidance and inspection every year. In 2008, the Government conducted guidance and inspection for 1,628 workplaces and had most of the violations corrected. According to the "Act on Equal Employment and Support for Work-Family Reconciliation", an employer should give equal pay for work of equal value in the same business. To ensure compliance, the Government also provided consulting services, job interview guidelines as well as a manual on gender-based discrimination. It would also develop and provide a self-inspection checklist so that employers and workers voluntarily could check and improve discriminatory elements in wage payment. Thanks to these efforts, in 2002 women earned 64.5 per cent of the corresponding salary of men while in 2008 the figure stood at 66.5 per cent. Nonetheless, since seniority-based wage systems remained dominant and wage levels were based on educational qualifications, length of service and experience, there were some limitations to policy implementation. Companies needed to modify their labour management systems and wage structures, but such reforms remained a challenge as trade unions preferred the current seniority-based wage system.

With a view to increasing job opportunities for women, the Government was injecting 1.5 trillion won of its budget in order to foster social enterprises, such as patient-care service, with the target of creating 400 such enterprises in 2009. Also, expanding maternity protection and supporting the reconciliation of work and family life were essential to ensuring equality for female workers. In the Republic of Korea, female workers were granted maternity leave of 90 days and employers were required to grant paternity leave of three days. A worker with an infant or a child under the age of three could take childcare leave of up to one year and the childcare leave benefits were partially financed by the Government. She referred to the written information supplied by the Government for more detailed information on the measures taken to promote the employment of women and to support their skills development; the document also contained information on the measures taken to combat discrimination against the elderly and people with disabilities.

In respect of fixed-term and part-time workers, she stated that in December 2006, and in order to balance worker protection and labour market flexibility, the Government enacted the "Act on Protection, etc. of Fixed-term and Part-time Employees". This Act came after intensive debates and fact-finding surveys organized mainly by the Tripartite Commission, which were followed by further discussion in the National Assembly for another two years. The Act banned undue discrimination against fixed-term and part-time workers and established an effective remedial procedure within Labour Relations Commissions for acts of discrimination. The Act also obliged employers to state the terms of employment contracts in writing and to make efforts to preferentially employ fixed-term and part-time workers already working in the workplace concerned when hiring regular workers. A recent opinion survey found that this system had the effect of preventing discrimination in advance as it prompted companies to voluntarily improve employment conditions. However, the system was still in its early stage and only partially applied. Once decisions and rulings by the Labour Relations Commissions and the courts had been sufficiently accumulated to provide standardized criteria for judgment, the system was expected to play an important role in improving employment conditions for workers in diverse employment settings.

In concluding, she maintained that all forms of excessive discrimination should be eliminated, not only in the world of work, but also in every aspect of human life. The policy measures the Government had taken were designed to eliminate discrimination in a way appropriate to na-

tional conditions and practices, as stated in Article 3 of Convention No. 111. She reiterated that the Government was doing its utmost to eradicate discrimination on the basis of race, colour, sex, religion, political opinion, national extraction and social origin. Not content to rest on its achievements, the Government was committed to bringing about improvements based on opinions from all sectors of society.

The Employer members stated that observations had been made on four occasions and that it was the first time that the case had come up for discussion. Regarding Article 1 of the Convention, there was no provision in national legislation that prohibited discrimination on grounds of race, colour, national ascendancy or political opinion; nor did it prohibit indirect discrimination in the terms of Convention No. 111. The situation had begun to improve from 2005 onwards, when protection and assistance measures were introduced. Act No. 6507 of 14 August 2001, for instance, imposed a restriction on the number of hours that women who had given birth could work over the course of a year. In 2006, regulations were introduced on the entry of migrant workers to do internships, who under the Employment Services System of 2004 had been too dependent on the employer and could therefore fall victims to exploitation and find it difficult to look for better paid jobs. In 2007, the Foreign Workers' Employment Act allowed unskilled workers to be employed in specific sectors of the economy under contracts that were renewable each year up to a maximum of three years, provided they did not change employer – save in exceptional cases where the employer violated the terms of the contract. Between 2001 and 2006, the National Commission on Human Rights examined 1,222 complaints of employment discrimination, only one of which concerned migrant workers. Help centres for migrant workers were set up to provide advisory and medical services. In 2008, the Government envisaged additional grounds for allowing them to change their place of work. The infringement of labour legislation by employers who failed to pay workers their wages made it difficult to maintain an employment contract.

On the subject of disability, the modifications to the Act concerning the Prohibition of Discrimination against Persons with Disabilities and Compensation for the Infringement of their Rights came into force on 11 April 2008. Regarding equal opportunity and treatment between men and women in employment, which was the main thrust of decent work, one could point to a certain equity in terms of rights inasmuch as the discrimination faced by women in the world of work had to be combated as a matter of fundamental human rights and justice. Furthermore, from the standpoint of efficiency it could be argued that women played a vital role as potential economic agents in the transformation of society and of the economic environment. Equality was not valued simply for its intrinsic virtue; it also played a decisive part in furthering economic growth and reducing poverty.

The Employer members emphasized the importance of the effective application of Convention No. 111 by the Republic of Korea as it was one of the core Conventions, and it therefore welcomed the Government's assurances of its intention to comply with the Convention. They recalled that, under Article 2, member States undertook "to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation", while Article 3 made the same point by referring to "methods appropriate to national conditions and practice". An effective social dialogue with the employers' and workers' organizations was needed to improve disaggregated statistics and to make labour inspection more efficient and non-discriminatory.

The Worker members highlighted that the case on the Republic of Korea had been chosen because of their belief that discrimination within the Korean labour market had increased. After having consulted the written information communicated by Government, they felt that the Government's view was a little too optimistic.

With regard to the issue of migrant workers, the new system of work permits tied workers to their employers and did not allow them to change their place of work except under very restrictive and limiting conditions. Such inflexibility exposed workers to intimidation, abuse and reprisals on the part of employers and constituted basic discrimination. The Government had stated that a draft bill included new provisions allowing workers to change their place of work if the employer had not fulfilled the essential conditions of the contract and had not, for example, paid the salary that was due. The bill certainly represented progress, but it failed to limit the power of the employer and, on its own, would not put an end to discriminatory practices. Furthermore, the new provision did not improve the situation of migrant workers as, once they were without employment, they had only two months to find other work and would be compelled to accept new jobs, even under duress. Also, migrant workers could not reside in the country for longer than three years and required an "invitation" from their employers in order to stay a further three years. Employers often promised new contracts in order to force workers to accept unpaid overtime.

The Worker members stated that the Government had failed to indicate that it also intended to deduct accommodation and food costs from workers' salaries, which were currently paid by employers. The Government also refused to recognize the Migrant Workers' Trade Union, in direct contravention of the provisions of Convention No. 87.

With regard to the issue of discrimination based on age or disability, new laws prohibited any form of discrimination and promoted employment for older or disabled persons, with grants and quotas. The Worker members said that they would await data and would be interested to see the results of those new legislative provisions.

As for the issue of discrimination against women, the Committee of Experts had noted a slight increase in the rate of female employment in 2007. In 2006, an affirmative action scheme had been established, obliging the public sector and large private companies to recruit more women if the rate of female employment fell below 60 per cent of the average in their sector. According to the figures communicated by the Government, the rate of female employment had risen by an average of 2.5 per cent per year, but had only reached a rate of 35 per cent by 2008. Inequality in salary rates was worse than that declared by the United States; women only received 63.4 per cent of the salary that men received.

Another worst form of discrimination, based on employment status, was noted between regular and irregular workers. In 2005, so-called casual or temporary workers constituted 56 per cent of all male workers and 70 per cent of all female workers. One in every two men and two in every three women were therefore considered as irregular or casual workers. In comparison with 100 per cent of the salary of a regular worker, the irregular male worker only earned 49.7 per cent, while irregular female workers earned only 39.1 per cent. In December 2006, a law on the protection of salaries for fixed-term and part-time contracts had been enacted, which prohibited all discrimination regarding the employment status of workers. The law had come into force under the slogan "flexibility without discrimination", which brought to mind the Danish "flexicurity" model; in the current case, it referred more to Korean "flexequality". It should be noted that the pay gap between regular and temporary workers had widened, 87 per cent of those who had been made redundant

following the economic crisis were women, four out of every five regular workers enjoyed social security compared with one in every three temporary workers, and among the 46 cases brought before judicial authorities, only two had been judged to be discriminatory.

According to the Worker members, the law could not be applied as it limited the workers' right to appeal and did not open it up to trade union organizations. Moreover, many workers had, under duress, withdrawn the complaints filed against their employers. The law intended, in addition, to reconcile two contradictory objectives: eliminating all forms of discrimination towards temporary workers while at the same time introducing greater flexibility by increasing temporary employment. In that regard, the Worker members stated that discrimination in the Republic of Korea was not yet set to disappear.

A Worker member of the Republic of Korea observed that although all workers were affected by the current global economic crisis, migrant workers, precarious workers and women workers remained among the most vulnerable and, as such, should be the focus of any solutions designed to resolve the crisis. Discrimination on the basis of nationality, employment status, and gender had unfortunately grown more severe in the Republic of Korea, and the Government had failed to take appropriate measures in response to this phenomenon. Discrimination on the basis of employment status, particularly as concerned workers with fixed-term labour contracts, and with regard to wages, welfare or working conditions, had rapidly increased in recent years. As of August 2008, precarious workers accounted for 52 per cent of the total labour force. Wage disparities had increased, so that precarious workers' wages were now only 50 per cent of that of regular workers. The wage disparity for women workers was even greater, as female precarious workers received only 39 per cent of regular workers' average wages. Additionally, only 37 per cent of precarious workers received social security benefits, compared to around 90 per cent of regular workers.

The application of the principle of equal pay for work of equal value was a key tool for preventing discrimination. He pointed out, however, that this principle was not clearly expressed in the Protection of Fixed-term and Part-time Workers' Act, and urged the Government to amend article 6 of the Labour Standards Act so as to incorporate this crucial principle. Weak anti-discrimination measures in the Protection of Fixed-term and Part-time Workers' Act was a principal reason for increased discrimination against precarious workers; as of August 2008, only 46 petitions concerning discrimination had been filed, despite the scale of the problem, demonstrating the ineffectiveness of the Act's provisions. Also, as only individuals and not organizations were permitted to file petitions under the Act, many workers were unwilling to come forward with complaints for fear of being dismissed; cases where workers who had filed petitions had been fired existed, as in the case of the Agricultural Cooperatives Joint Market, where the employer refused to renew the worker's contract after the local Labour Relations Commission ruled that the worker had indeed faced discrimination at the worksite. In this connection, the speaker underscored the need for trade unions to be granted the right to submit petitions on behalf of workers.

The Government was attempting to render the situation as concerned discrimination even worse, by planning for instance to extend the maximum duration of temporary contracts from two to four years. He requested the Committee to urge the Government to prioritize ensuring equal treatment for precarious workers, instead of weakening the current law's protections in its single-minded push for labour market flexibility.

Migrant workers also faced serious discrimination, as evidenced by the serious legislative restrictions referred to in the Committee of Experts' report. The Government was planning to include housing and food costs in the calculation of the minimum wage of migrant workers, who were already suffering from low wages and poor working and living conditions. Furthermore, the Korean Federation of Small and Medium Businesses had issued a directive to its members to deduct 8 to 20 per cent of the minimum wage from migrant workers' salaries for food and housing. He requested the Committee to urge the Government to halt its plan to introduce these wage deductions and permit migrant workers to change employers freely. Recalling that collective bargaining was instrumental to securing the rights under Convention No. 111 in practice, he stressed that full respect for freedom of association was a necessary precondition for enabling workers' and employers' organizations to carry out their important role in addressing discrimination. However, precarious and migrant workers' freedom of association rights were seriously repressed. The Migrants Trade Union, an affiliate of the Korean Confederation of Trade Unions, was still denied legal recognition. Moreover, a leader of the Korean Transport Workers Union, who had disguised himself as a "self-employed" worker at Daehan Tongwoon, tragically sacrificed his life for the cause of trade union recognition. The Government had issued an order to the Korean Construction Workers' Union and the Korean Transport Workers' Union to voluntarily dissolve their membership, as their members were categorized as "self-employed". He requested the Committee to urge the Government to ensure freedom of association for precarious workers to prevent further forms of discrimination.

The Employer member of the Republic of Korea noted that policies on migrant workers depended on each country's unique economic and social situation. The EPS limited workplace mobility, which was unavoidable in order to fully comply with the employment contract and to prevent labour market distortions by foreign workers. Notwithstanding the existence of limitations, some exceptional cases were recognized for the protection of foreign workers' rights and interests, for example, when employers rejected the renewal of employment contracts after termination without specific reasons, or when it was difficult for foreign workers to continue their work for reasons not attributable to themselves. If foreign workers would be allowed to freely change workplaces, they would be tempted to move to another workplace even for an insignificant difference in wage rates. This frequent mobility would undermine the ability of employers to manage their workers, and as a result, increase the heavy financial burden of employee education and training. Compared to other countries, wage rates in the Republic of Korea were high – 5 to 15 times higher than those in migrant workers' home countries. Therefore, from their perspective, a 5 to 10 per cent wage difference was substantial, and as a result, foreign workers would be inclined to frequently change workplaces. In fact, many employers had pointed out that workplace mobility was a major difficulty they were faced with in managing foreign workers. According to research done by the Korean Federation of Small and Medium Businesses, of 888 manufacturing companies employing foreign workers last year, 47 per cent of the respondents had experienced problems related to foreign workers' demands for a workplace change. Furthermore, there was no discrimination between domestic and foreign workers in terms of basic social protection, such as employment injury benefits and minimum wage.

As regards female temporary workers, as a result of the current global economic recession, female employment in the Republic of Korea had decreased. However, given that the male employment rate had also decreased, there was no downward trend of employment of women workers. The female employment rate had decreased by 0.2 per cent (from 48.9 per cent in 2007 to 48.7 per cent in 2008), while the male employment rate had decreased by 0.4 per cent (from 71.3 per cent in 2007 to 70.9 per cent in 2008).

In relation to the argument that most non-regular workers were women, the speaker argued that it was an unavoidable global trend that, with the diversification of industries in modern society, occupations were also increasingly diversified. In order to raise the low participation rate of women, it was thus important to recognize increasingly diverse employment types, rather than to favour regular over temporary employment. Also, it should not be ignored that many women voluntarily chose to work part time, as this allowed them to choose flexible working hours and maintain a work–life balance. The gender wage gap was not caused by gender discrimination, but by the difference between men and women and other factors such as career interruption due to child birth, lower education levels, smaller periods of service, and less work experience than men. Many women at present were eager to work but they could not. However, women's economic participation rate was still low. The answer to improving the situation lay in recognizing the growing diversification of employment types and improving the flexibility of the labour market. These measures had to be accompanied by increased assistance to women to enable full access to the labour market.

Another Worker member of the Republic of Korea stated that the Industrial Trainee System was introduced in the Republic of Korea in 1993 with the aim of resolving labour shortages. However, this system caused serious problems such as severe exploitation, human rights violation and discrimination. To address this situation, the Government introduced a new policy – the EPS – in 2004, and further improvements to the new system were introduced in 2007. Problematic provisions in the current legislation remained, however. It was almost impossible for migrant workers to change employer due to the heavy restrictions on workplace transfer pointed out by the Committee of Experts. Although under the EPS some restrictions on workplace transfer understandably were necessary in order to prevent job losses for low-wage and precarious local workers, especially in the construction sector where they had to compete with migrant workers, more flexibility should be allowed in the law so that migrant workers could also change workplaces when there was a sharp difference in wages and working conditions compared with other workers performing the same type of job. Job transfer should also be allowed when employers violated the laws prohibiting discriminatory treatment.

Another restriction on workplace transfer was the period for applying for a new job. Under immigration laws, if migrant workers failed either to obtain permission to change employer within two months of applying for a change of business or workplace, or to apply for a change of business or workplace less than a month from the termination of their labour contracts, they were subject to immediate deportation. A number of migrant workers had become undocumented due to these provisions as the prescribed periods were too short to find a new job, especially in the Korean labour market where there were not enough job opportunities. Therefore, extending this period was urgently needed to prevent migrant workers from becoming undocumented or being forced to leave the country before their contract term ended. In addition, the Government had to make every effort to ratify the related ILO Conventions including Migration for Employment Convention (Revised), 1949 (No. 97), and Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), through amending the provisions of the current legislation which were not in line with international labour standards.

With respect to discrimination based on employment status, the Government was trying to amend the laws on precarious work; by the proposed amendment, the Government was attempting to extend the employment period of fixed-term workers, from the current two years to four years, and to expand the types of jobs allowed to temporary agency workers – currently only 26 types of jobs were allowed to the latter. He maintained that as these changes could lead to further discrimination against precarious workers by perpetuating their marginal and unstable status, the Government should take drastic measures to minimize the adverse effects of the current legislation and effectively redress discrimination against precarious workers instead of attempting to downgrade the current law. His organization, the Federation of Korean Trade Unions (FKTU) continued to promote social dialogue and sincerely hoped that the Government would find a reasonable solution regarding this matter as soon as possible, and in full consultation with the social partners.

A Worker member of Malaysia stated that the Malaysian Trade Union Congress was gravely concerned that the Korean EPS system led to severe discrimination against migrant workers. The Committee of Experts had previously noted that a system of employment of migrant workers which provided employers with the opportunity to exert disproportionate power over them could result in discrimination and had asked that the EPS be kept under review with a view to further decreasing the level of dependency of migrant workers in relation to their employers.

The two problematic points of EPS were, first, its prohibition of workers' change of workplace unless there had been a documented labour law violation or the employer gave his consent. Second, the number of workplace changes was restricted even if there existed a documented labour law violation. As the Committee of Experts had noted in its 2008 report, this inflexibility made migrant workers vulnerable to discrimination and abuse. In this regard, the Committee of Experts had observed that migrant workers suffering such treatment might refrain from bringing complaints out of fear of retaliation by the employer although bringing a complaint was necessary to establish that the employer had violated the contract or legislation, which was a requirement for being granted permission to change the workplace. In order to solve these problems, the speaker recommended that this Committee requested that migrant workers be given the right to change their employers freely and that the restrictions on the number of times they could change be eliminated.

The fact that migrant workers leaving their employers were only granted two months to find a new workplace had led to migrant workers being forced to sign new contracts quickly and without adequate time to assess labour conditions. This constituted a severe restriction on the right to freely choose employment. The restriction on the length of time for finding new work should be abolished.

In his view, the short residency period of three years and the requirement for an invitation on the part of the employer to extend their stay for a second three-year term, as laid down in the EPS, was also problematic. Employers often used the promise of rehiring workers as a means to force them to accept unjust conditions such as forfeiting severance or overtime pay. To eliminate this abuse, migrant workers should be allowed to work for a term of five years with the possibility of extending the time once this term was completed. Food and housing costs should not be deducted from the calculation of migrant workers' minimum wages.

He expressed his concern that the Government's refusal to register the Migrants Trade Union (MTU) and the repeated arrest and deportation of union leaders denied migrant workers their right to form and participate in a trade union of their choosing. The Government had used the fact that the members of the MTU were primarily undocumented migrant workers as a justification for its denial of MTU's status. However, the Committee on Freedom of Association had recently recommended that when examining legislation that denied the right to organize to migrant workers in an irregular situation – a situation similar to that of the MTU case – all workers, with the

sole exception of members of the armed forces and the police, were covered by Convention No. 87. It therefore requested the Government to take the terms of Article 2 of Convention No. 87 into account in the legislation in question. Moreover, the Committee had recommended that the Government avoided measures which involved a risk of serious interference with trade union activities such as the arrest and deportation of trade union leaders shortly after their election to trade union office.

Freedom of association rights were of vital importance to ensuring equal opportunity with respect to employment and occupation. The Conference Committee should therefore recommend that the Government stopped targeting MTU leaders and granted MTU the status of a legal trade union, in accordance with the recommendations made by the Committee on Freedom of Association.

The Worker member of Germany stated that she spoke on behalf of her fellow female trade union members and wanted to focus on the discrimination of female employees in the Republic of Korea. In the worldwide economic crisis, women were the main losers and highlighted again that a staggering 87 per cent of the persons having lost their jobs were women. This figure was frightening, even more so if one recalled that employed women also were the main losers during the 1997–98 financial crisis. The Republic of Korea should have learned since then that women in particular deserved special protection of their rights. The Republic of Korea had ratified the UN Convention on the Elimination of All Forms of Discrimination against Women as early as 1984. This Convention condemned every form of discrimination against women. In its Equal Employment Act, the Republic of Korea had further provided that women were not to be discriminated against because of their sex, pregnancy or their marital status. Reality, however, showed another picture.

It was mainly women who were exposed to precarious working conditions. While one in two men was employed in precarious working conditions, two out of three women were employed in such conditions. The National Human Rights Commission referred to a case where women were employed as temporary workers and were promised permanent contracts in the medium term; however, this never materialized. Yet, men nearly always obtained a permanent employment contract. This was flagrant discrimination against women due to their sex. She therefore urged the Government to especially consider the situation of women in its combat against precarious working conditions and to contribute to the improvement of women's working conditions.

There was a further significant difference between the salaries of male and female workers. Recent research by the KCTU had shown that the salaries differed by 36 percentage points. This was an even larger difference than in the US, and the US was infamous among OECD countries for having the largest inequality of the salaries of men and women.

The Government had committed itself to complying with Convention No. 111 – even during the current economic crisis – and to become active against the discrimination of women and to ensure that women's rights were complied with. Referring to the statement of the Korean Employer representative, she requested clarification as to whether in their view the Convention would justify discrimination of women, based only on the fact that women were the ones giving birth.

The Worker member of the United States made his observations in full solidarity with Korean workers and especially with the KCTU and the FKTU regarding the disparate treatment between regular and non-regular workers. This was a most compelling issue, as such discrimination had become all the more prevalent and devastating with the deepening of the global economic crisis. This dimension had to be reviewed by the Committee given the agenda of this year's ILC Committee of the Whole. In spite of the comments made by the Employer member of the Republic of Korea, Article 1, paragraph 1(b) of the Convention, clearly justified review of the employment status discrimination aspect of this case. This particular dimension of the case was also covered by Article 1, paragraph 1(c) because discrimination based on difference in employment status produced an overwhelming and disproportionate negative impact on women – as 70 per cent of all Korean female workers were also non-regular and precarious workers. This case also had implications concerning the application of Conventions Nos 87 and 98.

In 2006, the Government adopted a law enabling the expanded use of temporary contracts for up to two years. This measure exacerbated the precarious situation of many Korean employees. Notwithstanding the recent information provided by the Government to the Committee, this new law contributed to diminishing the ability of unions to bargain collectively and essentially formalized the practice of the past ten years. In the wake of the 1997 Asian financial crisis, employers had imposed a rapid deregulation of the Korean labour market and precarious or non-regular work proliferated so that it constituted at least 56 per cent of the entire Korean workforce. The effects were staggering – as of August 2008, the ratio of the average wage for non-regular workers to that of regular workers was less than 50 per cent. Around 90 per cent of regular employees were covered by the social insurance systems, but the coverage of non-regular workers was only one third. While about 80 to 90 per cent of regular employees enjoyed benefits such as severance allowances, bonuses, overtime pay, and paid leave of absence, less than a quarter of the non-regular workers were entitled to such benefits.

The growing use of subcontracted, non-regular employees in the Republic of Korea's basic manufacturing sectors, such as auto, steel, and electronics – the base of the nation's formal workforce and of its trade union movement – was particularly ominous. In addition to being paid half of what regular and unionized employees had been receiving for the same work, these non-regular workers were subjected to more hazardous and dangerous conditions. According to the Labour Ministry's own information, after reviewing the working conditions in 2,040 enterprises between February and May of 2007, 34 reported job-related deaths including 21 irregular workers. Repeatedly, when subcontracted and irregular manufacturing workers attempted to form a union, the primary contractor either terminated its agreement with the subcontracted company or the subcontracted company closed its business. Such was the practice over the last five years with Hynix Magna Chip, KM and I, GM Daewoo Motors, Donghee Auto, Hwasung Factor of Kia Motors, and Hyundai Hysco.

As the KCTU had observed, the Government's Discrimination Corrective System (DCS), consisting of administrative complaints and remedies, was not getting to the root of the problem. The Labour Ministry and the National Labour Relations Commission did not assert jurisdiction over the primary contractor in the case of subcontracted dispatch workers, even though the primary contractor had the actual power to remedy the discriminatory wage rates for the dispatched employees. Moreover, it was still not clear whether the DCS could even maintain jurisdiction over the complaints of subcontracted irregular workers when primary contractors refused to renew their agreements with the subcontractors in the middle of the investigatory process.

Korean unions had rightly concluded that these problems would persist unless and until the Fair Labour Standards Act was amended to provide for equal wages for work of equal value, removing one of the primary incentives to further exploit the growing irregular workforce. Regrettably, the Government appeared to be moving in the opposite direction in the midst of the current global

crisis, by simply proposing the extension of fixed term contracts from two to four years instead of pursuing an authentic macroeconomic policy of converting irregular workers into regular employees with full legal and protected, status. The speaker emphasized that the Committee had to maintain full vigilance in this case and called for an ongoing review at next year's session.

The Government representative of the Republic of Korea informed that the category of so called non-regular workers was unique to the Republic of Korea, and different from informal workers. The definition of the workers covered by the "Non-Regular Workers' Protection Law" was the subject of protracted discussions among the tripartite constituents finally resulting in an agreement in 2007. According to the agreed definition, non-regular workers in the Republic of Korea – which covered workers having regular employment relations in most other countries – were divided into contingent workers, part-time workers and atypical workers. The latter category included dispatched workers, contract company workers, workers in special types of employment, at-home workers and workers on call.

According to the supplementary survey to the economically active population survey, in March 2009 non-regular workers accounted for 33.4 per cent of the total number of wage-earners. Since the promulgation of the Non-Regular Workers' Protection Law (Act on Protection of Fixed-term and Part-term Employees), the total number of non-regular workers had continued to fall, while the number of fixed-term workers had risen. The increase of fixed-term employments was a result of the Government's policy to create jobs to overcome the economic downturn and the job-sharing efforts in the private sector.

With reference to the alleged violation of the right of freedom of association, she referred to paragraph 74 of the General Survey on equality in employment and occupation of 1988, which stated that: no specific clause concerning the right to establish or join trade unions or to participate in trade union activities was included in the Convention in order to avoid duplication of the provisions of Convention No. 87. Therefore it was not appropriate to discuss issues concerning trade unions, as they fell outside the scope of Convention No. 111.

Regarding the issue of extending the employment period for fixed-term workers, under the current Act, an employer could employ fixed-term workers for up to two years and if the employment period exceeded two years, the employer should employ them as regular workers. However, the surveys had found that the two-year limitation had decreased fixed-term workers' chances of being converted to a regular status while increasing their chances of losing jobs as the company replaced them with other fixed-term workers or outsourced their work especially under the current economic difficulties.

The opinion surveys conducted by various media firms also showed that amid the recent economic recession, fixed-term workers had a smaller chance of being converted to a regular status and a bigger chance of losing jobs. So it was needed to extend the current two-year employment period further to ensure that companies retained fixed-term workers through contract renewals without throwing them out of work.

She recalled that the Government was effectively prohibiting discrimination through relevant laws and regulations as well as through diverse policy measures. The Government was also taking measures to ensure equality of opportunity and treatment for vulnerable groups of workers such as women, the aged and people with disabilities through protective measures and active preferential treatment. The observations of the Committee of Experts on the Government's implementation of Convention No. 111 had touched upon discrimination based on the grounds of gender, age, migrant and employment status. She expected that the ILO and the Committee of Experts would facilitate the effective implementation of Convention No. 111 through the supervisory mechanisms within the boundaries of the Convention.

She then referred to the report which was prepared for the adoption of Convention No. 111 in 1958: "the words 'national extraction' might be taken to cover also foreign nationality." However, it should be recalled that these words had been used in preference to national origin in order to make it clear that nationality was not covered. It was therefore obvious that it was not intended in this paragraph to deal with nationality. Furthermore, she made reference to the 1996 General Survey on Convention No. 111, which stated that the concept of 'national extraction' in the 1958 instruments did not refer to the distinctions that might be made between the citizens of one country and those of another, but to distinctions between the citizens of the same country on the basis of a person's place of birth, ancestry or foreign origin.

In closing, she stated that, with full respect for the principles of Convention No. 111, the Government was determined to continue its efforts to eliminate every possible form of discrimination and promote reasonable equality in employment and occupation.

The Employer members appreciated the information provided by the Government which demonstrated its political will in so far as, since 2006, it had been reforming its laws to bring them into compliance with many of the comments of the Committee. The legislative amendments were gradual and, in some instances, did not result in decisive change. It was also well-known that on many occasions, although the legislative amendments were well-intentioned, they affected the legitimate interests of businesses, for example, with regard to their costs and budgets or the fear of provocations from workers that affected job security. Convention No. 111 was one of the fundamental Conventions on employment and the prevention of discrimination based on gender existed nowadays in respectable workplaces; in that regard, failure to comply with the Convention was inexcusable. Tripartite dialogue should be established in order to create better conditions through the implementation of the Convention. Article 3(a) urged governments to seek the cooperation of employers' and workers' organizations and other appropriate bodies in promoting the acceptance and observance of a national policy that encouraged equality of opportunity and treatment in employment and occupation, in order to eliminate all discrimination.

The Employer members hoped that future reports would show real progress in each of the areas that had been discussed before the Committee. The Government should provide copies of all legal texts that had recently been approved as well as precise statistical data disaggregated by, inter alia, sex, age and nationality. Equally, as the Committee had requested in 2008, monitoring should be strengthened regarding the implementation of legislation applicable to migrant workers in order to prevent discriminatory practices.

The Worker members stated that the labour market in the Republic of Korea seemed to change constantly, as much in relation to different forms of discrimination as in relation to the adaptation of its regulatory and monitoring functions. It was for this reason that they had requested the Committee, the Committee of Experts and the Office to carry out heavy monitoring of those changes and to establish a monitoring system on the developments that occurred in the Republic of Korea. To that end, the Government was requested to continue communicating precise information on the situations in which workers were exposed to discrimination, as well as on the measures that had been or would be taken to eliminate those situations, particularly regarding the new law on temporary work. In its report, the Committee of Experts had clearly indicated the information that it wished to be transmitted.

The Worker members urged the Government to amend its labour legislation. With regard to the Employment Permit System they urged that: migrant workers be able to change their workplace without any restriction; the period of residency be extended from three years to five years at minimum; the accommodation and food costs not be deducted from workers' salaries; and, finally, the Migrant Workers' Trade Union (MTU) be recognized as such and the harassment of its leaders be put to an end. The new law on the protection of temporary workers should be amended so that: trade unions were given the capacity to conduct legal proceedings on behalf of workers; the time limit for lodging a petition was extended from three to 12 months; the principle of "equal pay for work of equal value" was stipulated explicitly in the law; and finally, the scheme allowing temporary contracts to be extended from two to four years was abolished.

To conclude, the Worker members emphasized that the priority should be to ensure genuine and effective equality in the treatment of temporary and casual workers.

Conclusions

The Committee noted the oral and written information provided by the Government representative and the discussion that followed.

The Committee noted that the Committee of Experts had stressed the importance of ensuring effective promotion and enforcement of the labour and anti-discrimination legislation to ensure that migrant workers were not subject to discrimination and abuse contrary to the Convention. The Committee noted the measures that the Government had taken to improve the application of the existing anti-discrimination provisions in respect of migrant workers, including the establishment of five Korea Migrant Worker Support Centres, and a plan to expand the number of Centres and diversify their services. The Committee also noted the Government's commitment to making continuous efforts to ensure respect for migrant workers' rights. The Committee noted the Government's indication that a bill had been submitted to the National Assembly in November 2008 to improve the Employment Permit System (EPS) providing greater flexibility so that migrant workers could change employers, including due to unfair treatment and violation of their employment contracts.

The Committee noted that the issue of protecting migrant workers from discrimination and abuse required the Government's continuing attention and it therefore requested the Government to pursue, and, where necessary, to intensify its efforts in this regard. The Committee considered that measures reducing migrant workers' excessive dependency on the employer by allowing for appropriate flexibility for migrant workers to change their workplace would assist in decreasing migrant workers' vulnerability with regard to abuse and violations of their labour rights. It therefore called on the Government to review the functioning of the current arrangements for workplace changes, and the proposals in the draft bill, in consultation with workers' and employers' organizations, with a view to determining how best to achieve the objective of reducing migrant workers' vulnerability. The Committee asked the Government to provide in its report when it was next due, the results of this review for examination by the Committee of Experts. The Committee also recommended that the Government further strengthen the enforcement of the labour legislation, including through labour inspection, to protect migrant workers' labour rights.

The Committee welcomed the various measures taken by the Government to promote women's equality in employment and occupation, including the affirmative action scheme and the equality targets regarding recruitment and appointment to management positions. However, it expressed concern that women's participation in the labour market continued to be at a very low level and that the gender pay gap continued to be very wide. The Committee insisted that discrimination based on gender was unacceptable and called on the Government to reinvigorate its efforts and to seek the cooperation of workers' and employers' organizations in this regard.

The Committee also welcomed the recent adoption of legislation addressing discrimination in employment and occupation based on the grounds of age and disability. It called on the Government to take all measures necessary to ensure the full implementation and enforcement of these laws.

With regard to discrimination based on employment status, the Committee noted that the Act on Protection, etc. of Fixed-term and Part-time Employees of 2006 prohibited discrimination against fixed-term and part-time workers. The Committee requested the Government to provide information concerning the difficulties encountered with the enforcement of the Act, and on whether trade unions were authorized to bring complaints on behalf of victims of such discrimination. The Committee also noted the significant differences in wages and social security coverage between regular and non-regular workers, based on employment status, and expressed concern that the large majority of non-regular workers were women. Noting that the Act was currently under review, the Committee called on the Government, in consultation with the workers' and employers' organizations, to improve the legislative protection against discrimination based on employment status, which disproportionally affected women. It called on the Government to provide further information on this matter for examination by the Committee of Experts.

The Committee requested the Government to provide in its next report under article 22 of the ILO Constitution detailed information on the measures taken and results achieved in addressing discrimination in all the areas mentioned above, as well as all the information requested in the Committee of Experts' observation for its continuing examination of the situation.

KUWAIT (ratification: 1966)

The Government provided the following written information in reply to the latest observation of the Committee of Experts.

Access of women to specific occupations

The Government reiterated its commitment to the provisions of the Convention at the legislative and practical level, with respect to women's access to specific occupations, and indicated that women occupied posts in all freedom and without any discrimination between them and men. National laws did not exclude women from work from any post as article 29 of the Constitution prohibited, inter alia, any discrimination on the basis of sex. On 2 April 1992, the State of Kuwait signed the United Nations Convention on the Elimination of all Forms of Discrimination against Women. Decree No. 24 of 2002 was promulgated, and officially published in the *Official Gazette*, and thus the Convention acquired the force of law, in accordance with article 70 of the Constitution. Kuwait's judiciary did not spare any effort in making women acquire their rights guaranteed by the Constitution, and in rendering decisions on the unconstitutionality of legislative texts which might diminish any of these rights.

In practice, at the government level, women occupied leading positions within the State, ranging from the position of director of a department and that of a minister. Women also worked in all freedom in the diplomatic corps (Ministry of Foreign Affairs) in addition to holding the post of an ambassador in Kuwaiti diplomatic missions abroad, the President of the Mission of the Cooperation Council of Information in Brussels, as well as the post of the Permanent Representative of the State of Kuwait at the United Nations, which was reflected in the statistics communicated by the Government. Many women worked

at the Ministry of Justice in different positions. They also worked as investigators in the Public Department of Investigations, which was equivalent to a position in public prosecution. Women were also employed in the Department of Fatwas (formal legal opinions) and legislation, attached to the Council of Ministers, in their capacity as a state lawyer, who was in charge of defending the Government, in cases for, and against it. Kuwait's legislation provided the same treatment to women as her male counterparts, with respect to administrative and financial privileges. Recently, a first group of police women graduated, which indicated that women started working in the police force, like their male counterparts, in application of the principles of the Convention. Statistics on the number of women employed at the Ministry of Defence indicated that women were not excluded from working in the army: about 70 per cent of the number of employees in support services at the Ministry of Defence were women. Many women also worked at military camps and units, in types of employment of a civil and technical nature such as engineers, doctors and administrative staff.

Furthermore, the Public Fire Extinguishing Department would in the near future welcome the first graduates group of firewomen. These trends were reflected in the Majlis El Ummah (National Assembly) elections (2009), during which the Kuwaiti people elected women to the National Assembly, who represented now about 8 per cent out of the overall number of Members of Parliament.

Discrimination on the basis of race, colour and national extraction

The Government referred to article 29 of the Constitution which prohibited discrimination between citizens on the basis of race, colour or national extraction. Following Kuwait's commitment to upgrading its legislation to international standards, the Government was currently revising some laws, including the Penal Code, and was currently preparing new texts which specified clearly the prohibition of discrimination in employment and occupation. Information on any progress made on this matter would be communicated by the Government in due course.

Application of the Convention to migrant domestic workers

Act No. 40 of 1992, on the regulation of domestic service agencies applied to domestic workers and to workers in a similar situation. The regulation of this work was aimed to impose constraints and rules by the competent authorities so as to stop the exploitation of domestic workers by employers and abusive practices with respect to payment of wages. The Act contained sections which specified the conditions and procedures for granting permits and penalties imposed on persons found in violation. Implementing orders also specified the strict procedures for granting permits to and showing the obligations of employment agencies towards domestic workers and employers. A ministerial order specified the need to raise the threshold of financial guarantee for the person requesting the permit for a validity period of six months. Currently, there was a Bill which specified the quadrupling of the financial guarantee.

It was worth noting that the relevant bodies in the State had formulated a mandatory model contract which regulated the relationship between domestic workers and employers and included the provision of suitable housing to workers, living comforts such as food, clothing and medical care, besides specifying the value of his/her wages, working hours, paid weekly rest hours, and annual holidays, and other matters which were in the worker's interest. Additional privileges were included in the revised model contract.

In collaboration with the Sri Lankan Embassy in Kuwait, the Government provided assistance to 222 domestic workers and their families in leaving the country at the Government's expense, so as to facilitate their situation. The necessary measures were currently being carried out so as to settle the situation of another group of workers at the expense of the State of Kuwait, which included 26 Filipino workers, 15 Ethiopian workers and 200 Indonesian workers.

There were 1,130 complaints submitted by domestic workers against employment agencies and employers. The Government was currently preparing statistics on the penalties imposed against employers and heads of employment agencies found in violation.

National policy

The Government pointed out that, being a Muslim nation, the provisions of the Constitution and the principles of equality which were espoused by the Kuwaitis were based on the principles of Muslim precepts. Several government bodies in the State put to effect these principles, according to the mandate of each body. For example, the Ministry of Information, through the official television channel of the State, diffused several awareness-raising programmes so as to fight discrimination in all its forms. The Ministry of Religions Endowment and Muslim Affairs also launched campaigns which encouraged and highlighted the principles of equality and non-discrimination between peoples of different nationalities and religious creeds.

Requesting ILO technical assistance

The Government reiterated its request for high-level technical assistance on the issue of bringing into conformity the legislation currently into force with the provisions of the Convention, and on the need to examine the upgrading of new legislation, which would ensure the application of the provisions of the Convention.

In addition, before the Committee, **a Government representative** stated that, in response to the observations made by the Committee of Experts, his Government had submitted the required report, reiterating its commitment to all international Conventions on eliminating discrimination, particularly against women. Many issues had been tackled. With regard to the issue of women's access to certain occupations, it should be stated that national legislation did not exclude women from any occupations. Women worked with the Ministry of Justice as investigating officers in the Department of Public Prosecutions, which was the equivalent of the post of public prosecutor. Women also held posts in the diplomatic corps and in the military, as well as in the public fire-fighting department. They participated in political activity through exercising the right to stand for election in the Municipal Council and the National Assembly, where they occupied 8 per cent of seats. Women were not excluded from the army either; around 70 per cent of all employees in support services in the Ministry of Defence were women.

With regard to discrimination based on race, colour or national extraction, the Government drew attention to article 29 of the Constitution which prohibited any form of discrimination among citizens based on these grounds. Owing to Kuwait's commitment to improving legislation and its compliance with international standards, the Government was in the process of amending certain laws, such as the Penal Code, and drafting new texts that clearly stipulated the prohibition of any form of discrimination regarding employment and occupation. Information on the progress that had been made in this regard would be communicated by the Government in due course. With regard to the issue of equality of access of women in vocational training, employment and occupation, a programme to reorient workers to work in the private sector

trained 7,190 women compared with 5,479 men between 2001 and 2009. Regarding stereotyped views of women's roles within the family and employment, the Government drew particular attention to the provision of measures that promoted women's access to the labour market, such as maternity and parental leave. With regard to the application of the Convention to migrant domestic workers, Act No. 40 of 1992, the related regulations and the model employment contract were binding. They contained provisions that guaranteed the rights of migrant domestic workers.

On the issue of national policy, the Government, noting that Kuwait was a Muslim nation, emphasized that the principles of equality and of non-discrimination according to race, colour or national extraction were among the founding principles of Islam. Many state institutions applied those principles. The Ministry of Information, through the official television channel, broadcast a number of programmes to raise awareness, in order to combat discrimination in all its forms. The Ministry of Awqaf and Islamic Affairs also organized campaigns to promote and emphasize the principles of equality and non-discrimination among people of different nationalities and with different religious beliefs.

To conclude, he emphasized Kuwait's continued commitment to collaborating with the Organization in order to bring its legislation into conformity with the provisions of the Conventions the country had ratified, particularly Convention No. 111. He reiterated the request for technical assistance regarding international labour standards, so that Kuwait could benefit from ILO expertise in that regard.

The Employer members noted that certain laws in Kuwait appeared to prohibit women from working in certain functions in the military, the police, the diplomatic corps, the Administration and Justice Division, and in the Department of Public Prosecution. According to information provided orally to the Committee by the Government, national laws did not exclude women from any post, as the Constitution of Kuwait prohibited discrimination on the basis of sex. National legislation, including the Penal Code, was under revision, to prohibit discrimination in employment and occupation. This information has not been verified as it was not provided in time for review by the Committee of Experts. The Government had also indicated that, in practice, women occupied positions in the occupations previously mentioned. Again, it was not clear whether women worked in all posts or were restricted to work in certain functions within these occupations. The Employer members reminded the Government that Convention No. 111 required member States to pursue a policy of equality of opportunity and treatment in respect of employment under its direct control. Any remaining exclusions in law and in practice which were contrary to the Convention should be eliminated. The Committee of Experts had noted with regret that the Government had again failed to supply concrete information on measures taken to prevent discrimination on the basis of race, colour, national extraction, and in respect of the impact of such measures. Noting the Government's statement that it intended to draft legislation prohibiting discrimination in employment and occupation, the Employers encouraged the Government to put in place measures to prevent discrimination on these grounds. The Employers hoped that the Government would provide information to the Office regarding the progress made on these issues.

The Worker members recalled the key points of the Committee of Experts' observation. It had firstly dealt with the lack of information on the implementation of Article 2 of the Convention requiring member States to pursue a national policy designed to promote equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof. The second point dealt with the under-representation of women in certain government-related professions, due to the fact that the legislation prohibited, in contradiction with Article 3 of the Convention, women to hold certain positions in the armed forces, the police, the diplomatic corps and the administrative and Justice Division. Third, the Committee of Experts had emphasized that information was not available to verify whether national legislation and practice were in conformity with the obligation to eliminate all discriminations based on race, colour and national extraction in employment or occupation. Fourth, the Committee of Experts had remarked on the absence of protection for domestic workers, who represent an important part of Kuwait's foreign workers.

Generally, due to the lack of cooperation by the Kuwaiti Government, hardly any information was available. The Committee of Experts had repeatedly requested the Government to submit comprehensive information on the legislation and anti-discrimination policy, the measures taken or envisaged to eliminate all forms of discrimination and to promote equality of opportunity, the implementation of policies, workers' complaints of discrimination, especially brought forward by domestic workers etc. Those requests had, however, not been followed up. Furthermore, the information provided by the Government during this session was not helpful. All this appeared to aim to disguise the lack of will to sincerely combat distinctions, exclusions or preferences based on race, colour, sex, religion, political opinion, national extraction or social origin. Though the Committee of Experts had highlighted the problems in relation to discrimination based on sex and on discrimination affecting foreign workers, it would also be useful to receive complementary information on other types of discrimination and on the measures taken by the public authorities to address these issues.

Especially in light of the high number of foreign citizens and the different ethnic and racial origin of workers in Kuwait, this situation gave reason for concern. The public authorities had to become truly engaged in the elimination of all types of discrimination. A major focus for this engagement was the protection of domestic workers who were very often foreign citizens and of which two-thirds were women. Those workers were particularly vulnerable since they were excluded from certain social security protection and from the coverage of the labour law. In addition, the labour inspection services had difficulties controlling the application of legislation in this respect. The vulnerability further existed because of the recruitment system based on a system of sponsorship *(kafala)* which ties the migrant worker's visa to a specific employer, discouraging them from filing a complaint in case of violation of their rights. The Committee of Experts had also recalled that domestic workers were particularly vulnerable due to the multiple forms of discrimination caused by the individual character of the employment relationship, the lack of legislative protection, sexism and the undervaluation of this type of employment.

In this respect, it had to be noted that due to the limitations imposed on trade union rights, there was a risk that the vulnerability of these workers would increase. Having read the Committee of Experts' observation on the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Worker members welcomed that the restrictions imposed on foreign workers to affiliate with trade unions seem to have been removed. The Committee of Experts nevertheless asked the Government to amend section 5 of the draft Labour Code, which excluded domestic workers from its scope of application, or to indicate how their right to freedom of association was guaranteed.

It was regrettable that for the third time, the Committee of Experts had to ask the Kuwaiti Government to provide a minimum amount of information, as this undermined an in-depth evaluation of the situation concerning discrimi-

nation in regard to access to employment and vocational training. Despite this lack of information, the Committee of Experts had been able to draw up precise conclusions to which the Worker members fully subscribed. They further drew attention to the importance of trade union rights, a fundamental pillar for the protection against discriminations and unjustified inequalities. Finally, they emphasized the necessity to implement campaigns aimed at informing workers about their rights and the possibilities offered to them to seek recourse, with special attention to migrant workers and domestic workers and by observing the fact that women had a double risk to be discriminated against: as women and as migrants.

The Employer member of Kuwait stated that the allegations that Kuwaiti laws prohibited women from accessing certain posts, were baseless. Such allegations should not be formulated against a State where women had access to high-level ministerial, parliamentarian and diplomatic posts. The progress made might not be fast, but it was being achieved in a careful and continuous manner. He emphasized that there were no obstacles inhibiting women from accessing different posts in the private sector. They were occupying the posts of governing body director or director-general in various companies. If any discrimination existed in Kuwait, its incidence would not be higher than in developing or developed countries. In certain cases, the media may have highlighted certain social circumstances but these were exceptions rather than the rule. It was indicated that a draft Labour Code was being developed with the social partners who were conscious about respecting the principle of non-discrimination when drafting the law.

In conclusion, he made reference to the comments of the Committee of Experts relating to discrimination of migrant workers. He indicated that these comments were baseless, with the exception of certain individual cases to which the Kuwaiti media and workers' organizations had given particular attention so that justice could be done.

The Worker member of Kuwait stated that the General Union of Kuwaiti Workers agreed with the position of the Government that the national legislation did not exclude women from accessing certain posts. If certain activities had a low participation rate of women, this was due to social considerations. Moreover, women had always actively participated in union activities in the country. They occupied leadership posts within the trade union movement, which had a committee for women workers.

With regard to the fifth point raised by the Committee of Experts with respect to migrant workers, problems existed. Migrant workers were in need of greater legal protection guaranteeing their rights. The draft Labour Code included 45 amendments particularly relating to the employment contract, the minimum wage and paid holidays. Thirty-five amendments had been approved, and if the bill were adopted, it would certainly bring adequate solutions to problems concerning migrant workers.

He specified that the General Union of Kuwaiti Workers had a counselling bureau to provide legal assistance in cases of complaints received from migrant workers. There was also a web site on this subject which published all the legislation relating to labour rights and the rights of migrant workers. He asked the Government to increase its awareness-raising programmes concerning issues faced by migrant workers.

In conclusion, it was indicated that the problem of migrant workers concerned both receiving and sending States. The supervision of agencies recruiting foreign workers should be strengthened. It was also important to put in place programmes and training workshops on labour rights and on the traditions and customs of the country with a view to sensitizing these workers to the national context.

The Worker member of India, focusing on the plight of women domestic workers in Kuwait, stated that thousands of workers from different countries of the world, including India, were working in Kuwait – especially women working as domestic servants. Women domestic workers in Kuwait were often discriminated against, exploited and even abandoned. They faced arbitrary detention and abuse from the authorities as well as from their employers and they were deprived of a wide range of their fundamental human rights. They did not enjoy protection under labour laws as section 5 of the draft Labour Code excluded domestic work. Their employers often confiscated their identity documents and their salary was often delayed or withheld. They also faced sexual harassment and other forms of violence by their employers. The Government of Kuwait had to accelerate its efforts to protect foreign workers.

Poor women had considerable difficulty in obtaining assistance to resolve disputes with employers. Seeking redress through the courts put a heavy financial burden on those in lower income brackets. Once detained, the poor women found themselves deprived from access to translators or lawyers, and had little or no idea of why they had been detained and when they might be released or returned home. A case involving the repatriation of a Filipino worker, the case of Mary Ann K. of 2004, was a well known example covered by the media. Ms K had threatened her employer that she would complain about her pay situation, and her employer, seeing her talking to a male friend, handed her to the police who maltreated her. Lacking a lawyer, she had been interrogated and appeared before court without legal assistance.

He was pleased that the Government had initiated certain measures, but the gap between legal provisions and practical implementation continued to be wide, as the measures were only slowly implemented and inadequate. The current system of permits and sponsorship had to be stopped and the final employer had to be charged with the overall responsibility to avoid exploitation by sponsors acting as middle men. He welcomed the move of the Government in this direction and hoped to see its expeditious implementation. Since foreign workers, making up the bulk of the workforce, still risked deportation if they attempted to organize unions or to go on strike in particular, he demanded that domestic servants should be given the right to organize and to establish trade unions and the barrier of five years had to be lifted. Further, migrant workers had to be informed about their labour and human rights. The Government should work closely with embassies of the sending countries to protect foreign workers, to review laws discriminating against migrant workers, to impose stringent penalties on employers confiscating passports of their foreign workers, to cover all foreign workers by medical insurance paid by the employer, provide workers with a smartcard identification containing all details about them, operate a toll-free number for workers to report complaints, create a labour protection administration for migrant workers, appoint labour officers to deal with workers' complaints, set up official recruitment offices and cut out all middle men.

Sending countries also had to be more proactive. Most embassies from Asian countries were poorly staffed, and positions were often on a part-time basis only. Trade unions were also asked to improve the situation by establishing a migrant helpdesk, as had been done by the Union Network International Malaysia Liaison Council (UNI–MLC) organizing migrant shelters for workers that fled their employers because of abuse or harassment and by increasing cooperation between trade unions in sending and receiving countries. In this regard, he welcomed the Memorandum of Understanding concluded between India and Kuwait which required the employer in the host country to issue the worker, after arrival in Kuwait, within two months, a work permit together with the documents presented at the time of application and a copy of the authenticated employment contract. The Memorandum further

provided that the parties, in coordination with the authorities concerned, would cooperate to take appropriate steps for the protection and welfare of workers not covered by the labour law of Kuwait, India and the United Arab Emirates. Next year he looked forward to receiving information on the progress made.

The Worker member of Poland noted that, according to the International Trade Union Confederation (ITUC) survey, Kuwait was one of the countries in the Middle East that created a "dark region on the map of trade union rights violations". The situation particularly affected migrant workers, who constituted 80 per cent of the labour force and were therefore essential to the country's economy, but who lived and worked in appalling conditions.

These people did not leave their own country and move to another because they wanted to live in paradise, but because they were forced to do so; they hoped that finding jobs in other countries would help both themselves and their families to survive. Not only the families but also some of the home countries were dependent on the remittances sent by the migrant workers. Those remittances encouraged governments to continue sending people, regardless of the conditions in which they would have to work. It was unacceptable, however, that the recipient countries abused the situation by exploiting people.

The migrant workers were insufficiently remunerated, sometimes denied their freedom of movement, excluded from social insurance schemes and often deprived of their right to rest. The workers were also unable to establish union organizations within the single trade union system. There was a lack of information and statistical data on the situation and legal status of non-Kuwaiti women, including migrant domestic workers, particularly with regard to their employment conditions and socio-economic benefits. Stereotypes regarding gender roles and certain types of employment still existed.

Although the number of non-Kuwaiti nationals exceeded the number of Kuwaiti citizens in the country, they still had no legislative protection and were deprived of trade union rights. The majority of migrant workers in Kuwait were women who should be protected against discrimination in all fields of employment under Convention No. 111. In that regard, there was concern over the absence of legal measures taken to address the discriminatory treatment of migrant domestic workers, as no such measures existed in either the Regulation of Domestic Service Agencies or the Labour Code. The Government's explanation that migrant domestic workers had been excluded from the draft Labour Code owing to the difficulty of applying certain provisions to those workers was not satisfactory.

The Government was encouraged to take the following steps: the protection of migrant workers should be included in the Labour Code, including the elimination of forced labour practices, and information should be provided on the steps taken; special provisions should be stipulated in the Penal Code in order to sanction the perpetrators of discrimination; the right to join trade unions should be extended to include migrant workers, in accordance with Convention No. 87; the terms of employment and working conditions of migrant workers should be improved through, inter alia, strengthening the resources of the labour inspectorate to ensure that employers who failed to observe the terms of employment and safety regulations were sanctioned; women and migrant workers should be informed about their rights; and public officials, particularly law enforcement officials, should be fully sensitized in order to foster public understanding and acceptance of the principles of non-discrimination and equality.

The speaker welcomed the fact that the Government had provided assistance to some domestic workers from Sri Lanka, but information was still needed on the situation of those people, as it seemed that the Government simply waited for the situation to worsen to such a degree that the workers had to return home. The Government was therefore encouraged to establish broader cooperation with home countries and take responsibility to protect sufficiently all migrant workers from discrimination. In that regard, the Government should also monitor recruitment agencies to ensure that they acted in a fair manner.

The speaker concluded by recommending that the Government should improve national legal and administrative measures to guarantee migrant workers the rights enshrined in the Convention, not only in law but also in practice.

The Government representative of Kuwait indicated that he had taken note of the different recommendations made and that the Government was determined to implement the provisions of the Convention, especially since its labour laws were currently being amended.

On the question of women's access to certain occupations, it had to be clarified that no profession was forbidden for women neither by the Constitution, nor by the national laws. A first group of female police officers recently graduated which indicated that women, like their male counterparts, had started working within the police force, in accordance with the principles of the Convention. Concerning migrant workers, it was reported that they constituted 70 per cent of the population and their rights were guaranteed, particularly in the case of domestic workers who received, inter alia, housing, medical care and legal assistance free of charge in cases of conflict with the employer. A centre for the provision of medical, psychological and legal assistance to these workers was set up in collaboration with their respective embassies.

In addition, he pointed out the existence of bilateral agreements with several countries, including India. Indian workers constituted half of the population of Kuwait and their rights were guaranteed, particularly since they required prior authorization from their embassy before coming to Kuwait. Implementing decrees provided strict procedures for granting work permits and determined the obligations of employment agencies towards domestic workers and employers. It was also strictly forbidden by law to confiscate the passports of migrant workers. Brochures on the recruitment procedures were available in seven languages so as to advise workers about their rights and a special hotline was available to receive complaints against certain abusive practices.

The Employer members, while appreciating the Government's request for technical assistance from the Office, found that it was not clear from the information provided whether the Government was in compliance with the requirements of the Convention, especially regarding the right for women to work in all posts in the police, the military, judiciary and legal services; whether sexual harassment by the employer was prohibited; and whether women had access to all educational and training institutions. They hoped that the Government in its next report would show progress in each of the areas that had been discussed.

The Worker members endorsed the comments and requests made by the Committee of Experts. They particularly emphasized the following points: the need to ensure women's access to all posts in the public sector; the integration in the legislation of effective provisions against discrimination and unjustified inequality; the adoption of specific measures, vis-à-vis both employers and employment agencies, for the protection of domestic workers against discrimination, including means of redress and compensation for victims of discrimination. As the Committee of Experts had rightly pointed out, the difficulties encountered relating to monitoring could not be used as an excuse to evade the requirements of Convention No. 111 and weaken protection against discrimination. It was absolutely necessary to bring the partial initiatives together in a coherent and coordinated national policy

with a view to promoting equality of opportunity and treatment in accordance with Article 2 of the Convention. Such national policy had to include campaigns to inform all workers, including foreign and domestic workers, of their rights and possibilities of appeal available to them. It was necessary for these actions to go hand in hand with the extension of trade union rights, especially for domestic workers because it was the essential pillar for protection against inequality and discrimination.

The Government had repeatedly stated its intention to improve national legislation and practice to make them more compatible with Convention No. 111 and to respond to the comments of the Committee of Experts. The Worker members requested the Government to set a strict timetable on this matter and to submit it for examination by the Committee of Experts at its next session in November 2009. They welcomed the willingness expressed by the Government to accept the technical assistance of the Office in this respect.

Conclusions

The Committee noted the statements of the Government, both written and oral, and the discussion that followed. The Committee noted that the Committee of Experts had raised concerns regarding the exclusion of women from certain posts and their under-representation in certain occupations, the absence of effective protection against discrimination on the basis of race, colour or national extraction, the absence of legal and practical measures to protect migrant domestic workers against discrimination, and the absence of a national equality policy.

The Committee noted the statistical information provided by the Government on the participation of women in vocational training and in employment in some state institutions. The Government also provided information on the steps being taken to revise the Labour Code and other laws with a view to, inter alia, addressing discrimination issues. With respect to migrant domestic workers, the model employment contract was in the process of being revised, and efforts had been made to collaborate with sending countries. A centre to assist domestic workers had also been established, as well as a complaints hotline, and preliminary research had been undertaken with a view to reviewing the sponsorship system.

The Committee noted the Government's commitment to ensuring the full application of the Convention in law and practice, including revising legislation to bring it into line with international labour standards, and welcomed the Government's request for ILO technical assistance in this regard.

While noting the information concerning the improved access of women to some positions in state institutions, the Committee remained concerned that there continued to be considerable obstacles to women's access to a number of posts and occupations, including due to stereotyped views regarding the role of women. The Committee urged the Government to remove any existing legal obstacles to women's access to employment, and to take proactive measures to address the practical barriers to women's access to education and training opportunities and to certain posts and careers. The Committee also urged the Government to ensure that effective measures, in law and practice, were put into place to protect all persons, including foreign workers, from discrimination on the grounds of race, colour or national extraction. Noting the particular vulnerability of migrant domestic workers, the Committee urged the Government to pursue efforts to ensure more effective protection in law and practice against discrimination of these workers, on the grounds set out in the Convention. It also called on the Government to take steps to ensure all workers, including migrant domestic workers, were aware of their rights relating to non-discrimination, and that there was effective enforcement and access to complaints procedures. The Committee stressed that it was essential that the measures be part of a coherent national equality policy.

The Committee hoped that ILO technical assistance would be provided to enable the Government to apply this fundamental Convention in law and practice. The Committee urged the Government to provide full, objective and verifiable information in its report to the Committee of Experts when it is next due. It expressed the firm hope that such information would evidence that concrete progress had been made in all the areas discussed by this Committee and on all the matters raised by the Committee of Experts.

Convention No. 122: Employment Policy, 1964

CHINA (ratification: 1997)

A Government representative expressed appreciation to the Committee of Experts for its positive comments and observations on the report concerning the application of Convention No. 122 by China, which would assist its efforts in employment promotion.

China was strongly committed to the objectives of Convention No. 122 in working towards full, freely chosen and productive employment. The Convention provided a good framework for China to tackle its employment challenges. With a population of 1.3 billion, China's Government had always given priority to employment and had made unremitting efforts to effectively apply Convention No. 122. The Government's report detailed the national laws and policy measures on employment promotion and their implementation.

The labour market was being expanded in favour of a sustainable and job-rich economic growth. The Government had devoted its attention to developing labour-intensive and tertiary industries, private enterprise and enterprises with foreign investment, small and medium-sized enterprises (SMEs), self-employment and flexible forms of employment. To ensure that job creation was placed at the centre of macroeconomic policies, governments at all levels had established interdepartmental employment working groups for policy coordination. At the central level, the group was headed by a vice premier and brought together representatives of more than 20 ministries.

Active employment policies were being adopted, focusing on: tax reduction, micro credit and interest-subsidized loans for business start-up and self-employment; hiring incentives such as tax reduction and social insurance contribution subsidies for enterprises that recruited unemployed people; public job creation schemes for hard-to-place workers; and targeted employment assistance programmes to ensure every family had at least one member in employment.

Measures were being taken to develop a unified labour market and provide public employment services. Such services were currently offered free of charge to both rural and urban workers, with 37,000 employment agencies, including 24,000 public ones, operating across China by the end of 2008, assisting 20 million people to find work that year.

In order to strengthen skills training and improve workers' employability, China had established an employment-driven vocational training system for both urban and rural labour forces. By the end of 2008, there were more than 3,000 technical schools, more than 3,000 job centres and more than 21,000 private training institutions providing training for 20 million people per year, including 9 million rural workers.

Labour legislation and enforcement were being improved to protect rights at work. The Government had promulgated a series of laws and regulations on issues such as labour contracts, employment promotion and employment of disabled persons. The Labour Contract Act had increased the number of labour contracts concluded and reduced the use of short-term labour contracts, thereby increasing job security. The Employment Promo-

tion Act had translated active employment policies into law, providing powerful legal support for achieving full employment. A minimum wage had been established in all provinces and municipalities and was increased at least once every two years. A new department had been set up in 2008 within the Ministry of Human Resources and Social Security with responsibility for protecting rural migrant workers and enhancing labour inspection. A special training programme had been launched in 2006 to train 40 million rural workers over five years and action plans had been implemented to extend social security coverage to migrant workers.

Thanks to successful implementation of the above policies, China had maintained a steady increase in total employment and improvements to its employment structure. Since 2003, over 10 million jobs had been created and more than 8 million workers transferred from rural areas each year. Registered urban unemployment stood at 4.2 per cent in 2008.

The financial crisis had mainly affected China's real economy, especially the export sector and SMEs. Migrant workers and new labour entrants, including college graduates, had been among the most affected. A range of measures had been taken to respond to the crisis. Domestic demand had been boosted to ensure economic growth and promote employment, with a stimulus package worth US$6.8 billion focusing on infrastructure, public works, rural development investment and support for labour-intensive industries, particularly SMEs and the service sector. From design to implementation, major projects were required to give due consideration to their impact on employment. To safeguard enterprises and jobs by easing the burden on enterprises, companies in difficulties were allowed to postpone or reduce payment of social insurance contributions, and various subsidies were provided to enterprises that experienced difficulties but managed to retain workers through in-service training, work-sharing or flexible wage arrangements.

Active employment policies were being scaled up, with greater jobseeker incentives for the unemployed, migrant workers and university leavers. Public employment services were being improved: from 2009 to 2011, a programme would be launched to provide internships for 3 million college graduates, and for 2009 there were plans to help 1 million long-term unemployed people to find jobs and assist 8 million migrant workers to transfer to the non-agricultural sector. A special two-year training programme had also been launched for workers in enterprises with difficulties, rural migrant workers, laid-off workers and new labour entrants, which was expected to train 15 million people during 2009.

Social dialogue was being promoted as a tool to respond to the crisis. Enterprises were encouraged to improve management and technological innovation in order to minimize job cuts, and unions were encouraged to guide workers to understand and support measures taken by enterprises, such as flexible working hours, etc.

Social security coverage was being expanded to ensure that more people, particularly rural migrant workers and people in flexible forms of employment, could enjoy its benefits, and the establishment of a basic medical insurance system was being accelerated. From 2009 to 2011, governments at all levels would invest around US$120 billion in improving medical insurance and the medical service system. By 2010, every one of the country's 1.3 billion citizens would enjoy full health insurance coverage.

Recalling the enormous loss of life and property caused by the Wenchuan earthquake in Sichuan province in 2008, he expressed appreciation for the sympathy and support shown by the international community in the wake of the disaster. Various employment policies had been put in place to tackle its consequences, including: adopting emergency response measures and special employment aid programmes to recover production and stabilize employment; organizing more than 20 provinces to give "one-to-one" employment assistance to individual counties, with jobs provided through aided reconstruction projects; and helping workers find employment through labour migration programmes. By March 2009, 100,000 people had been re-employed through aided reconstruction projects and more than 3 million had found work through labour migration programmes. The post-disaster reconstruction was running smoothly with stable labour market recovery.

The speaker highlighted and expressed appreciation for the strong support received from the social partners. The All-China Federation of Trade Unions and the China Enterprise Confederation had not only actively participated in the development and implementation of various laws, regulations and policies, but had also pursued various employment programmes. China had enjoyed support from the ILO and foreign governments, and had undertaken broad cooperation with the ILO and governments in the field of employment through projects on labour legislation support, the ILO's Start and Improve Your Business programme, employment aid to disaster-stricken areas, youth employment, rural migrant employment, employment for the disabled and other issues. Such cooperation had given China the benefit of international experience, significantly aiding its employment promotion activities, and he expressed appreciation in that regard.

Although his Government had adopted a series of measures to promote employment and had made great progress, China would face long-term employment pressure through factors such as its huge population, industrialization, urbanization, economic restructuring and the comparatively low quality of its labour force. Every year, China had 24 million jobseekers in urban areas and 10 million rural labourers yet to be transferred, resulting in a degree of employment pressure not experienced by any other country. Nevertheless, he was confident that the issue could be properly addressed, which would not only benefit China's economic development and social stability but also contribute to world peace and development. His Government's commitment to the goals of Convention No. 122 remained unchanged and work would continue to implement and improve various policies and measures to promote employment, including, as suggested by the Committee of Experts, establishing a unified labour market and improving the labour market information system. Information on progress made would be provided in the Government's next report. China stood ready to further strengthen exchange and cooperation with the international community in the field of employment, to share experiences, and to jointly promote the realization of decent work for all.

The Worker members appreciated that the Government had submitted detailed and updated information concerning the employment situation, which had been communicated to the Committee of Experts in 2006, i.e. before the economic and financial crisis. Over the past 30 years, China had been progressively oriented to the market economy and experienced considerable expansion of the urban private sector and a simultaneous decline of state-owned enterprises. In that context, supply and demand of jobs developed in a different manner. There were currently in China 24 million people looking for a job in urban areas, whereas the economy could only afford 12 million jobs per year. A certain amount of hidden unemployment in rural areas and at state-owned enterprises should also be taken into account. In the context of the economic crisis, challenges for the Chinese labour market became even more difficult to meet. The following problems could be also noted: the adaptation of vulnerable categories of workers, particularly the rural population having a low income; the integration of people with disabilities into the economy; the re-employment of workers

of state-owned enterprises; the situation of internal migrant workers; and the quality of jobs, particularly as regards occupational safety and health.

The Worker members noted that, even if China had at its disposal labour legislation covering in a satisfactory way labour contracts, working hours and overtime work, minimum wage, termination of employment, etc., the major problem was that the respective provisions were applicable to a very little extent, supervision was rare and sanctions were inefficient. There were currently in China 145 million workers not receiving the minimum wage. There were also difficulties in the payment of wages: according to the trade unions, 70 per cent of the 100 million migrant workers in the country were paid late or were not paid at all. The social security coverage of workers was manifestly inadequate. In 2006, 25 per cent out of 764 million workers had an old-age insurance, 21 per cent had sickness insurance, 14 per cent had employment injury insurance and 9 per cent were entitled to related benefits. The Worker members concluded that it was important to see how the Government intended to remedy these deficiencies.

The Employer members recalled that Convention No. 122 required that each Member declared and pursued, as a major goal, an active policy designed to promote full, productive and freely chosen employment, by methods that were appropriate to national conditions and practices, and in consultation with the social partners. The case thus did not call for an analysis of national legislation vis-à-vis the terms of the Convention but rather for a broader analysis of the question of whether China's employment and labour market policies were in line with Convention No. 122. They expressed their appreciation for the full and detailed information provided by the Government and noted that the case was examined by the Conference Committee for the first time.

In its most recent observation, the Committee of Experts had noted that unemployment had dropped and that stability in employment had increased. It had also noted the adoption of the Labour Contract Act and the Employment Promotion Act that included, inter alia, provisions addressing the promotion of employment, government support to employment promotion, strengthening of vocational education and training, and expanding employment opportunities. The Committee of Experts had asked for additional information on the manner in which the goal of full and productive employment guided macroeconomic policies, and how national legislation contributed to the achievement of that goal. The Committee had also noted the Government's efforts to promote employment of the rural labour force in their own localities, and the policies adopted for equal employment, improved conditions for urban employment and organized mobility of the rural labour force. The Committee of Experts had requested the Government to supply further information on measures taken to reduce the gap between the employment situation of urban and rural workers. According to the Committee of Experts' comment, the Government had adopted legislation requiring the inclusion of the issue of employment for people with disabilities into the plan for economic and social development. The Committee of Experts had asked the Government to indicate further measures taken to increase employment for people with disabilities. The Employer members strongly encouraged the Government to continue to provide full details on all the abovementioned points.

Moreover, the Committee of Experts had asked for additional information on the social insurance scheme. The Employer members felt that such information could only be considered meaningful in the context of the Convention to the extent that it was linked to the effectiveness of active employment policies. Noting with interest that most job creation in the past few years had stemmed from private SMEs, the Employer members were pleased that the Government continued to support sustainable enterprises, in particular small and medium-sized ones, and invited the Government to continue to provide relevant information in this regard. They further noted with interest the vocational training initiatives undertaken by the Government and encouraged it to continue to furnish particulars on educational policies addressing labour market demands. Lastly, the Government should continue to consult the social partners in respect of each of the policies designed to promote full and productive employment.

The Worker member of China drew attention to the request addressed to the Government by the Committee of Experts for more information on issues including formulation and implementation of employment policy, further improvement of the labour market, expanding employment, promoting social harmony and stable development, eliminating the disparity between urban and rural workers, optimizing the current social insurance schemes, strengthening vocational education and training and providing employment assistance to disabled people, particularly in rural areas. By requesting such information, the Committee of Experts was playing an active role in pushing the Government to improve its plans and policies on such matters. He expressed his appreciation for the attention given by the Committee to employment in China and indicated that China's trade unions would do their part in urging the Government to improve the application of Convention No. 122, in accordance with the Committee of Experts' requests and expectations.

As the world's largest developing country, with a population of 1.3 billion, China was facing a severe imbalance between demand and supply in the labour market. The situation had been aggravated by the global financial crisis, worsening China's unemployment rate even further. Every year, China had some 24 million jobseekers in urban areas and around 10 million urban workers sought transfer to other jobs, while 6 million new graduates entered the labour market. The Committee of Experts had paid particular attention to rural migrant workers in China, who currently numbered around 230 million and of whom some 120 or 130 million were employed in cities. The financial crisis had had a major impact on SMEs in China's eastern coastal region, where more than 60,000 SMEs had ceased trading, leaving more than 20 million villagers jobless and forced to return to their homes. In addition, around 20 million babies were born in the country each year. As a result, China had experienced a great downward strain on its economic growth since the third quarter of 2008. Many enterprises, especially in labour-intensive industries and the export sector, had seen production severely affected and many had been forced to reduce production or shut down altogether, with significant job losses. Nevertheless, the unemployment rate had remained below 4.2 per cent. By maintaining a reasonable standard of living for its 1.3 billion people, China had kept its social stability, which in itself was a contribution to humanity as a whole.

The speaker added that over the years, the Government had implemented a series of plans and policies in employment promotion and had made great efforts to optimize the labour market and promote equal employment. However, trade unions had noted that, on issues such as narrowing the employment gap between rural and urban areas, promoting the employment of vulnerable groups and disclosing labour market information, the Government could intensify its efforts and perform better.

With regard to the impact of the financial crisis and the grave employment situation, he emphasized that the social partners should play an active role in formulating national economic and social policies. China's trade unions had spared no effort in taking specific measures to stabilizing employment and safeguarding workers' right to work, including participating in the formulation of a more proactive employment policy with a view to ensuring work-

ers' right to choose their work exploring the unions' organizational advantages by offering the unemployed skills training opportunities and job services through over 2,000 training centres and 1,800 job agencies run by the trade unions, implementing assistance campaigns for tens of millions of rural migrant workers, extending aid to workers in need and launching an employment action programme for graduates. At the same time, a campaign had been initiated encouraging enterprises to refrain from cutting wages and dismissing workers, and in this regard a comparatively comprehensive law enforcement monitoring mechanism had been established. So far, some 321,000 supervision bodies had been created. The trade unions would continue to urge the Government to fulfil its responsibilities, particularly with regard to Convention No. 122.

In conclusion, the speaker stated that the global economic crisis had led to the closure of many enterprises and the loss of millions of jobs, posing a great threat to social stability. Implementation of international labour standards would undoubtedly promote the building of a sound economic order and stimulate economic growth. The ILO had made great efforts and an active contribution by promoting ratification and implementation of its Conventions. China's trade unions would continue urging the Government, in its efforts to implement Convention No. 122, to listen to the various parties, actively pursue employment policies and strengthen social dialogue so as to achieve decent work for all China's workers.

The Employer member of China indicated that China was a highly populated country in transition, and that the recent increase in laid-off workers constituted a major challenge. The Government had adopted a series of measures to promote employment and had implemented active employment policies to stabilize employment, create conditions for employment, and foster development of Chinese enterprises and sustainable development of the national economy. The China Enterprise Confederation (CEC) had also made considerable efforts to stabilize employment. First of all, it had actively collaborated with the Government and workers' organizations with respect to trade policies, by underlining problems faced in enterprises in terms of employment and by participating in the formulation and implementation of employment policies. Secondly, the CEC attached great importance to its social responsibilities and had thus promoted vocational skills training of workers, the upgrading of knowledge of managerial staff, and the training of farmers. The CEC had also sought to explore the internal capacity of enterprises to ensure that workers would not be laid off. Thanks to the stimulus package provided by the Government, the Chinese enterprises had been able to provide employment to an increasing number of workers. For example, 200,000 new jobs had been created for internal migrant workers and new college graduates.

The Worker member of France said that the application of Convention No. 122 by China took on a particular importance in the context of the global economic crisis. There existed, in times of crisis, a certain tendency for worker protection to be sidelined. Nevertheless, China had recently seen various positive developments: an act defining the employment relationship had been in force since 2008. It carried the obligation to issue written employment contracts and provided, inter alia, for sanctions against employers who failed to respect the rights of their workers, particularly in the event of dismissals. The Government, through the National Human Rights Action Plan 2009–10, had made certain commitments concerning the right to work, the right to a minimum standard of living, the right to health, the right to social protection, the right to freedom of expression and guarantees for the rights and interests of peasants. When it came to implementing this legal arsenal, however, problems arose. Many enterprises were using the crisis as an excuse for mass redundancies. The central authorities had authorized local authorities to freeze the minimum wage, suspend payment of social benefits and deregulate working hours or wage calculations. The Government should instead apply existing legislation, making use in particular of real and effective social dialogue. The speaker highlighted the responsibility of employers in that regard. She stated that the pressure exerted by certain large groups did not encourage the Government to promote job security, social protection or a decent minimum wage. The speaker considered that, if multinational enterprises were capable of exerting a negative influence, they could also exert a positive one and improve wages and working conditions. This should be taken into consideration in the context of corporate social responsibility.

The Worker member of the United States considered that the implementation of Convention No. 122 by China raised serious concerns, including, in particular, four distinct but related points.

Firstly, according to Article 1 of the Convention, the employment policy should aim at ensuring that there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his or her skills and endowments in, a job for which he or she is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin. However, numerous reports by, inter alia, the ITUC, the US State Department and Human Rights Watch documented continued imprisonment, harassment and intimidation of workers who had expressed political opinions that differed from those adopted by the State. He therefore considered it crucial that the Government explained how its policies and activities would ensure conformity with Article 1 of the Convention, especially with regard to workers with diverging political opinions. This was all the more relevant given the importance of the current economic crisis.

Secondly, Article 2 of the Convention stressed the need to adopt the necessary measures for attaining the objectives specified in Article 1. Education was a critical component of fulfilling Convention No. 122, since workers who were not aware of the rights provided to them under the law, would not avail themselves of those rights. Education, however, meant more than merely issuing a law. It also meant making sure that the new law was understood by and accessible to all workers, regardless of region, origin or political opinion. The speaker thus called for a widespread public education process to disseminate information about the recently adopted legislation pertaining to employment, as recommended by the ITUC. In addition, he shared the view of the Worker member of France that enforcement was essential to the effective application of Convention No. 122 and deplored the lack of enforcement of employment laws in China.

Thirdly, according to Article 3 of the Convention, consultations constituted an essential element of the formulation of employment policies. However, consultations in China remained limited to the official State apparatus. The speaker believed that consultations should be sincere and broad and should include independent labour and human rights groups, as well as vulnerable categories of persons such as persons with disabilities. Sharing the view expressed by the ITUC, he urged the Government to ensure that all relevant groups and stakeholders, including workers' organizations, women's groups and migrant workers, were fully involved in the consultation and law reform process.

Fourthly, he considered that transparency was vital for all aspects of the Convention. He concluded that the Government should, therefore, provide the civil society, the workers and the media with timely reports on the progress of all issues relating to the implementation of Convention No. 122.

The Government representative of China thanked the Worker and Employer members, as well as the other members of the Committee for their positive remarks and encouragement on the efforts made and progress achieved by his Government in applying the Convention. Their understanding of the challenges and difficulties with which China was confronted and their advice and suggestions for enhancing the application of the Convention were highly appreciated. Due consideration would be given to the discussions of this Committee and the comments made by the Committee of Experts. He wished to emphasize, like the Employer members, that the Convention required the Government to pursue a policy by methods that were appropriate to national conditions and practices. The Committee could be reassured of his Government's commitment to the full application of Convention No. 122 and its intention to continue its efforts to develop the economy, build a well functioning labour market system, strengthen skills training, improve social security and strengthen law enforcement mechanisms. His Government was ready to cooperate with the ILO and the tripartite members of this Organization in the global endeavour to promote decent work for all.

The Worker members observed that the policy and approaches developed by China in the field of employment were of crucial importance for Chinese workers and for the whole world during this period of financial crisis. They consequently asked the Government to do the following: (1) to continue to provide information on employment policy, measures taken and results achieved as regards the creation of more stable employment opportunities, improvement of the residence and work permit system, improvement of the situation of persons with disabilities and other vulnerable groups, organization of reemployment and vocational training of workers in the situation of economic restructuring, strengthening of the effective application of the labour legislation in order to attain decent work and decent wages for all workers, as well as the establishment of an efficient social security system and accessible health care facilities; (2) to continue to assess the impact of the new legislation, such as the new Labour Contract Act adopted in the beginning of 2008 and the new Regulations concerning the employment of persons with disabilities adopted on 1 May 2007; and (3) to continue to describe the role of social dialogue and trade union participation in that context.

The Employer members noted with interest the important role that job creation policies were playing in China's macroeconomic policy. Recalling that the Convention set out a framework for the development of an active employment policy according to national conditions, they encouraged the Government to continue to develop and implement policies promoting full and productive employment and to include the social partners in this regard. Finally, the Employer members were pleased that the Government was prepared to communicate a full report regarding its policies to promote full and productive employment and the progress made in relation to achieving that goal.

Conclusions

The Committee noted with interest the detailed information supplied by the Government representative, as well as the tripartite discussion which ensued, addressing the measures taken in response to the financial crisis, to support employment by stimulating growth through active labour market policies as required under Convention No. 122.

The Committee welcomed the information provided by the Government on the situation of the labour market and its commitment to ensure that at least one member of every family was employed. The Government indicated that the registered urban unemployment rate in 2008 stood at 4.2 per cent and each year, the country had 24 million jobseekers in the urban areas and an additional 10 million rural workers who stood to be transferred to the cities to seek work causing an extremely high employment pressure on the labour market. The Government also reported on the measures taken to develop a unified labour market and ensure a public employment service, to strengthen skills training and workers' employability, to improve social security and extend health care schemes, and to enforce the recently adopted legislation on labour contracts and employment promotion, which provided a framework for the achievement of full employment. In reply to the request by the Committee of Experts, the Government also provided indications on the emergency-response measures and special employment programmes implemented to recover productivity and stabilize employment in the Sichuan province, which was stricken by an earthquake in May 2008.

The Committee recalled that it was essential for the purposes of achieving the objective of full and productive employment to fully consult with the social partners and persons affected by the measures to be taken such as representatives of the rural sector and other stakeholders, so as to secure their full cooperation in the formulation and implementation of employment policies. The Committee requested the Government to provide, in its next report, information on the results achieved in terms of employment promotion through the implementation of the Labour Contract Act and the Employment Promotion Act. The Government was also requested to provide information on the results achieved by the measures taken to integrate vulnerable workers, such as workers with disabilities and workers that were laid-off as a consequence of the economic crisis, in the open labour market. The Government was also invited to include other relevant information on the measures taken to generate decent and sustainable employment, the efforts deployed to collect reliable labour market data, plans for the extension of social security and health care and the steps taken for the revision of the residence and work permit system with a view to achieving a unified labour market. The Committee also invited the Government to report on the impact of the measures taken to support sustainable enterprises, particularly small and medium-sized enterprises, and to foster vocational training and educational policies to match the demands of the labour market.

Convention No. 138: Minimum Age, 1973

MALAYSIA (ratification: 1997)

A Government representative recalled that the Government had ratified Convention No. 138 in 1997 and that the Committee had requested to raise the minimum age for employment, as stated in the Malaysian Children and Young Person (Employment) Act of 1966 (CYP), from 14 to 15 years.

The Government was fully committed to reviewing and amending the CYP to conform to the Convention. In line with this aspiration, the Government would set up a tripartite technical committee composed of employers' organizations, such as the Malaysian Employers' Federation (MEF), the Federation of Malaysian Manufacturers (FMM), workers' organizations, such as the Malaysian Trade Union Congress, and government agencies, such as the Ministry of Women, Family and Community Development, Ministry of Home Affairs and other relevant agencies. The tripartite committee was scheduled to meet in December 2009 to review the CYP. According to the current report by the Department of Labour under the Ministry of Human Resources, there had been hardly any issues relating to the CYP. Nevertheless, the Government was aware that there were pertinent issues in relation to the CYP. In its revision of the CYP, the Government would give consideration to raising the minimum age for employment from 14 to 15 years to be in conformity with the Convention. However, part of the revision of the CYP would also be an analysis of whether the competent au-

thority could authorize persons between 13 and 15 years of age to perform light work. This would include a definition of light work and a limitation on working time.

Based on Article 3, paragraph 1, of the Convention, the Committee had further suggested that the Government took the necessary measures to ensure that no person under 18 years was authorized to perform hazardous work. The Government was also requested to include a definition of "hazardous work" as required by Article 3, paragraph 2, of the Convention, and to provide information on the consultations held with employers' and workers' organizations concerned. The Government, supported by the tripartite technical committee, was currently working to give effect to the Committee's requests. The inputs and relevant information on the consultations with the employers' and workers' organizations would be provided after the December meeting. He further explained that under section 28 of the Factories and Machinery Act 1967, no young person, i.e. a person who had not completed his or her 16th year of age, was allowed to carry out hazardous work. This included work involving the management of, or attendance on, or proximity to, any machinery. Legislation was already in place stipulating that persons in charge of dangerous machinery such as steam boilers, cranes, scaffolding, hoisting machines and lifts had to be at least 21 years of age. He was aware that young people between 16 and 18 years of age were only allowed to perform hazardous work if authorized in accordance with the requirements of Article 3, paragraph 3, of the Convention.

In respect of training, section 26 of the Factories and Machinery Act 1967 required that any person employed at any machine or in any process had to be instructed as to the dangers likely to arise in connection therewith and the precautions to be observed. He or she also had to receive sufficient instruction about the work or be under adequate supervision by a person with knowledge and experience of the machine or process. The tripartite technical committee would review and take action on the recommendation that young persons between the age of 16 and 18 years be authorized in accordance with the requirement explicitly stipulated in Article 3, paragraph 3, of the Convention.

The speaker reiterated that the country's labour legislation was constantly reviewed and amended to keep abreast of current national and international developments. Currently, the Employment Act 1955, the Workmen's Compensation Act 1952, the Private Employment Agencies Act 1981, and the Industrial Relations Act 1967 were being reviewed and would be brought before Parliament in 2009. It had been the Government's intention to consider the revision of the CYP in the current session but it had been postponed as the question of child labour and abuses thereof were not seen as critical or alarming. Malaysia had one of the most effective labour inspectorates in the region. The Malaysia peninsula alone had 300 labour inspectors and every labour inspector carried out between 25 and 30 inspections per month. The inspectorate was charged with ensuring that child labour abuses were minimized. In 2008, the Department of Labour under the Ministry of Human Resources received a total number of 30,084 complaints on various labour issues. It inspected 52,925 premises including estates, prosecuted 190 employers, issued 139 compounds and handled a total of 11,943 labour cases. All the complaints and cases were scrutinized and it had been found that cases relating to child labour did not occur.

The Government was committed to providing information on any progress made in the revision of the CYP by the tripartite technical committee in its next report and was currently considering seeking technical assistance from the ILO.

The Worker members noted that the discussion of the current case coincided with the World Day against Child Labour, ten years after the Conference had adopted the Worst Forms of Child Labour Convention, 1999 (No. 182). The discussion on the application of Convention No. 138 by Malaysia, another essential pillar in combating child labour, was therefore highly relevant. The comments made by the Committee of Experts were precise and concerned the non-conformity of national legislation with Articles 2, 3 and 7 of the Convention: the legislation stipulated a minimum age of 14 years and not 15 years, as prescribed in Article 2 of the Convention; there were no provisions prohibiting persons younger than 18 years from types of work that could jeopardize their health, safety or morals, which was inconsistent with the provisions of Article 3; and there was no precise definition of light work limiting the work of children between 13 and 15 years in conformity with Article 7. The Committee of Experts had concerns about the practical application of the Convention and had requested the Government to provide as much information as possible, particularly statistical data.

The Worker members said that the examination of the case should retain the spirit of the comments made by the Committee of Experts on the non-application of Convention No. 182 on the worst forms of child labour. It was the first time that the Committee of Experts had made that type of observation for Malaysia, but the issues were already well known. The Committee of Experts made reference to the analyses and recommendations of 2007 of the United Nations Committee on the Rights of the Child, which had requested that the legislative provision be amended in order to ensure conformity with the provisions of Convention No. 138 and that labour inspection be strengthened. Two specific elements of that report merited particular attention; the first concerned child asylum seekers and refugees who should have access to free, public, primary and secondary education and the second concerned the employment of children as domestic workers. In that regard, the United Nations Committee on the Rights of the Child was gravely concerned by the high numbers of migrant workers employed in domestic services, including children who worked in hazardous conditions, disrupting their education and harming their health as well as their physical, psychological, spiritual, moral and social development.

The Worker members took note of the information contained in a recent report by the United States on the human rights situation in Malaysia, which stated that many rights were respected but many specific issues remained, particularly with regard to children working in the oil palm plantations, in the agricultural sector, but also those working in towns and cities. The observations were similar to those made recently by the National Commission for the Protection of Children of Indonesia, which, according to the *Jakarta Post*, mentioned cases of the forced labour of migrant workers and their children on plantations in Sabah, involving an estimated 72,000 children. The majority of cases concerned illegal immigrants whose children needed to work as they had no access to education as a result of their illegal status. The situation required deeper investigation.

They indicated that they had in no way disregarded the progress that had been achieved in Malaysia, in particular the swift ratification of Convention No. 182; the creation in 2005 of a special division on childhood within the Department for Social Protection; the adoption in 2001 of a law on childhood, which had been drafted according to the principles on the United Nations Convention on the Rights of the Child as well as a number of initiatives on the protection of children and the promotion of their rights. The Government of Malaysia had made commitments to improve its legislation and bring it into conformity with the ILO prescriptions on minimum age. However, the Government was invited to fulfil those commitments according to a clearly defined schedule established

in consultation with social partners within the framework of the tripartite committee.

The Worker members recalled that the Convention provided for consultation with social partners, particularly regarding the definition of hazardous work (Article 3) and light work (Article 7), and they stressed the need to improve data collection and to strengthen labour inspection in order to ensure the effective application of all provisions on minimum age. Particular attention should be given to three categories of children: extremely vulnerable children, that is, children of migrants, particularly children of asylum seekers, refugees and illegal immigrants; children employed as domestic workers; and children employed in the worst forms of child labour, as defined by Convention No. 182. The Government was invited to take all measures referred to in the comments made by the Committee of Experts on the application of the Convention.

The Employer members recalled that Article 1, paragraph 1, of Convention No. 138 required each member State to pursue a national policy for the effective abolition of child labour. They expressed the hope that the Government would provide a reply to all the points raised in the observation of the Committee of Experts, as well as a response to the conclusions of the UN Committee on the Rights of the Child. They thanked the Government for all new information supplied which, however, were too detailed to be assessed by the Committee. These information had to be examined by the Committee of Experts at its next session.

They concurred with the Worker members' statement and recalled that the Government had ratified this fundamental Convention in 1997, which testified, together with the ratification of Convention No. 182, to the Government's commitment to eradicating child labour. The Committee of Experts had added a double footnote and therefore the case, which was being dealt with for the first time, had to be thoroughly examined in a constructive manner. Although the Government stated that there was no child labour in Malaysia, publications that had been made available on the occasion of the international day against child labour, contained information to the contrary. Therefore, the application of Conventions Nos 138 and 182 had to be subject to a technical scrutiny.

The Employer members underlined that childhood and youth were sacred, and thus emphasis had to be placed on educating children about their rights. Today's children were the future tripartite members of the ILO and they had to be educated to become leaders and be competitive in the globalized world. Convention No. 138 set clear goals defining the age under which it was prohibited to work. They recognized the possibility of introducing flexibility measures to take account of national conditions and realities; however, they had to be in conformity with the Convention. Since the ratification of the Convention by Malaysia, the Committee of Experts had made four direct requests and one observation and this was the first discussion of the case in the Committee, but it had to be noted that there was no discussion relating to the application of Convention No. 182.

In recalling Article 2, paragraph 1, of the Convention, the Employer members noted that at the time of ratifying the Convention, the Government had declared 15 years to be the minimum age for admission to employment. However, the provisions of the Children and Young Persons (Employment) Act of 1966 (CYP) were not in conformity with this declaration as its sections 2(1) and 1(A) provided that a child, who was defined as a person under 14 years of age, should not be engaged in any employment.

Following the Government's information that a tripartite committee would review the labour legislation, the Committee of Experts had asked the Government to provide information on developments concerning this review, especially with regard to the measures taken to bring the minimum age for admission to employment (14 years) into conformity with the one declared (15 years). Although the Committee of Experts had noted the Government's information that the CYP did not outlaw child labour, but rather governed and protected children who worked, they recalled that in accordance with Article 2, paragraph 1, no one under the specified age of 15 should be admitted to employment or work in any occupation. The review of the CYP had been requested for a number of years, but one was still awaiting concrete results and the Government explained it was experiencing difficulties. They asked the Government to inform the Committee of a target date when it expected law and practice to be in conformity with the Convention. In addition, in accordance with Article 3, paragraphs 1 and 2, the Committee of Experts had requested the Government, in consultation with the social partners to determine types of hazardous work to be prohibited for persons below 18 years of age, by way of national legislation. Again, the Employer members requested that the Government established a target date for adhering to this request.

Noting that certain provisions of the CYP allowed young persons of 16 years and above to perform certain types of hazardous work under specified conditions, the Employer members fully agreed with the Committee of Experts' request that the Government took the necessary measures to ensure that the performance of types of hazardous work by young persons between 16 and 18 years of age would be only authorized in accordance with the requirements of Article 3, paragraph 3, of the Convention. They welcomed the new information provided by the Government regarding an action plan of March 2009. Since this action plan was subject to review in December 2009, they requested the Government to provide full information thereon to the next session of the Committee of Experts, so the results could be assessed by the Committee the following year.

Article 7 of the Convention, provided for the possibility of admitting young persons of 13 years of age to light work, however the CYP allowed persons under 14 years of age to be employed in light work which was adequate to their capacity, in any undertaking which was carried on by their family. The Government itself had informed that the CYP hence permitted children to work in any establishment owned by their parents or guardians, including hotels, bars and other places of entertainment. As a result, the Committee of Experts had urged that the minimum age of 13 years for light work be established by legislation and that, in the absence of a definition of light work in the legislation, the competent authority determined what light work was and prescribed the number of hours during which, and the conditions under which, such employment or work might be undertaken.

With respect to Parts III and V of the report form concerning the application of the Convention in practice, statistical information was lacking regarding the scope, type and extent of child labour, including knowledge of the economic domains that employed children, e.g. household, mines, underground, etc. The speaker supported the proposal that the Government sought technical assistance from the ILO to strengthen data collection. In conclusion, although the Committee of Experts had asked the Government to provide full particulars to the Conference, the Employer members' view was that the Government had not complied with this request.

The Government member of Brunei Darussalam fully supported the Government representative's statement and believed that the Government's strong determination and commitment to reviewing the Children and Young Persons (Employment) Act were in line with Convention No. 138.

The Worker member of Malaysia argued that children needed education to aspire to the best possible future, but

not all children had access to education. In Malaysia, child labour existed and children worked in hazardous conditions that were harmful to their health, physical, mental, spiritual, moral and social development. Their situation prevented them from access to education.

The Malaysian Trade Union Congress (MTUC) had previously taken up the issue of child labour with the Government and all parties were willing to eradicate the gaps that still marked the national legislation. The legislative gaps between the national legislation and the requirements of Convention No. 138 were not so wide that they could not be bridged. He expressed the readiness of his union to discuss and address these deficits in a tripartite setting. For example, a definition of hazardous and light work had to be formulated. Once the legislative gap had been closed, ensuring the implementation of the laws was essential.

He expressed his concern over the absence of reliable data on the number of child labourers in Malaysia, as accurate data were needed to fully address the issue of child labour. Notwithstanding the lack of information on the sectors in which children worked, there was evidence that children were exposed to the worst forms of child labour, which was unacceptable. The UN Committee on the Rights of the Child had acknowledged this problem and recommended the establishment of a national central database on children. The speaker supported this recommendation and encouraged the Government to collect and analyse accurate information to fill the knowledge gap, including through inspection services. To tackle and prevent child labour, the labour inspectorate needed to be strengthened with all the necessary support in order to enable it to effectively monitor the implementation of labour laws at all levels and to receive, investigate and address complaints of alleged violations.

Special attention had to be paid to vulnerable groups, in particular documented and undocumented migrant workers, refugees and asylum seekers whose children did not have access to school and were denied health care. The speaker encouraged the Government to sign the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, which provided that recipient countries should pursue a policy aimed at integrating children of migrant workers in the local school system and that the fundamental human rights of undocumented migrants had to be respected.

In seeking a better life than that of their country of origin, workers came from abroad and contributed to the economy and society of Malaysia. More effort had to be made to integrate their families so that their children could attend school, because without access to education, they often worked. One example in this respect was the Help Centre that was set up by his union in cooperation with trade unions in Indonesia, which assisted workers coming from Indonesia to Malaysia in solving migration related problems. Every child in Malaysia had to have access to free and compulsory primary education, as well as to secondary education, and the nature of work could not interfere with their schooling. His union was more than willing to discuss and seek ways to address child labour in a tripartite setting. Efforts had to continue with all parties, because children belonged in school and not at the workplace.

The Government member of Singapore welcomed Malaysia's commitment to reviewing and amending the CYP to bring it into conformity with the Convention. She welcomed, in particular, the positive steps taken by the Government in setting up the tripartite technical committee, which would be meeting in December 2009 to review the CYP. She also noted that Malaysia had no recorded cases or complaints relating to child labour as part of the Government's scrutiny of labour cases in 2008. As an indication of acknowledgment of the general efforts taken towards improving the situation of children in Malaysia, the UN Committee on the Rights of the Child had commended Malaysia on its notable improvement in economic and social development, including continuous investments in health services, the protection infrastructure and the educational system. In light of the efforts made, she supported giving the Government more time to adopt the necessary measures to ensure compliance with the Convention. She looked forward to seeing progress by the tripartite technical committee after it had commenced its work in December 2009.

The Worker member of Indonesia stated that the Indonesian National Commission for Child Protection (INCCP) reported, after a 2008 fact-finding mission to the plantations in Sabah, Malaysia, that tens of thousands of migrants were working there under "slavery-like" conditions. A large number of migrants' children also worked in the plantations, without regulated employment hours – which meant they worked all day long. Other sectors where migrant workers' children were often found were family food businesses, night markets, small-scale industries, fishing, agriculture and catering. Furthermore, in Sabah, an unknown number of children begged in the streets; estimates ranged from a few hundred to as many as 15,000 children. The INCCP Secretary-general had stated that the children of migrant workers born under these conditions were not provided with birth certificates or any other type of identity document, effectively denying their right to education.

He urged the Government to investigate this situation in detail and identify the sectors where child labour was prevalent, as well as to ensure that migrant workers' children possessed legal status and were provided with education. He added that since migrant workers came to Malaysia from neighbouring countries, this problem could only be solved in a regional context. In 2006, the Confederation of Indonesian Trade Unions established a partnership with the Malaysian Trade Union Congress (MTUC); both parties signed a Memorandum of Understanding to inform migrants from Indonesia going to Malaysia on the risks of migration – including the risk of their children becoming labourers. Noting that unions alone could not solve this problem, he urged the Government to ensure, in cooperation with the Government of Indonesia, an end to child labour among migrant workers' children.

The Government representative of Malaysia thanked all members of the Committee for the views expressed, took note of the comments made and expressed the belief that his Government was able to carry out the responsibilities under Convention No. 138. The CYP (Employment) Act of 1966 did not outlaw child labour, but its main objective was to govern and protect children who worked. The speaker wished to reiterate that his Government was fully committed to reviewing and amending the CYP Act in order to bring it into line with the principles of Convention No. 138. The Government emphasized its strong willingness to uphold the spirit of collaboration among employers, employees and related government agencies in order to thoroughly discuss the review of the current legislation.

The Worker members endorsed the Employer members' appeal and were pleased to be able to discuss the case before the Committee on the World Day against Child Labour, especially as it was just ten years since the adoption of Convention No. 182. The case under discussion pointed both to a political will to make progress and to a number of major challenges to be faced. They requested that a clear timetable be established with the social partners for bringing legislative provisions into line with Articles 3 and 7 of Convention No. 138. They emphasized the need to reinforce labour inspection to improve statistical data collection and to devote particular attention to three categories of extremely vulnerable children: migrant children, especially the children of asylum seekers, refugees and undocumented migrants; children employed as

domestic workers; and children engaged in the worst forms of child labour as defined in Convention No. 182. They accordingly invited the Government to communicate information on its follow-up to the recommendations of the Committee of Experts regarding that Convention, even though it was not the subject of the present debate. The Worker members concluded by expressing the hope that Malaysia would become an outstanding example of follow-up action in the region, in close collaboration with the social partners.

The Employer members made reference to the UN Committee on the Rights of the Child, and aligned themselves with the conclusions of that Committee, dated 25 June 2007, which condemned, inter alia, the lack of data, particularly on non-Malaysian children living in Malaysia; violence towards children; the exploitation of child victims of trafficking; the sexual exploitation of children; and subjecting children to forced labour. Referring to the recommendations of the Committee of Experts, they urged the Government to strengthen its mechanisms for data collection by establishing a national central database on children and developing indicators consistent with the Convention in order to ensure that data were collected on all areas covered by the Convention and were disaggregated by age (for all persons under 18), sex, urban and rural area and by group of children in need of special protection.

Conclusions

The Committee took note of the oral information provided by the Government representative and the discussion that followed. The Committee noted the information contained in the report of the Committee of Experts relating to discrepancies between national legislation and Convention No. 138 in respect of the minimum age for admission to employment or work; minimum age for admission to, and determination of hazardous work, regulation of light work, weak enforcement of the Convention; and the absence of statistical data on working children.

In this regard, the Committee noted the information provided by the Government that it was fully committed to reviewing and amending the Children and Young Persons (Employment) Act of 1966 to bring it into conformity with Convention No. 138. In line with this aspiration, the Government would set up a tripartite committee composed of representatives of employers' and workers' organizations, and of relevant government agencies to meet in the month of December 2009 to review the Children and Young Persons (Employment) Act. During the review, the Government would give consideration to raising the minimum age for employment or work from 14 to 15 years in line with the Convention. The Committee also noted the Government's indication that it would make the necessary recommendations to the tripartite committee so as to ensure that no one under the age of 18 years was authorized to perform hazardous work and that these hazardous types of work would be determined in national legislation. Moreover, the Government stated that it would give serious consideration to establishing a minimum age for light work and determining these types of activities so that only children from 13 years of age would be authorized to undertake light work activities. In the meantime, in order to strengthen and ensure an effective labour inspectorate, the Ministry of Human Resources had recruited a number of labour inspectors. Finally, the Committee noted the Government's indication that while it had reviewed a series of labour laws to be tabled in Parliament in 2009, the Government had postponed the review of the Children and Young Persons (Employment) Act because it felt that child labour and abuses related to it were not critical or alarming in Malaysia. However, the Government would make every effort to provide information made in the review of the Act by the tripartite committee and would consider seeking ILO technical assistance.

While noting the Government's indication that it intended to amend legislation soon dealing with children and child labour to conform to the provisions of Convention No. 138, the Committee observed that the Government had been referring to the legislative review of the Children and Young Persons (Employment) Act of 1966 for a number of years. The Committee, therefore, firmly hoped that the necessary provisions would soon be adopted to address all the issues raised by the Committee of Experts, including the raising of the minimum age to employment or work to 15 years, the minimum age of 18 years for hazardous work, as well as the determination of these types of hazardous activities, the regulation of light work activities and the provision of statistical data on the situation of working children in Malaysia. Concerning the issue of insufficient data on working children, the Committee suggested that the Government considered the establishment of a national central database on children.

The Committee noted the Government's indication that it had increased both human and financial resources to the labour inspectorate, which was one of the most effective in the region. It accordingly requested the Government to further strengthen the capacity and reach of the labour inspectorate and to ensure that regular visits, including unannounced visits, were carried out so that penalties were imposed on persons found to be in breach of the Convention. In this regard, the Committee called on the Government to pay specific attention to three categories of extremely vulnerable children: the children of migrant workers, in particular the children of asylum seekers and undocumented migrant workers; secondly, children employed as domestic workers; and thirdly, children who were involved in the worst forms of child labour as defined by Convention No. 182.

Noting that a tripartite technical committee would be set up in December 2009 and further noting the Government's request for ILO technical assistance, the Committee asked the Government to avail itself of such assistance with a view to giving effect to the Convention in law and in practice as a matter of urgency. The Committee firmly hoped that the Government would provide detailed information, in its report when it was next due, for examination by the Committee of Experts on progress made in complying with this fundamental Convention. The Committee also invited the Government to provide comprehensive information in its report on the manner in which the Convention was applied in practice, including in particular enhanced statistical data on the number of children working, their age, gender, sectors of activity and information on the number and nature of contraventions reported and penalties applied.

Convention No. 143 : Migrant Workers (Supplementary Provisions), 1975

ITALY (ratification: 1981)

The Government communicated written information which included a general introduction to the Italian legislative framework on anti-discrimination, description of communication campaigns for the social integration of immigrants and the actions of inspection and investigation of illegal employment and immigration carried out by the Ministry of Labour, Health and Social Policies and the Ministry of the Interior.

The Italian Government was fully concerned about the racist and xenophobic propaganda, which mainly targeted non EU-migrants and minority groups, such as Roma populations, and which compromised the difficult process of peaceful integration and coexistence. There was confidence that all the efforts made by the Government, local administrations, churches and NGOs were a strong "screen against racism". Instigation to racial hatred was severely punished by the Italian Criminal Code; nonetheless it was for the judicial authority, in its full independence, to assess, on a case by case basis, to which extent a

given manifestation either fell within the bounds of the freedom of thought and expression and of political orientation, or it was rather to be considered as a criminal act of instigation to racial hatred.

By Law No. 101 of 6 June 2008, the national legislation had been amended in order to reverse the burden of proof shifted to the respondent if the claimant supplied factual elements sufficient to demonstrate the presumption of a direct or an indirect discrimination.

The Office for the Promotion of Equality of Treatment and the Elimination of Discrimination based on Race and Ethnic Origin (UNAR) decided to start a specific strategy capable of going beyond legal support to victims of discrimination and act on the structural causes of discrimination in the labour market. One of the main problems faced daily by immigrants was the access to the market itself in the very first stage of the selection process of personnel. The idea was to create opportunities for contact between companies and two categories of disadvantaged people, persons with disabilities and foreigners. For instance, UNAR organized a first job meeting in collaboration with Sodalities (CSR development Centre) and some leading Italian companies in order to raise awareness about job opportunities for both employers and potential employees. In addition, with a view to prevention and promotion of positive actions, training courses on anti-discrimination legislation, especially in the workplace, had been one of the most significant channels for the transfer of knowledge and best practices in combating racial discrimination.

UNAR and social partners agreed upon the need to face the problem of the cohabitation of people of different ethnic origins in the workplace, employing vocational training and awareness-creating tools both for workers and trade union representatives as well as for managers and employers' representative bodies.

In 2008, the Strategic Programming of Vigilance Activity of the Ministry of Labour, an annual document which defined its objectives and political priorities, gave particular attention to actions aiming to fight the irregular and illegal work of migrant workers. The document provided that the inspection activity in this sector, carried out in coordination with national insurance bodies and with the Police Corps, needed to deal with economic organizations managed by minorities promoting illegal immigration of their compatriots to keep them in Italy in a situation of exploitation under violence in violation of standards of workers' rights. For the internal programming activity of the General Directorate for Inspection Activity for 2009, every local office (regional directorate) had identified precise areas of intervention in consideration of the different economic realities on the territory and of the sectors in which the irregular employment of extra community workers was most present.

In the second part of its communication, the Government described measures taken to promote the integration of Roma and Sinti communities in Italy, including measures aiming at promoting the access to employment, education and health facilities, as well as the development of an action plan. Through the National Fund for Social Policies (2008) it had been possible to allocate an additional sum of €7 million for the implementation of interventions for the social integration of immigrants mainly in the following areas: employment and education insertion of Roma people, health protection, information and communication activities. The resources specifically allocated to interventions in favour of Roma communities amounted to €3,360,000. Considering that the promotion of labour insertion policies was a priority instrument to limit the particular socio-economic marginalization of Roma population on the national territory, it was decided to activate a completely new programme of interventions aiming at promoting the social and labour integration of Roma living in regional areas where their presence was particularly high (for example, Lombardia, Piemonte, Tuscany and Apulia). Specific agreement with regions and municipalities had been covering apprenticeship, internship, information, guidance and employment support services, training of Roma cultural mediators, with the support of employers' and workers' organizations and of local associations representing the Roma community. A similar methodology was followed in relation to actions supporting Roma minors, for whom it was decided to activate host/assistance interventions including the help of cultural mediators, with the aim of promoting minors positive insertion and guidance at school, trying to limit school abandonment and to prevent minor dispersion (a phenomenon which was particularly evident in the municipalities of Rome, Milan and Naples).

A further measure of intervention concerned the issue of health protection for the implementation of a full equality in foreigners' access to public health services, enabling them to meet not only the necessity for disease treatment, but also the need for prevention and assistance to pregnancy, childbirth, growth of children, old age and for all the diseases arising from socially disadvantaged conditions. These were the reasons which led to the signing, together with the National Institute for Health, Migration and Poverty, of an agreement for a total amount of €2 million concerning the implementation of actions supporting the access of migrant population to health and care services and to disease prevention, paying particular attention to pregnant women and minors, with the support of cultural mediators to be employed in Italian ASL (local sanitary agencies) once appropriately trained through the organization of specific courses.

Additional financial resources could be allocated to the implementation of actions supporting the integration of Roma and Sinti communities and the fight against racism and xenophobia within the EU funds, both in the framework of the new Structural Funds Planning for 2007–13, and within the European Fund for the integration of nationals of third countries, which was created under the general programme "Solidarity and Migration Flows Management".

As part of the efforts for the definition of a national strategy on Roma issues, the 2009–11 Program Document, currently in progress, specified those actions and interventions on immigration and integration which the Italian Government decided to carry out for the next three years. A special section of this document was devoted to the planning of actions supporting Roma and Sinti communities, promoting and defining a new approach to the issue of Roma and Sinti which, consistently with the goals and actions of the European Union, would be based on interventions enhancing social inclusion, on the concept of equal rights/duties for autochthonous and immigrants and on the consolidation both of the reception of migrants, and the acceptance of "diversity" in all processes of integration in every area. In addition to this, there was a strong focus on policies fighting both the exploitation of migrants and the racist and xenophobic discrimination. These policies would be based on surveys and monitoring interventions and would develop through campaigns for the promotion of equal opportunities at schools, in the labour market and in the field of lodgings.

In addition, the Italian Government's communication included extensive information concerning relations with Romania for joint action for social inclusion of Roma and Sinti, measures taken to promote Roma children schooling, as well as information on specific training for police officers and carabinieri on human rights in relations with the Roma community.

In addition, before the Committee, **a Government representative** expressed disappointment at the decision to include his country on the list of individual cases for examination by the Committee, although he believed that it could be an occasion to clarify certain points that had

been raised unfairly. He indicated that Italy was proud to be a member of the ILO and would engage with its usual spirit of collaboration in support of the ILO's fundamental objectives. He added that his country had the best record of ratifications of ILO Conventions and noted that, of the 23 countries that had ratified Convention No. 143, Italy was the only one that was confronted with massive immigration.

He indicated that he could not accept the simplification of a very complex issue inherent in the comments of the Committee of Experts, which had referred to what appeared to be "a climate of intolerance, violence and discrimination of the immigrant population" in his country. He added that over the past decade his country had experienced a significant increase in the number of non-European Union citizens living and working on its territory. Following the completion of the regularization programme and the establishment of entry quotas, the foreign population in Italy was around 4 million, representing 6 per cent of the national population.

He recalled that the promotion and protection of human rights was set forth in the Italian Constitution, which envisaged protection of all the rights and fundamental freedoms set out in the relevant international instruments. The principle of non-discrimination was one of the main pillars of the constitutional order, upon which the domestic legislative system was based. Italian law contained a wide range of criminal, civil and administrative provisions to combat racism and discrimination. The stigmatization of certain ethnic or social groups remained a matter of serious concern for the authorities at all levels, and all political forces had firmly condemned all recent attacks against specific groups. He acknowledged that racism was a real problem of global dimensions affecting many countries and indicated that action continued to be taken to combat it using all types of tools, including legislation, communication, education and social policies.

He noted that his Government had provided written information to the Committee and had made many efforts to improve inter-cultural and inter-religious dialogue adopting various initiatives to improve understanding between the various faiths. One of these initiatives was the Observatory on Religious Policies, which worked with the Ministry of the Interior with the aim of evaluating the complexity of religious phenomena by examining the real situation of cults other than the Catholic majority. In so doing, it was providing useful elements to resolve the problems that were identified. Another such body was the Council for Islam, an advisory body established in 2005 to promote fruitful dialogue between the State and the national Islamic community. It prepared studies and put forward opinions and proposals to the Minister of the Interior. Its aims were to promote institutional dialogue with Muslim communities in Italy and improve knowledge of problems relating to integration with a view to identifying the most appropriate solutions.

With regard to political rights, and particularly the right to vote of migrants, he emphasized that the participation of immigrants in democratic processes, policy formulation and integration measures, especially at the local level, was essential for their effective inclusion in society. Although the right of migrants to vote in national political elections was not envisaged, they could do so in local elections. He indicated that many municipalities had instituted extra posts of city councillors, for which foreign nationals in the area stood for election, thereby representing the views of foreign communities. A council had also been established in 1998 to address the problems of foreign immigrants and their families. The purpose of the council was to obtain advice from the agencies and groups that were most active in helping in the integration of immigrants and to examine the complex issues related to the situation of foreign immigrants.

With reference to equality of social rights, he indicated that the latest measures adopted included access to public housing, for which the residence criteria were normally set between five and ten years, which served to limit the access to such benefits to those who were well-rooted on the national territory. This approach had been endorsed by the Constitutional Court and was based on the intention of granting benefits only to foreign nationals who were permanently resident on the national territory. Other benefits, such as the overtime bonus for families, retirees and persons who were not self-sufficient, under the terms of Legislative Decree No. 185/2005, were granted to anyone who lived in the territory, regardless of the length of residence. In addition, the national law provided that retirement benefits could be exported even in the absence of international agreements of reciprocity. Foreign nationals who were engaged in regular work in the country were entitled to the same retirement benefits as Italian workers, with the payment of contributions to the National Social Insurance Institute (INPS). Persons who had worked regularly in Italy retained the rights and social security entitlements that they had acquired, and could benefit from those rights even in the absence of reciprocity agreements with the country of origin.

With reference to access to public employment, he indicated that Italian citizenship was required for access to the civil service, although more recent legislative decrees had established that European Union citizens could have access to jobs in government which did not involve the direct or indirect exercise of official powers and were unrelated to the protection of the national interest. In relation to the salaries earned by foreign workers, he noted that legal migrants working in Italy were fully protected and benefited from equal rights with Italian workers. However, those who were engaged in the black economy were not protected as they were not officially employed. The issue raised concerning lower salaries for migrant workers could be explained by the nature of the jobs available to them, which tended to be low-skilled. He indicated that the issues of the black economy and occupational safety had been high on the political agenda for some years. Labour inspections had increased in numbers as the Government had provided the necessary financial resources and appointed new inspectors. Particular attention was paid to certain sectors, such as agriculture and construction, in which the risks of exploitation and undeclared economy were the greatest.

Turning to the question of introducing the crime of illegal immigration and, in the case of expulsion, the possibility for migrants to defend their rights, he indicated that the so-called "security reform" had not yet entered into force as the necessary legislation was still before the Senate. The original initiative announced in early 2008 had been modified frequently during parliamentary discussions. Section 6 of the Bill currently provided that a foreign national who entered or stayed in the country, in violation of the provisions of the law, was liable to a penalty of between €5,000 and €10,000, although, as in all criminal procedures, they were afforded all the guarantees provided for by the Constitution. He recalled in this respect that other European countries had established the crime of illegal immigration.

In view of the general trend noted in the country to reject migrants, an institutional communication campaign on the social integration of immigrants had been launched by the Ministry of Labour with a view to increasing awareness of the fundamental principles of the Constitution, workers' rights, the rules governing immigration and the opportunities for social inclusion and access to public services. The campaign was now being carried out in more cities than originally planned and a specific agreement had been concluded with public service broadcasters for a series of television and radio initiatives to support the dissemination of information with a view to facilitat-

ing the integration of foreign nationals. A users' guide to integration had been published and updated, and translated into eight languages.

The need to combat all manifestations of racism and intolerance on the Internet was being addressed by the Office for the Promotion of Equality of Treatment and the Elimination of Discrimination based on Race and Ethnic Origin (UNAR). It was possible to find information and denounce discriminatory and racist materials through the UNAR web page.

He emphasized that his Government attached the greatest importance to the integration of Roma communities. A bilateral summit had been organized in October 2008 between Italy and Romania to create direct contacts with the competent Romanian administrative departments, exchange good practices and start the formulation of medium-term projects. The Ministry of Education was implementing policies for the integration of Roma into Italian schools, in cooperation with several local institutions. A Protocol developed in earlier decades had been renewed in 2005, and Protocols had been concluded by various local institutions and organizations representing the Roma and Sinti. Cultural mediators in schools were now playing a key role in several areas, such as schooling, information, orientation, linguistic services and cooperation with the social services.

Finally, he indicated that for some time courses had been provided to the Italian police forces on human rights and related issues. The training curricula for police of all ranks included elements on human rights law and courses covered a wide range of topics, including vulnerable groups and minorities, the social categories most exposed to discrimination and exploitation by criminal groups. This formed part of general training measures intended to prepare the security forces to deal with vulnerable groups.

In conclusion, he observed that migration was the most difficult challenge of globalization. It could not be managed without strong cooperation between receiving and sending countries. He hoped that the efforts that were being made by his country to address the situation of migrant workers in a positive manner would be taken into account in the Committee's conclusions.

The Employer members, requesting that the detailed and comprehensive information provided by the Government be compiled into a report for consideration by the Committee of Experts, recalled that Convention No. 143 had been adopted 34 years previously, when migration flows had been significantly smaller. Its two objectives were to address illegal immigration and protect legal immigrants. Even with the best laws, regulations and intent, implementation of the Convention faced considerable practical difficulties, particularly in view of emotional responses to immigration in all countries, which were heightened in times of difficulty, such as the current economic crisis, and tended to result in higher levels of xenophobia and racism. The Committee of Experts should bear this in mind and restrict its examination of such cases to consideration of law and practice.

The statement made by the Government representative showed clearly that Italy had a sophisticated legal, regulatory and administrative structure for implementing Convention No. 143 and that its framework was coherent and sensitive to equal treatment issues. Information received also demonstrated that the Government had a strategy on the subject and was working on the problem in conjunction with the social partners, taking full account of concerns regarding racist and xenophobic propaganda and allocating substantial funds to integration of migrants. The Government had also shown itself responsive to concerns raised in various quarters, and the Employer members expected the Government to give priority to the issues raised by the Committee of Experts in its observation.

The Worker members acknowledged that the global economic crisis could give rise to an upsurge of xenophobia in all countries, not only in Italy. In the present economic situation, migrants were often considered as the primary responsible. Thus, it was the duty of public authorities to expressly pursue a policy to promote tolerance, integration, equality of opportunity, and respect for rights, and to combat discrimination and xenophobe patterns of behaviour.

In 1975, Convention No. 143 had constituted the first attempt of the international community to address the issues raised by illegal migration and illicit employment. The Convention had complemented the existing instruments concerning discrimination through the introduction of the principle of non-discrimination on the basis of nationality, by stating in Article 1, that the protection provided by the Convention applied to "all migrant workers", regardless of their status. This meant that any policy to combat illegal employment had to respect, without any restriction whatsoever, the fundamental rights of the workers concerned.

Apart from Italy, solely 22 countries had ratified Convention No. 143, of which only a few European countries. The Committee of Experts had highlighted the following serious issues of non-observance of the Convention in Italy: various manifestations of xenophobia, denial of rights and ill-treatment of the Roma. Under Article 10 of the Convention, every ratifying State undertook "to declare and pursue a national policy designed to promote and to guarantee … equality of opportunity and treatment", and Article 12 encouraged member States to promote and implement an equality policy. The Worker members deplored that the Government had taken the opposite course of action. Various initiatives of Italian public authorities called into question the fundamental rights of migrants, in particular the Roma and Sinti. Thanks to the pressure exercised by society as well as the European and international community, a number of those initiatives, such as the proposal to take the fingerprints of all Roma including children, had been brought to a halt.

In its recent report, the Commissioner for Human Rights of the Council of Europe requested the Government of Italy to ensure that legislative action could not be construed as facilitating or encouraging the "objectionable stigmatisation" of Roma, Sinti or immigrants, and recommended that the independence of the national Office for the Promotion of Equality of Treatment and the Elimination of Discrimination based on Race and Ethnic Origin (UNAR) be strengthened.

The Worker members pointed at two recent legislative initiatives. Firstly, the penal sanctions against illegal immigrants had been reinforced, in keeping with an unfortunately widespread tendency that had been stimulated by European Union initiatives against illicit employment adopted within the framework of the "Frattini package". The illegal migrant workers were the main victims of those initiatives, although they were not to be blamed for the illegal practices of certain employers. The second initiative concerned the "Security Reform" that was being discussed at the Senate but had already been adopted by the Chamber, and contained new infringements of the rights of migrants.

In the Worker members' view, it was an extremely disturbing picture of the situation of migrants in Italy that emerged from the abovementioned elements. This was aggravated by the tendency to oppose natives and non-natives both at local and national level, and by the lack of clear political will to combat discrimination and inequality. The Worker members requested the Government to put an end to the climate of xenophobia and racism; to combat direct and indirect discrimination against migrants; to review its recent legislative initiatives; to apply Articles 10 and 12 of the Convention; to establish a truly independent national institute for the fight against dis-

crimination; to take the necessary measures to assist victims in the enforcement of their rights; and to effectively punish discrimination and all forms of racism.

The Government member of Portugal, also speaking on behalf of the Government member of Spain, stated that they condemned any act of violence against human rights, as well as any situation of intolerance or discrimination that arose in any country against migrants, including illegal immigrants.

With regard to Italy, she stated that special attention should be paid to the efforts the country had made to tackle and overcome immigration problems within its territory, both through legislative measures and by creating relevant administrative and consultative bodies. Furthermore, it was important for the Conference Committee to consider the social tensions occurring in Italy as a result of mass arrivals of undocumented immigrants, both by land and by sea, a climate which the Italian Government should do everything possible to avoid. Taking all this into account, it did not seem reasonable that Italy had been invited to appear before the Committee side by side with other States where human and social rights were violated.

To conclude, the speaker underlined the fact that only 23 countries had ratified Convention No. 143, adopted in 1975, and that Portugal was one of them. She added, however, that despite the fact that Portugal also had a large number of immigrants from Africa, Brazil and Eastern Europe, it had not faced such serious problems to date as those currently experienced in Italy.

The Worker member of Italy, echoing calls for further ratifications of Convention No. 143, recalled that, in 1981, when Italy had become one of the few countries to ratify the Convention, it had still been more of a sending country of migrants than a receiving one, since many of its citizens had moved abroad in search of better living conditions. He underlined that Italy was a democratic country with laws providing for the protection of fundamental human rights, which, however, were not always automatically translated into reality or fully enjoyed by citizens.

He stated that the right to religious freedom, while respected on paper, had met with interference at local level, where controversies had arisen over the construction of mosques and praying in public. Voting rights, including the right to administrative voting, were only accorded to Italian citizens. With regard to access to citizenship, the "Security Reform" before Parliament would extend the required term of legal domicile in Italy after celebration of marriage from six months to two years. Citizenship on grounds of residence could only be applied for after ten years and was difficult and costly to obtain. Act No. 125 of 2008 called into question the essential civil principle of equality before the law, as it amended section 61 of the Criminal Code by introducing the circumstance of "general aggravation", if a crime was committed while the culprit was staying illegally within Italian territory.

With regard to the abolition of discrimination, the fundamental duties of the Office for the UNAR of the Ministry of Equal Opportunities included reporting and fighting direct discrimination generated by individual and collective behaviour, but did not include combating indirect discrimination and removing legislative provisions incompatible with Convention No. 143 or the Italian Constitution.

National laws were not free from discrimination in respect of foreign citizens: access to public employment was denied to non-Italian citizens; social security provision was not uniform; foreign diplomas were often not recognized in Italy; and the enjoyment of certain allowances was expressly denied to non-Italians. In addition, there existed de facto discriminatory practices, for example with regard to wage levels among non-Italians and local regulations governing the use of certain social services, which were frequently restricted to persons with ten years' residence in Italy.

The speaker added that Italy remained one of the European countries with the highest incidence of occupational accidents and diseases, and statistics showed that accidents were increasing disproportionately among migrant workers, who were often employed in irregular circumstances in the heaviest and most hazardous jobs and did not receive sufficient information on safety and health provisions. The Italian General Confederation of Labour (CGIL), the Italian Confederation of Trade Unions (CISL) and the Italian Labour Union (UIL) had repeatedly reported that the UNAR's actions were inadequate for an institution supposedly independent from the Government, in charge of guaranteeing the full enforcement of non-discrimination rules and rejecting practices, including in the public sector, that were incompatible with those rules. The Commission for Human Rights of the Council of Europe had echoed this view in a report published in 2009.

With regard to Article 8 of the Convention, equal treatment of migrant workers losing their jobs was not guaranteed. They could continue to hold residence permits for only six months, while unemployment benefits for dismissed Italian workers were paid for eight to 12 months and other benefits for up to one year. In May 2009, the Ministry of the Interior had instructed Prefects to restrictively implement the current law, which provided for residence permits of at least six months for dismissed or unemployed legal migrants, thereby obstructing provisions agreed between local authorities and the social partners, to allow residence permits to be extended for up to one year, in view of the global economic crisis.

In relation to Article 9 of the Convention, irregular migrant workers were not currently guaranteed compensation for their labour, much less social security benefits. Many such workers who had reported violations in this regard by their employers had been expelled from the country and were thus deprived of the opportunity to take legal action. Section 11 of Act No. 189 of 2002 ("the Bossi-Fini Act") provided for up to three years' detention for employing irregular workers, but very few employers had been reported and even fewer convicted. If Decree Law C.1280 were approved and illegal migration made a criminal offence, it would be possible to expel illegal migrants without their cases being reviewed by a magistrate; approval by a justice of the peace would suffice. Expulsion would ensure that the possibility to claim rights before a competent authority would remain merely theoretical.

The speaker stated that, in 2006, the Government, in response to union lobbying, had extended the application of section 18 of the Unified Text of Legislative Decree No. 286 of 25 July 1998 on immigration to include serious cases of exploitation at work. Proven cases of serious exploitation reported by victims and verified by the authorities could now give rise to the grant of a residence permit for humanitarian reasons and to a protected process of integration. However, the rule was very restrictive and had not affected the proliferation of cases of forced labour, which was now very common in agriculture, home care and the construction sector. Lastly, the Government did not guarantee travel costs in the event of expulsion. Migrants who did not comply with expulsion orders could be arrested and sentenced to up to four years' detention.

He considered that Articles 10 and 12 of Convention No. 143 were systematically disregarded, and public thinking was tending against immigration, irregular or otherwise. The use of words such as "illegal migrant" and "criminal" and the criminalization of entire ethnic groups were part of a campaign started in the political sphere and exacerbated by the media that generated intolerance towards all foreigners, with serious consequences in terms of individual or collective acts of racism and xenophobia.

Several measures against migrants had been adopted by municipal authorities, and the public was susceptible to the idea that respect for fundamental human rights could be overlooked, for example in rejecting boat-people arriving from North Africa, who were denied the prospect of political asylum. A recent report by Amnesty International had raised many concerns about this policy, which resulted from cooperation with the Government of the Libyan Arab Jamahiriya and was characterized by little transparency and lack of conditions imposed on the Libyan Government in terms of human rights. The Commissioner for Human Rights of the Council of Europe had also expressed disapproval regarding the forced return of irregular migrants to countries that did not guarantee full respect for human rights. The continuing flow of boat-people across the Mediterranean Sea proved that the agreements to deter irregular migration were not effective. Finally, the speaker stated that, in fact, many administrative and legislative provisions, which intended to tackle irregular immigration, threatened to affect the victims of trafficking and exploitation more than the perpetrators.

The speaker stated that the provisions of the "Security Reform" awaiting approval seemed to confirm the intention to create a separate body of laws penalizing migrants, in particular irregular migrants, with serious consequences in terms of violations of human and civil rights. Criminalizing illegal immigration would turn what was now a misdemeanour into a criminal offence. This could have a knock-on effect on the behaviour of civil servants, who would be in breach of section 328 of the Criminal Code if they failed to report an "illegal" migrant. Even though the original provisions of the "Security Reform" allowing physicians and school head teachers to report irregular migrants they encountered in the course of their work, had been withdrawn, it might not prevent persecutory attitudes against patients and pupils, especially as criminalizing illegal immigration would result in the same provisions being implemented by civil servants. Media coverage had already caused many irregular migrants to avoid contact with the public health-care system. The situation not only constituted a grave violation of article 32 of the Constitution and section 2 of the Unified Text of Legislative Decree No. 286, but threatened the welfare of migrants and society as a whole.

Turning to the issue of Roma and Sinti populations, he indicated that no specific instruments had been passed in that regard but that orders had been issued granting extraordinary powers to the Prefects of Milan, Rome and Naples to demolish unauthorized gipsy camps. While fingerprinting minor nomads had been abandoned following opposition, including from the European Union, individual data collection had brooked strong criticism. Of particular concern was the emergency-like approach to the issue by the authorities, despite the fact that there had been Roma and Sinti in Italy for six centuries, a large majority of whom had become integrated. What the country lacked was a well-defined integration policy on housing, schooling and employment, as underlined by the Commissioner for Human Rights of the Council of Europe.

The speaker asserted that the issue of Roma people (and, by extension, Romanians) was being used to stir up public opinion and encourage violent behaviour. Mistreatment of and violence against Roma, Sinti and migrants, including some serious attacks, were occurring with increasing frequency, and there had even been an attack on the office of the International Organization for Migration in Rome. Laws awaiting approval contained two provisions specifically relating to Roma and Sinti populations: one introducing stricter rules to combat the use of minors for begging, and one that made the grant of resident status conditional on proper housing conditions, which could hardly be satisfied by people living in camps.

In conclusion, he considered that, although Italy's laws enshrined important principles concerning respect for human rights and the value of individuals, regardless of origin, race or religious belief, they also included discriminatory provisions that should be removed. Remarkable delays were seen with respect to the full and effective application of the principle of equality for all. In this context, the economic crisis and poisoned political climate did not help. Unfortunately, the bodies established to safeguard equality and promote harmonious coexistence, such as the Ministry of Equal Opportunities, had proved insufficiently independent and ineffective.

The presence of more than 800,000 irregular migrants in Italy and public perception of the Government's inability to handle the situation, exacerbated by the economic crisis, had provoked increased exclusion and hostility, prompting 27 civil society organizations to launch a national campaign against racism and xenophobia. In this regard, the speaker indicated that the report by the European Network Against Racism contained important recommendations. However, the Government's decision to stop immigration flows for 2009 and to enact draconian measures on migrants' living conditions, would not only compromise the fight against irregular immigration, but would also worsen the existing climate of conflict and misunderstanding within the civil community.

The Worker member of Senegal indicated that the issues of non-observance of Convention No. 143, as raised by the Committee of Experts, echoed the findings of a report drawn up by Amnesty International concerning the violations of the rights of migrants and asylum seekers. The above report denounced in particular the forced expulsion of illegal migrants or asylum seekers to their country of origin, regardless of the Geneva Convention relating to the Status of Refugees and the European Convention on Human Rights. These violations recalled the warning issued by the Commissioner for Human Rights of the Council of Europe against bilateral or multilateral agreements relating to the forced return of illegal migrants to certain countries. Italy, which at the time of ratification of Convention No. 143 had been a country of emigration, had received in the meantime 1,510,000 immigrant workers who contributed to 10 per cent of its GDP. The speaker stressed that the country needed to take concrete measures to guarantee that all those migrant workers, regardless of their status, be treated with dignity, and that their rights be respected just like the rights of other workers. The Conference Committee should therefore urge the Italian Government to take all necessary steps for achieving this goal.

The Worker member of the United States supported the remarks and recommendations made by the Workers' spokesperson. He wished to add that recent societal trends coupled with a struggling economy, had moved the public away from tolerance of immigrants. To make matters worse, and notwithstanding the ratification by Italy of Convention No. 143 in 1981, some elected officials, bent on political gain, had attempted to irresponsibly capitalize on that trend. He qualified this as contrary to the requirements of Article 12(d) to repeal any statutory provisions and modify any administrative instructions or practices which were inconsistent with the policy for equality of opportunity and treatment of regular migrant workers; and also of Article 12(b) to enact such legislation and promote such educational programmes as to secure the acceptance and observance of that policy.

With a particular emphasis on the Roma of Romania, the speaker referred to the Committee of Experts' condemnation of the aggressive and discriminatory rhetoric used by political leaders explicitly associating the Roma to criminality, thus creating an overall environment of hostility, antagonism and stigmatization among the general public. He stressed that, while the political climate had changed, the issue of immigration had not. As re-

ported by the Worker member of Italy, the presence of the Roma in Italy dated back to the fifteenth century, but the Government had not yet adopted a comprehensive plan for Roma integration. On the contrary, the scarce resources were mostly aimed at relocating "gypsy camps" far from towns, thus confirming an approach oriented more on perceived security needs rather than human rights improvement.

He stated that, instead of acting as a conduit for change, the Government's ineffective and futile attempts to protect the immigrant population had created divisions and ill will towards its immigrants. He shared the deep concern of the Committee of Experts at the increasing climate of intolerance, violence and discrimination against the immigrant population. Reprehensible acts against immigrants included hate speech, ill treatment, threats, attacks, beatings, arson, throwing of stones and overturning cars.

Lastly, the speaker endorsed the position of the Committee of Experts expressing the hope that the Government would act quickly to ensure the effective protection in law and in practice of the basic human rights of all migrant workers. He cautioned that, without corrective action, the situation would negatively impact on the basic level of protection of the human and labour rights and the living and working conditions of immigrants.

The Worker member of France observed that Article 1 of Convention No. 143 required the States which had ratified this instrument to respect the fundamental rights of all migrant workers including, therefore, those who were not in regular situation. Even if the Committee of Experts had not yet elaborated much on the concept of fundamental rights of migrant workers, migrant workers had to enjoy the same rights as other workers in so far as their status permitted it. The principle contained in Article 1 of Convention No. 143 conformed to the UN Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. At the European level, the declaration which had been adopted at the end of the Intergovernmental Conference in 2000 and integrated in the Treaty of Lisbon, which was in the course of ratification, formally recognized the unity and indivisibility of all human rights – social, economic, civil, political or cultural. Therefore, for the 27 Member States of the EU, the scope of rights provided for in Article 1 of Convention No. 143 implied a very large application to irregular migrant workers. Following a completely opposite direction, the Italian Government had chosen the path of ostracism as regards migrant workers, in a climate of worrying intolerance, that had been abused in the past when people had revelled in stigmatizing these workers and had even made them partially responsible for the world economic and financial crisis. He expressed the hope that Italy and other EU member States adopted a policy of tolerance, solidarity and social cohesion with a view to overcoming the economic crisis and ensuring decent work for all. He also hoped that the supervision of the application of ILO Conventions Nos 143 and 97, and other relevant international Conventions would provide a good opportunity to take stock of the state of health of democracy in the countries that had ratified them.

The Employer member of Italy recalled that Convention No. 143 had very ambitious and important aims, namely to regulate migration flows, to combat illegal migration and to promote equality of opportunity and treatment for all migrant workers regardless of status. Italy was among the 23 countries that had ratified the Convention. The speaker welcomed the detailed information supplied by the Government, which once again demonstrated its strong commitment to the principles of the Convention.

Migration had become a key feature in a globalized world, and in the last 15 years, the number of immigrants had risen significantly, which had entailed the need for adjustments in society, and in particular in the labour market to address the challenges of integration and equality. She believed that Italy's advanced and detailed legal framework provided protection to migrants going well beyond international standards and EU provisions. Moreover, the well developed collective bargaining system enabled the conclusion of collective agreements addressing issues essential to migrant workers such as training, housing, food needs and leave. In her view, the abovementioned signs of a positive integration of migrant workers in Italian companies were confirmed by an increase in the number of migrant workers becoming union representatives.

The speaker stressed, however, that migration could also lead to illegal situations. Employment of illegal migrant workers created unfair competition for the vast majority of enterprises respecting the law and led to losses in tax and social security revenues. At the same time, illegal migrant workers were more vulnerable to become victims of abuse and exploitation. She expressed her firm opposition to any form of abuse or exploitation of migrant workers, considering that this humanitarian aspect of the issue had to be dealt with on a priority basis. She indicated that the existing legislative framework provided for inspections and sanctions for illegal employment, and that employers collaborated with the Government in line with Convention No. 143, which recognized the specific role of the social partners. The employers engaged, often together with the unions, in projects to tackle undeclared work and promote social inclusion of migrants, and paid special attention to migrant workers in training sessions on occupational safety and health.

In view of the above, the speaker felt that the comments of the Committee of Experts did not accurately reflect the reality of Italian companies and the situation in the country. The complex phenomenon of illegal migration could only be tackled through broad policies and international cooperation. While the protection of human rights of migrant workers irrespective of their status should be enforced, this needed to go hand in hand with efforts to put in place efficient and flexible channels for legal migration flows, to coordinate with the migrants' countries of origin, to fight against organized crime and to repatriate illegal migrants while respecting their legitimate rights. She considered that a comprehensive and balanced strategy for Italy to face the challenges of migration was crucial, as the country represented one of the main entry points into Europe.

The Government representative of Italy took due note of the observations made before the Conference Committee and thanked the Government members of Portugal and Spain, as well as the Employer members for expressing their solidarity and underlining the EU dimension of the issue of migration. In his view, the written and oral information provided by his Government had adequately addressed most of the points raised during the discussion. The Government pledged to supply further information to the Committee of Experts by 1 September 2009. With regard to the remarks of the Worker members concerning the Security Package, he reiterated that the text only represented a draft bill and had not yet been approved. As to the supposed climate of xenophobia, violence and discrimination in Italy, the speaker rejected those comments as a groundless simplification of the situation in his country.

The Employer members identified one area of common agreement with the Worker members, namely that the problem of migration was not limited to Italy but rather existed in all European countries to different degrees according to the migration influx. The Employer members believed that this fact needed to be appreciated and the difficulties recognized.

In their view, there were two ways to evaluate the situation. While for the Worker members the glass was half empty, for the Employer members the glass was more than half full. Expectations that compliance with Conven-

tion No. 143 would put an end to xenophobia in a country with substantial migration flows were deemed illusory.

The Employer members considered that the comments of the Committee of Experts relating to the present case were mainly based on the findings of other international bodies. The relevant observation lacked an appraisal by the Committee of Experts of the tangible facts. They believed that the discussion before this Committee had provided sufficient information for the Committee of Experts to undertake the much needed concrete assessment of Italy's implementation of the Convention.

The Worker members noted the various initiatives which the Government had indicated to have taken in accordance with Convention No. 143, and also noted the statements made by the Governments of Portugal and Spain in this context. They deplored, however, that in reality, the situation in the field deteriorated, that central or local public authorities took measures which led to reducing the rights of migrant workers, and that as part of the suppression of illegal employment, their fundamental human rights had been attacked – rights which Article 1 of the Convention intended to guarantee for all migrant workers, whether in a regular or irregular situation.

They requested the Government to do everything in its power to end the climate of xenophobia, to combat direct or indirect discrimination of which migrant workers were victims, and to review the recent legislative initiatives, in particular the "Security Reform" and the proposed amendments to the Criminal Code aimed at combating illegal employment.

The Worker members requested, as the Employer members, that the Committee of Experts conducted an in-depth and detailed analysis of the legal provisions and practice in Italy on this matter, in order to evaluate which measures respected fundamental rights of migrant workers – including those who were in irregular situations – and were in conformity with Articles 10 and 12 of the Convention. They recommended that the Government should ensure that the national institute to fight against discrimination and inequality would be truly independent, and to take the necessary measures so that migrant workers who were victims of violations of their rights could receive full compensation.

In 2004, a general discussion at the Conference had been devoted to the situation of migrant workers and had been oriented towards an approach based on full and complete recognition of migrant workers' rights. The Worker members concluded that, in the context of Convention No. 143, it was these rights, especially the fundamental rights of migrant workers – including those who were irregular – which had to be the reference point of national policies on this matter.

Conclusions

The Committee took note of the comprehensive written and oral information supplied by the Government and of the discussion that followed.

The Committee noted that the Committee of Experts' observation, while having noted the Government's affirmation to protect and respect the rights of migrant workers and the measures taken to promote equality, had expressed concern regarding reports indicating an apparent high incidence of discrimination and violations of human rights, particularly of undocumented workers coming from Africa, Eastern Europe and Asia, and immigrants of Roma origin.

The Committee noted the information provided by the Government on the national legal framework, the practical measures taken and administrative bodies established to protect human rights, combat racism and discrimination against migrant workers and to promote their equality of opportunity and treatment in the labour market. The Committee also noted the measures taken or envisaged to promote the social and employment integration of immigrants and Roma and Sinti communities. The Government had also indicated its serious concern regarding the stigmatization of certain ethnic and immigrant communities.

With respect to the protection of the basic human rights of irregular migrant workers, the Committee acknowledged that the phenomenon of irregular migration was a complex and global issue. The Committee noted the particular challenges faced by Italy in addressing the rapid increase in immigration flows and in protecting the basic human rights of migrant workers. The Committee noted that the Government was taking certain measures, including through enhanced labour inspection, aimed at combating illegal employment and irregular migration of migrant workers, while at the same time improving compliance with the laws and regulations concerning conditions of work and strengthening assistance measures. Furthermore, the Committee took note of recently proposed legislative initiatives, in particular the so-called Security Reform, targeting irregular migration and the illegal employment of migrants.

In light of the above, the Committee noted that the global financial crisis had created additional challenges for governments when addressing issues of irregular migration and equality between migrant workers and nationals in the labour market. It had provoked a rise in racism and tensions between different groups in Italy and elsewhere. Considering that these were issues of a global nature, and in the case of Italy, of a particularly European nature, the Committee believed that the hosting of a forum on these matters, with the assistance of the ILO, should be given due consideration.

The Committee encouraged the Government to strengthen its efforts to promote tolerance and respect between all groups of society. With regard to migrant workers lawfully in the country, the Committee requested the Government to ensure full respect for the equality of opportunity and treatment of these workers with nationals, and to pursue its efforts, in cooperation with the social partners, to promote and ensure the observance of a national policy in this regard. The Government should take additional measures to ensure the effective protection of migrant workers against direct and indirect discrimination, in accordance with Articles 10 and 12 of the Convention, and to review its law and practice in this regard. The Committee further asked the Government to undertake a detailed analysis of the recent amendments to the Penal Code concerning irregular immigration and of the recent legislative initiatives proposed in the context of the Security Reform with a view to ensuring their compliance with the Convention. Measures should also be taken to ensure that irregular migrant workers were able to enjoy their basic human rights, in accordance with Article 1 of the Convention.

The Committee further expressed the firm hope that the full application of Convention No. 143 would be ensured, both in law and in practice, to all migrant workers, including those in an irregular situation. The Committee requested the Government to include in its report on the application of the Convention when it was next due, full information on all the matters raised by this Committee and in the comments of the Committee of Experts to allow an in-depth analysis of the application of the Convention in law and in practice.

Another Government representative of Italy thanked the Committee for the useful discussion and appreciated the opportunity that had been provided to explain the situation and the manner in which legislative and other measures in the country were addressing the very important problems involved. The discussion had also provided an opportunity to extend the debate beyond her country to the situation of other nations, particularly in the European Union, that were also faced by significant immigration.

Convention No. 169: Indigenous and Tribal Peoples, 1989

PERU (ratification: 1994)

A Government representative, Minister of Labour and Employment Promotion, referring to the observations con-

tained in the 2008 report of the Committee of Experts on the application of Convention No. 169, beginning with Article 1, said that Peru had ratified the Convention on the assumption that there was compatibility between its provisions and the concept or legal definition of "peasant-farmer or native community", which was the term used in Peru's Constitution and legislation. Nevertheless, the Congress of the Republic had prepared a draft Act entitled "Framework Act on indigenous or original peoples of Peru" which included the peasant farmer and native communities in question, as well as isolated indigenous groups, defining the term "indigenous or original peoples" with an exact transcript of Article 1 of Convention No. 169.

With regard to the second observation of the Committee of Experts, regarding Articles 2 and 33 of the Convention, he recalled that the Government had established a range of institutions to administer programmes affecting the people concerned. He stated that, in 2005, Act No. 28495 had created the National Institute of Andean, Amazonian and Afro-Peruvian Peoples (INDEPA) as a participatory body, with its own administration and budget, mandated to propose policies and programmes for indigenous peoples' development. As it had only recently been established and its competences would require a certain amount of consolidation, the speaker indicated that the Government would request technical support from the ILO subregional office for the Andean Countries for institutional strengthening of INDEPA.

He underlined that Peru was making progress towards decentralization and transferring powers to regional and local levels of government through policies of dialogue, promotion and capacity-building for public and private bodies to benefit Andean, Amazonian, Afro-Peruvian and Asiatic Peruvian peoples, as evidenced by the Organic Municipalities Act No. 27972 of May 2003, that established coordinating councils, whose members included representatives of native people located in the relevant jurisdictions, and created participatory control mechanisms. In that regard, he also noted that various acts had provided for affirmative action concerning the political rights of indigenous peoples, stipulating, for example, that at least 15 per cent of candidates on electoral lists for municipal and regional assemblies should be drawn from indigenous peoples.

In order to resolve complaints from indigenous Amazonian populations and create a space for dialogue with their representatives – which were the subject of the third observation of the Committee of Experts concerning Articles 2, 6, 15 and 33 of the Convention – various legislative decrees specifically mentioned in the Committee's report had been repealed and a Multisectoral Committee had been established on 20 April 2009, to deal with matters relating to the proposals made by the Inter-Ethnic Association for the Development of the Peruvian Rainforest (AIDESEP) regarding repeal of various legislative decrees, a measure which had already received preliminary approval in Congress.

In addition, local coordinating councils had been created and other consultation mechanisms were in place to encourage public participation and include peasant-farmer or native communities in processes affecting the environment, in accordance with the consultation procedures set out in Article 6 of Convention No. 169. However, despite new legislation, the speaker said that it was necessary to establish standards to apply across the country and in all sectors in order to guarantee the right to participation and consultation at all levels of government, standards which he hoped Congress would approve shortly. In that regard, attention should be drawn to the plan for citizens' participation, intended to involve communities on an organized basis in public monitoring and vigilance programmes with regard to the social and environmental impacts of implementing projects affecting the exploitation of natural resources when they threatened the members, institutions, property, work, cultures and environment of the peoples concerned. In this respect, he cited the cases of the Río Blanco project in the Piura region and the exploration of the Condohuain hills to exploit their mineral deposits.

Lastly, the Government representative referred to the events of the previous weekend in the Bagua area of the Cajamarca region. Although the events and those responsible for them were being investigated, he stated that, in the Government's view, the protests and demonstrations had resulted from the action of uncontrolled groups that, twisting the complaints of native communities, had attempted to disrupt oil pumping and endanger gas piping facilities, which would have had serious consequences for millions of Peruvians. However, he concluded by saying that he regretted the outcome and that the Government remained open to dialogue.

The Employer members thanked the Minister of Labour and Employment Promotion of Peru for personally attending the Committee's session and for the information provided. They noted that it was the twentieth anniversary of the adoption of Convention No. 169, but that it was only the fifth time that the application of this Convention had been discussed in this Committee. The Employer members highlighted the importance of this discussion for Peru and for the other 19 countries that had ratified the Convention, as well as for the region generally. It was the first examination of the application of Convention No. 169 by Peru in this Committee, though the Committee of Experts had already made eight observations since the ratification of this Convention by Peru in 1994. The Committee of Experts continued to regret the Government's failure to provide the information requested. In addition, the Government had not responded to the communications submitted by the workers' organizations. The Employer members noted the problems the Government had encountered. They understood that a 60-day state of emergency had been declared in May 2009 in areas of the Amazon and that there had been recently a confrontation in Bagua. They stated that there appeared to be a very sensitive situation on the ground, but highlighted that the purpose of the Committee was to review the application of the Convention with reference to the Committee of Experts' report.

The Employer members acknowledged that there existed practical difficulties in the application of the Convention in Peru. They noted that the Government's obligation, among others, to establish appropriate and effective mechanisms for the consultation and participation of indigenous and tribal peoples regarding matters affecting them, was a cornerstone of Convention No. 169. The Convention provided that consultation and participation of indigenous and tribal peoples was an essential element in ensuring equity and guaranteeing social peace through inclusion and social dialogue. However, even if there was some degree of general participation in Peru and ad hoc consultations on certain measures, the Committee of Experts had considered it insufficient to meet the Convention's requirements. The Employer members noted that there remained concern and confusion about the legislative criteria identifying the Peruvian peoples covered by the Convention, and that without such criteria the difficulties in its application in practice would persist. The Committee of Experts had requested the Government to clearly define the coverage, in consultation with the representative institutions of the indigenous peoples, and to ensure that all peoples referred to in Article 1 of the Convention were covered. However, the Employer members considered that, in terms of the Convention, the coverage was open to interpretation, since neither "indigenous" nor "tribal" peoples were defined in the instrument. In this regard, they encouraged the Government to consider the definitions provided in the ILO thesaurus when respond-

ing to the Committee of Experts. They also highlighted that, without resolving the problems of coverage, there would continue to be problems of application of Articles 2 and 33 of the Convention. The Government should clearly address why some peoples remained not covered and provide the rationale so that this information could be considered by the Committee of Experts.

The Employer members further noted the problems of application of Articles 6 and 17 (consultation and legislation). Here again, they highlighted the obvious linkage with Article 1, because the Committee of Experts had urged the Government to take steps, with the participation of the indigenous peoples, to establish appropriate consultation and participation mechanisms and to consult the indigenous peoples before adopting measures. Regarding the problems of application of Articles 2, 6, 7, 15 and 33 of the Convention, the Committee of Experts had referred to numerous serious situations of conflict, to which the Government had not responded. The Employer members were not in a position to examine the legislative information provided by the Government to this Committee, but encouraged the Government to provide the information to the Committee of Experts on an annual basis and to consider a plan of action to address the application problems with clear reference to what was happening on the ground and to identify urgent situations connected with the exploitation of natural resources, which could endanger the persons, institutions, property, work, culture and environment of the peoples concerned. The Employer members considered that this was a serious case of non-reporting and it also appeared that the Convention had not been fully implemented. They wanted the Government to take immediate positive steps to provide the Committee of Experts with the information they were seeking, so that a proper assessment of the issues could take place.

The Worker members noted that Peru had ratified Convention No. 169 in 1994. The Committee of Experts had commented on the application of this Convention in 2006 and 2008, but the Government had never been called before the Conference Committee on this matter.

They recalled the particular context of this discussion. Following a violent conflict in the northern part of the country, Bagua, in connection with the suppression of an action led for a few days by 30,000 people, which had caused 33 deaths on 5 June 2009, marches in solidarity with the peoples of Peru had taken place in many countries in support of indigenous movements. In addition, the Government's action had been firmly condemned by the Inter-American Commission on Human Rights and the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous and Tribal Peoples who had called on the Government to avoid in the future any forms of violence and to apply or adopt measures to protect the rights and fundamental freedoms of the indigenous and tribal peoples. The Worker members recalled that the Committee of Experts had already highlighted in 2008, various situations of grave conflicts attributable to an escalation of the exploitation of natural resources in the territories traditionally inhabited by indigenous peoples.

They underlined the legislative problems arising from this case. As other Andean countries, Peru had a population in which Indian communities remained important. These communities, however, were isolated from power and were not consulted when rights, which concerned them were at issue. In addition, even though Peru had formally recognized in its Constitution its multi-ethnic and multi-cultural character, there was a real gap in action between the legislature and the executive. Four decrees, among which was Decree No. 1090, derogated from the laws providing for restrictions on social order at the mining of raw materials which had prompted the Inter-American Commission on Human Rights to recall the role of the judiciary in the settlement of disputes and compensation of damages caused to the indigenous and tribal peoples. Legislative Decree No. 1090 of 28 June 2008, known as the Forestry Law, had modified the Forestry Law of 2000 in view of adapting it to the Free Trade Agreement signed with the United States. This decree had been suspended recently by the Congress of Peru for 90 days. The conclusions of the Conference Committee would therefore be of high importance.

The Worker members then turned to the detailed analysis of the situation of the indigenous peoples of Peru undertaken in the report of the Committee of Experts. One of great difficulties, the source of legal insecurity and of abuse, was the question of the definition in the Peruvian legislation of the peoples to whom the Convention had to apply. The legal notion of "indigenous peoples" was not defined in the Constitution and several terms were utilized to refer to indigenous peoples, thus creating a certain and detrimental ambiguity. The Committee of Experts had several times asked the Government, in vain, to establish, in consultation with the representative organizations of indigenous peoples, unified criteria for the peoples who might be covered by the Convention.

As part of the application of both Articles 2 and 33 of the Convention, the Government had to establish institutions or other mechanisms, provided with necessary means to accomplish their functions, in order to administer programmes involving the peoples concerned. The Worker members stated that the creation in 2005 of the INDEPA as a participatory organization with administrative and budgetary autonomy granted had not seemed to have generated the desired guarantees. The diversity in the representation within the organization prompted the imposition of decisions of the State and the INDEPA had not had real power. Therefore, the Worker members stressed the request of the Committee of Experts for the Government to create, with the participation of the indigenous peoples, truly effective institutions.

To conclude, the Worker members regretted that the Government had made very few efforts to implement the Convention and to resolve, through consultation with the peoples concerned, the numerous situations of grave conflicts, attributable to an escalation of the exploitation of natural resources in the territories traditionally inhabited by indigenous peoples.

The Government member of Colombia thanked the Minister of Labour and Employment Promotion of Peru for the information provided to the Committee. He stated that the Government of Colombia recognized the Government's will for dialogue and encouraged the social actors to reinforce such dialogue and to use it as an efficient means to achieve a better understanding and to reach agreements. Finally, the speaker invited the ILO to consider favourably the Government's request for technical assistance.

The Worker member of Peru stated that the non-observance of the Convention by the Government had serious consequences for the indigenous peoples of her country. The current situation offered a disheartening image of violence. On Friday 5 June, the police had resorted to violent action against protests carried out for two months by the communities located in the Bagua locality, Amazonas Department. The protests of the indigenous communities were aimed at demanding the repeal of legislative decrees which had been issued by the Government without previous consultation and stripped the communities of their legitimate rights to water and land, laws which flagrantly violated Convention No. 169 ratified by Peru. The armed intervention to resolve the indigenous strike had led to the death of at least 30 indigenous persons and 23 members of the police force.

Over 49 to 55 million hectares of the Amazon had been subjected to concessions. Thus, 72 per cent of the territory had been given away by the Government for the exploration and exploitation of hydrocarbon, contrary to Brazil

which had conceded only 13 per cent, or Ecuador which had given 11 per cent. In fact, no account had been taken of the firm conviction of the indigenous peoples of Peru who underlined the need for an integrated development. The deforestation of huge expansions of woodland, the contamination of the rivers with lead and other heavy metals, produced through irresponsible mining and oil extraction, were consequences which affected not only Peru, but also harmed entire nations and humanity as a whole. For example, only between 2006 and 2009, 48 oil spills had been caused between the sites 8 and 1AB of Pluspetrol, contaminating the Tigres and Corrientes rivers, harming 34 indigenous communities. According to the reports of the Ministry of Health, 98 per cent of girls and boys in these communities surpassed the limits of toxic metals in their blood. While the Government was called upon to give explanations for the non-observance of Convention No. 169, in Peru a national day of combat was taking place in order to protest against the events which had taken place and to demand from the Government the guarantee of all the rights of the indigenous communities.

A solidarity front had been created, composed of indigenous trade union and community organizations, in order to demand the respect of the 1,400 indigenous communities of the Peruvian Amazon and its 65 ethnic groups. The Committee of Experts had on eight occasions issued reports relative to Convention No. 169 and had exhorted the Government to bring law and practice into line with the obligations flowing from this Convention. The CGTP, indigenous, rural and human rights organizations had presented to that Committee additional comments in 2008. Nevertheless, the Government had not complied with any of these observations. The violation of the right to prior consultation had led to an expression of concern by the Committee of Experts in their latest report. Ten years after the first issuing of various reports by the ILO on the issue of prior consultation, to the extent that it affected indigenous peoples, questions relative to the non-compliance with this requirement continued to be raised. The Convention contained a series of rights which in their totality guaranteed the life and development of the indigenous communities. One of these rights was the prior consultation with respect to decisions which affected them. It was a fundamental right of major historical and political significance. Since its recognition, governments were obliged to respect the right of the indigenous peoples to determine their type and pace of cultural, political, social and economic development.

The social and political crisis which was being currently experienced in the country was a major concern. The previous day, the United Nations Special Rapporteur on Indigenous Peoples had appealed to the Government in order to adopt all necessary additional measures to protect the human rights and fundamental freedoms of those affected. The Government in its public interventions ridiculed the indigenous peoples' struggle, the defence of the indigenous territories and the sustainable exploitation of resources, thus ignoring the global debate on the measures undertaken to ensure that future generations could live on the planet. All countries in the framework of the United Nations considered that this was a fundamental issue. Among the most important measures adopted by the United Nations General Assembly was the designation of the Special Rapporteur on the situation of human rights and fundamental liberties of the indigenous peoples. Moreover, the Permanent Forum on Indigenous Questions had been established. Later on, the Declaration on the Rights of Indigenous Peoples had been adopted, with the active support of Peru to the adoption of this instrument.

Despite the statements of the Government at the international level on the adoption of these mechanisms and the support given to them, its policies defended and promoted the enrichment of the few at the expense of the rights of the ancestral settlers and its activities were developed without caring about the harmful consequences to the environment. The workers of Peru demanded from the Government to maintain genuine social dialogue aimed at solutions to overcome this profound crisis. They rejected the accusations that the President had proffered against the indigenous peoples, trade unions and popular leaders, treating them as terrorists who were opposed to the country's progress. They were convinced that the fundamental postulate of the ILO Constitution, to which the Peruvian State had also been committed, was irreplaceable and indispensable: universal and lasting peace could only be based on social justice.

In view of the particularly grave situation of the indigenous peoples, she requested that a high-level mission be sent as quickly as possible to evaluate the serious situation of non-observance of Convention No. 169 and to urge the Government to protect the life of the members of the indigenous communities; guarantee the full exercise of the rights of indigenous peoples; repeal the controversial legislative decrees; lift the state of emergency and the curfew in the Amazon forest; and apply urgent measures to safeguard the institutions, persons, goods, culture, work and environment of the indigenous peoples. Finally, it was necessary to reinforce the capacity of the ILO Office in Lima in order to meet the needs of follow-up and technical support of the social partners for the application of Convention No. 169.

An observer representing the World Federation of Trade Unions (WFTU), highly valued the concern of the Committee of Experts regarding the Government's failure to comply with Convention No. 169 and stated that the Committee of Experts had conducted its monitoring with great professionalism. The issues faced by indigenous populations were not new to Peruvian people; based on the information communicated by the President of the General Confederation of Workers of Peru (CGTP), it could be concluded that the Government had systematically contravened Convention No. 169. He referred to a crime of lese-humanity against indigenous peoples in the Amazonia, in the north of Peru, which he said should be viewed in the proper political context; it had not been circumstantial, but a result of the neoliberal policies that the current Government continued to apply, regardless of the devastating consequences for Peru and other Latin American countries.

One objective of those national policies, besides destroying the trade union movement, had been the privatization of strategic enterprises and natural resources in order to hand them over to transnational companies. Within the country, more than 90 per cent of public enterprises had been sold off between 1990 and 2000. The Amazonia, full of natural riches, was considered to be one of the planet's lungs, but those transnational companies, far from protecting the region, polluted it and exploited its riches – oil, timber and biodiversity – on a large scale, and such exploitation needed government complicity. Convention No. 169 provided salvation from the outrage and abuse against native communities in the Amazonia; it also protected the environment and the life of those communities, as there seemed to be no limit to the voracity of the transnational companies and the complicity of neoliberal governments.

The speaker said that the Government had no intention of complying with Convention No. 169, despite repeated calls to do so by the Committee of Experts, and had made use of the "delegated authority" it had by way of parliamentary majority, headed by the ruling party and its allies. This authority was used in order to pass a package of legislative decrees, including some related to the sale of land in the Amazonia region; however, the indigenous communities living in that region responded with complaints to national and international authorities. The CGTP took on the battle. Such legislative decrees were

unconstitutional and represented a violation of Convention No. 169, as no consultation had been held with the affected Amazonian communities, who demanded the immediate repeal of those decrees. That repeal would have allowed the initiation of dialogue within the framework of the consultation provided for in the Convention, but, in a display of authoritarianism, the Government refused the repeal. Prior to that intransigence, the indigenous communities that were affected had begun demonstrations and, after receiving no response, declared a general strike in the region of Bagua-Jaen. After 55 days, the Government, rather than withdrawing the decrees, resorted to armed violence, by means of heavily armed repression forces; helicopters were employed using machine guns against the people, leading to the killings that had recently shocked both the Peruvian people and the international community. Those responsible were the Executive Branch and the Parliament, both of which, if they had employed the political will to do so, could have resolved the issue and prevented the deaths of dozens of indigenous persons and police officers. These killings were not the first of the current Government; hundreds of political prisoners had been killed and many peasants murdered when it had first taken office between 1985 and 1990. In that regard, the speaker indicated that the report of the Commission on Truth and Reconciliation should be read. He regretted that the Government, in taking office for a second time, had employed the same methods, to the extent that it had criminalized the trade union and social demonstrators, and used firearms against the protesters. During the three years that the current Government had been in office, there had been more than 27 deaths of workers and peasants due to action by repressive armed forces.

He requested the ILO to send a high-level mission to Peru in order to facilitate: ending immediately the repression of indigenous communities; repealing the legislative decrees in question; initiating dialogue with the affected communities within the framework of the consultation provided for in the Convention; ending immediately the state of emergency and suspending the Constitutional guarantees decreed by the Government; and trying and sentencing as many of the perpetrators of the killings as possible. Crimes of lese-humanity could neither be forgotten nor forgiven.

Following the request for two points of order, **the Chairperson** reminded the Committee that, in the interest of the discussion, it should respect the parliamentary decorum that had governed the Committee since 1926. He urged speakers to keep to the observation by the Committee of Experts that was the subject of the discussion.

The Employer member of Peru said that the timely questions on the observations made by the Committee of Experts in relation to Convention No. 169, which was ratified by Legislative Resolution No. 26,253 of 2 February 1994, had formed the subject of a comment by the spokesperson of the Employers' group, but, given that recent issues not referred to in the relevant footnote had also been covered, it was pertinent to state the following: the legal order of a country was founded on two indispensable pillars. The first was the "rule of law"; nobody could be above the law. The second was the "division of powers". Each state authority had its own powers, functions and competences. ILO standards formed part of Peruvian law, under article 55 of the Constitution, and, as such, should be observed. The fact that, for reasons of urgency, it had not proved possible to observe or comply with a particular principle in no way justified criminal actions, given that appropriate channels existed to be used in such circumstances.

Legislative Decree No. 1090, which consolidated procedures for peasant farmer and indigenous communities in the mountains and jungle and those applicable to coastal communities in order to improve agricultural production and competitiveness, had been issued as a result of the "delegated authority" of the Executive Branch by Congress through Act No. 29157, for the purpose of legislating on various matters relating to the application of the United States-Peru Trade Promotion Agreement. As this Act had been challenged by Supreme Decree No. 031–2009 PCM of 20 May 2009, a multisectoral committee had been established to deal with issues related to Amazonian peoples on a permanent basis. It had been agreed to analyse the content of the legislative decree point by point. Despite this agreement, the leaders of indigenous communities later changed their position from revising the act to asking for its immediate repeal, giving rise to acts of violent confrontation and thereby departing from the legal channels provided for in the law, given that an act could only be repealed or amended by another act.

In his capacity as representative of the National Confederation of Private Business Associations (CONFIEP), as well as the National Society of Industries and the Chamber of Commerce of Lima, the speaker read out a statement by Peruvian entrepreneurs energetically condemning the acts of violence that had occurred in recent days and expressing condolences for the losses of police members and of civil population. They supported the Government for the measures it had taken to re-establish the principle of authority and public safety, with strict respect for rights and, in particular, the national police and armed forces, which had acted in full exercise of the authority vested in them by the Constitution.

They called upon the public not to let itself be manipulated by groups seeking to create chaos and urged the population to stay calm, to report acts of violence and respect democracy, institutions and the law. A call was made to regional and local authorities, together with entrepreneurs in all regions of the country to work together in order to find mechanisms for cooperation and dialogue that would better respond to public aspirations.

Lastly, the speaker reiterated the commitment of employers to sustainable development in Peru. Work would continue on a national agenda that, setting aside individual and short-term interests, would build a prosperous country with its own identity and social peace.

The Government member of Denmark, also speaking on behalf of Norway, recalled that the Government was a party to ILO Convention No. 169 and supported the United Nations Declaration on the Rights of Indigenous Peoples, which called for the full respect of indigenous peoples' rights, the rights related to their traditional lands, territories and resources and to their free, prior and informed consent. With reference to the violent events that occurred in Bagua starting on 5 June 2009, she expressed deep concern and support for the statements issued on 5 June 2009 by the Chairperson of the United Nations Permanent Forum on Indigenous Issues and of the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples on 10 June 2009. She stressed that it was important that all parties abstained from violence and conveyed her deepest condolences to all victims and their families.

According to the information received, the mobilization of indigenous peoples in the Amazon region was in response to a set of legislative decrees that facilitated concessions for extraction industries in the area. These decrees were enacted without adequate consultation and respect for the right of indigenous peoples to free, prior and informed consent. Due to the severity of the situation, she called upon the Government to establish a comprehensive dialogue, through appropriate mechanisms, between the Government and indigenous peoples' organizations in accordance with Articles 2, 6, 15, 17 and 33 of Convention No. 169, and the UN Declaration and to undertake an independent and impartial investigation of the incidents in Bagua with the participation of the Ombudsman and international agencies.

An observer representing the Public Services International (PSI), said that, within the framework of the signing of the Free Trade Agreement, which Peru had concluded with the Government of the United States, the Congress of the Republic had in December 2007 delegated the authority to legislate on various matters related to the implementation of the United States–Peru Trade Promotion Agreement and on measures to improve economic competitiveness. The Government was legislating through legislative and supreme decrees that were in violation of not only the Political Constitution of the State of Peru but also of ILO Convention No. 169. In July 2007, the Government had adopted supreme decrees criminalizing peaceful movements, freedom of expression, freedom of association and basic human rights. At the same time, it had authorized the national police and armed forces to shoot and kill in the alleged fulfilment of their duties to maintain order. It should be pointed out that these supreme decrees were not authorized by the Congress of the Republic and that, as a result of their application, 13 leaders were being tried for international terrorism. In June 2008, the Government had adopted 103 legislative decrees. Two of these authoritarian laws amended the current regime for legal proceedings, essentially weakening the basic principles of the administration of justice such as the rule of law and the right to defence; but the most serious thing, and that which had led to social upheaval and the killing of indigenous people, was the infringement of ILO Convention No. 169, because the recognition of indigenous peoples as subjects in law who should perpetuate and reproduce their culture within their respective territories, without exclusion, discrimination or interference, had been violated; the right of the indigenous peoples to live freely on their lands and territories maintaining their collectively held property over these territories for their future generations and enjoying special protection so that their living space was not lost or degraded and so that they could use their resources, had been violated.

The speaker emphasized the violation of the right to consultation and participation in the adoption of the law and the removal of the indigenous participation in the Executive Council of INDEPA which had become exclusively a state institution and not one of concertation with the indigenous peoples as provided for in its founding act. She also indicated that the context behind these authoritative legal texts was the privatization of the forests destined to production and that these forests, just like the Andean and peasant communities, were located in indigenous territories.

She stated that the Government had argued that these legal texts were aimed at improving certain aspects related to the implementation of the Trade Promotion Agreement with the United States. Such an argument had been refuted by the spokesperson of the Environmental Investigation Agency, Andrea Jonson, who had expressed his concern with regard to both the content and the process which had led to the approval of the new law, the lack of consultations with the indigenous peoples and the lack of transparency on the part of the Government which was unacceptable in a country which considered itself to be a democracy. The party which endangered the Free Trade Agreement was the Government itself and not the indigenous peoples or the citizens who exercised the right to protest.

The speaker gave a series of data concerning the indigenous communities. According to the latest census of the indigenous and Amazonian communities, 1,786 indigenous communities existed, of which 1,183 had property titles and 603 had been registered in public registries; 65 ethnic groups existed of which 45 were located in the Peruvian forest; more than 300 languages existed. Sixty per cent of the territory was in the Amazon, 13 languages or dialects and 14 peoples or segments of peoples existed; these were isolated and concentrated in the border zone with Brazil. Sixty-six million hectares were tropical forest. International organizations recognized the special tie that the indigenous peoples maintained with their territory, culture and life. These indigenous communities occupied their territories since before the creation of the Peruvian State itself; despite this, the current policy of the Government tended to ignore the indigenous peoples, raised repeatedly and publicly questions concerning their existence, doubted the validity of their common territories and promoted the sale of these lands, indicating that the only possibility for development was that these lands be managed by large companies. As a result, more than 70 per cent of the Amazon was covered by oil sites and mining concessions, concentrated in the Andean region of the country, in particular, in the regions where a large number of rural communities existed.

The speaker then presented the chronology of the attacks against peasants, the indigenous peoples and environmentalists. She referred to the confrontation between the indigenous peoples and the army in which two protesters died in September 2007. She indicated that in a referendum carried out in the districts of Ayabaca and Huancab 90 per cent of the 31,000 voters had rejected the mining project Rio Blanco which the China Majaz company wanted to implement; contrary to the principle of free determination of the peoples enshrined in Convention No. 169, the Government had tried to impose the project and in order to achieve this, it had accused as terrorists 28 Peruvians including municipal officials, environmentalists and NGOs.

In March 2008, when 97 per cent of those voting also rejected in a referendum carried out in the region of Loreto Iquitos the privatization policy of the Government, they were attacked by police forces and two indigenous persons died while 52 others had been arrested and were still in prison.

The speaker considered nevertheless, that the worst was the presence of the paramilitary group COMANDO CANELA, which infiltrated peaceful movements and promoted violence. This group was composed by a large number of police assigned to the intelligence according to Executive Decision No. 2718–2008. Three peasants had died as a result of its action during the agrarian strike in Barranca and Ayacucho on 18 and 19 February 2008.

Finally, the speaker requested the dispatch of a high-level ILO mission to Peru considering that this case touched upon humanitarian questions since the indigenous persons, after being wounded and left without defence, were being transported to the army barracks in order to prosecute them under criminal charges of terrorism and were unable to assume the costs necessary to ensure an appropriate defence. She also referred to the state of vulnerability of the indigenous persons and the extreme violence on behalf of the Government.

The Worker member of the United Kingdom expressed grave concern regarding the events in the previous week in Bagua. These events followed two months of peaceful protest by the indigenous peoples of Peru and supporters, against legislation pushed through by the Government in breach of Convention No. 169, which provided for the right to proper consultation with indigenous peoples. Convention No. 169 allowed for the recognition of the rights of indigenous peoples to live without exclusion or discrimination, to live freely in their lands and territories, and to maintain collective property for future generations. It provided special protection to prevent loss of livelihood and the benefit of the use of the resources. However, Peru had in the previous year adopted laws to enable communal land to be disposed of more easily. This was not only in violation of the Constitutional rights of participation and consultation of rural and native communities, but also in breach of the fundamental rights recognized by the Peruvian Constitution.

For decades, natural resources had been exploited ruthlessly without participation or consultation with the people who occupied those lands; Peru's mining and oil policy contained no guarantees of participation for its indigenous peoples. Millions of hectares of oil and gas deposits had been tapped, millions of hectares of virgin forest had been assigned for reforestation, all without reference to the peoples who were guaranteed rights under Convention No. 169. This had also been done without reference to the right of fair compensation for damages to territories, while the benefits of this exploitation accrued to the State institutions and corporations involved. Instead of promoting a national agrarian programme which guaranteed a sufficient area of land for indigenous communities, and protected the cultural and ethnic plurality of the Peruvian nation as required by Convention No. 169, the Government had instead promoted the dissolution of communities and the advancement and profit of individual producers.

Referring to the Committee of Experts' report, she pointed out that the Peruvian Constitution was contradictory and vague, failing to make explicit which of its people were entitled to claim the guarantees of the Convention. Instead of the term "indigenous peoples", the Peruvian Constitution employed the terms "native community" and "rural communities", which were vestiges of the colonial past and sowed confusion as to the scope of the existing legal protections.

It was no surprise that Peru did not reply to the Committee of Experts or bring its laws into compliance with the latter's requests; previous criticisms of labour practices had also not been brought into conformity, and the failure to act on the breaches of Convention No. 169 followed the same pattern. The Government's current policy tended to deny the existence of indigenous peoples and their rights. President Garcia had publicly questioned the validity of communal lands and stated that the only way to guarantee development was to leave it to major companies and multinationals. He also refused the demands of indigenous organizations and environmentalists, claiming that they were motivated only by anti-capitalist or protectionist ideology and were opposed to development in Peru. The President was opposed to the recognition of isolated indigenous peoples, having stated that such groups were a mere invention, in spite of their recognition by many institutions and organizations, such as the Peruvian Ombudsman, the Ministry of Health, the Inter-American Commission of Human Rights and others.

More than 70 per cent of the Peruvian Amazon was now open to private profit, with giant oil and gas companies such as the Anglo-French company Perenco, the North American company Conco Phillips, and Talisman Energy having invested billions of US dollars into extracting natural resources from this region. For decades, indigenous peoples had watched as these industries devastated the rainforest that was their home, as well as a vital treasure to mankind. It was the duty of this Committee to respond with strong and clear determination to this flagrant breach of Convention No. 169 and the consequent suffering of peoples who had sought to defend their rights by opposing the terrible and terrifying destruction of these lands.

The Employer member of Colombia indicated that the ILO should only refer to the matters that concerned it directly, namely, the world of work. The more general issues related to indigenous and tribal peoples pertained to the competence of other human rights organizations and various international treaties and, as such, would be addressed in the appropriate frameworks, for example, the inter-American system of human rights. Only the contents of Articles 20 and 25 of the Convention were related to labour matters. He referred to a draft law aimed at regulating the issue of indigenous peoples in the country and other issues in the appropriate forums with the support of the affected peoples. This draft law should be adopted rapidly. He also referred to INDEPA, in the sense that it had a large indigenous participation but was in the process of changing. The Regional Office of the ILO had offered its technical assistance. Discussion forums had been created in the Amazon forest and participation and consultation were taking place at the local level with the hydrocarbon sector for the exploration and exploitation of indigenous lands. The same applied to the energy and environment sectors.

He requested that the names of the enterprises concerned should not appear in the report of the Committee of Experts. While expressing his sadness for the acts of violence which had taken place lately, he echoed the Government's readiness to engage in social dialogue. Finally, he underlined the nature and scope of Article 34 of the Convention. It contained the element of flexibility with regard to the situation of each country. He also expressed his wish that sanctions be imposed on those responsible for the recent events.

The Government member of Uruguay, speaking on behalf of the Group of Latin American and the Caribbean States (GRULAC), highlighted the Peruvian Minister of Labour's statement in reference to the progress made to ensure the application of Convention No. 169, including the establishment of regional and local mechanisms for dialogue with the indigenous peoples, the creation of the National Institute for the Development of the Andean, Amazonian and Afro-Peruvian Peoples, and the mechanisms for dialogue contained in the legislation respecting extractive activities. He also emphasized the Peruvian Ministry of Labour's statement expressing the Government's firm political willingness to continue to dialogue with indigenous peoples to achieve consensus on matters that concerned them. He also appreciated Peru's recognition of the challenges it had to meet to achieve full implementation of the Convention. He requested the Office to provide the necessary technical assistance in accordance with the requests of the Government. He noted that several of the countries in the region had been called to appear before this Committee, despite the fact that they were countries which cooperated with the supervisory bodies and made efforts, on the national level, to fully respect labour rights. He expressed his concern at this situation being prolonged without interruption, to the detriment of the investigation by this Committee of other serious cases in other parts of the world. Lastly, he asked that the significant progress made by Peru in applying the Convention be taken into account in the Committee's conclusions.

The Worker member of Venezuela stated that the Government was under the obligation to recognize, respect and protect indigenous peoples, taking into account the provisions of its own national Constitution and the international treaties, including Convention No. 169, which had been ratified 15 years ago. There had been, however, a continued climate of hostility towards indigenous peoples, beginning with the first Government of the current President, followed by those of Fujimori and Toledo, and now once again in an even more exaggerated manner with the President's second mandate. This had been clearly demonstrated in subsequent legislative reforms intended to repress demonstrations of indigenous peoples, popular organizations, trade union leaders and peasants. All of this for the sake of restricting and suppressing their ability to defend themselves and thus denying the indigenous peoples' rights that had been recognized historically by the Peruvian people. She indicated that, in accordance with Article 3 of Convention No. 169, the Government was required to ensure that indigenous peoples enjoyed the full measure of human rights and fundamental freedoms without hindrance or discrimination. She also pointed out that no form of force or coercion could be used in violation of their human rights and fundamental freedoms.

What characterized the Peruvian model of development was that it was based mainly on the exploitation of its natural resources, which led to the destruction of the living conditions of indigenous peoples, without having considered the impact these policies had which caused outright deterioration. She emphasized the importance of considering the context in which these four decrees had been issued, which had led to the recent events qualified as genocide and state terrorism. The context was the Government's imposition of the Free Trade Agreement on the defeated Free Trade Area of the Americas, without consulting the Peruvian people, as had occurred to other European countries in relation to the Constitution of the European Union. She emphasized the importance of the ILO's role and supported the request made before the Committee for a high-level mission to attempt to put an end to the executions and violence, and called for the definite repeal of the four decrees that thwarted the rights of indigenous Peruvians.

A member of the United Nations Permanent Forum on Indigenous Issues thanked the ILO for the opportunity to address the Committee on the Application of Standards. With reference to the violent events that occurred in Bagua starting 5 June, he expressed his deep concern. He referred to the information provided by the Permanent Mission of Peru to the United Nations, and made available to the Permanent Forum. He also referred to a statement issued by the Chairperson of the Permanent Forum calling, inter alia, for a cessation of the violence by all parties, and expressed his deepest condolences to all the victims of the violence and their families.

The events of 5 June had followed a state of siege decreed by the Government on 8 May 2009, which was issued in response to the mobilization of indigenous peoples in the Amazon region against a series of legislative decrees that facilitated extractive industries' concessions in the area without adequate consultations and respect for the right of indigenous peoples to free, prior and informed consent. The Chairperson of the Permanent Forum had previously expressed her concern that the state of siege resulted in the suspension of personal liberties and political freedoms of the indigenous peoples in the Amazon region, the criminalization of indigenous leaders and human rights defenders and the increasing militarization of indigenous territories.

The speaker recalled that the Government was under the obligation to respect the human rights of indigenous peoples as a party to ILO Convention No. 169, as well as other relevant human rights instruments. Furthermore, Peru had led the negotiations on the United Nations Declaration on the Rights of Indigenous Peoples and was one of the countries which had actively supported its adoption, which called for the full respect of indigenous peoples' rights, including the rights to life, physical and mental integrity, liberty and security of person, as well as the rights related to their traditional lands, territories and resources and to their free, prior and informed consent as contained in Articles 26, 29 and 32.

Given the extreme gravity of the situation and the urgent need to avoid any recurrence, he called on the Government to: work with indigenous peoples with a view to establishing a genuine and respectful dialogue between the Government and indigenous peoples' organizations; establish as a matter of urgency an independent and impartial investigation of the incidents in Bagua with the participation of the Ombudsman and international agencies; ensure immediate and urgent medical attention to all those wounded, and assist the families of the victims; and abide by its national and international obligations regarding the protection of all human rights, including the rights of indigenous peoples and human rights defenders, especially their right to life and security.

Finally, the speaker expressed the willingness of the Permanent Forum to assist both the Government and the indigenous peoples concerned to explore ways to reach an agreement based on dialogue, mutual understanding, tolerance and respect for human rights. There existed an urgent need for the Government and affected indigenous peoples to make renewed, concerted efforts toward a resolution of the conflicts in the region in an open and transparent manner that facilitated dialogue, avoided violence and respected human rights.

The Government representative of Peru, Minister of Labour and Employment Promotion, after thanking the Committee for its interest, indicated that such interest should be accompanied by good faith action so that the Government could engage in dialogue with the respective communities. He took exception to some of the interventions, that he considered erroneous as they created wrong impressions.

With regard to the consultation to which various worker representatives had referred, and with reference to a recent web page depicting the ILO forcing his country to sit on the defendant's bench, the speaker made an appeal for social dialogue in good faith, which had always been a pillar of the ILO. Social dialogue presupposed the search for interlocutors who sought formulas of understanding for the common good of their countries.

As for the legislative developments, he indicated that Act No. 29376 had just been approved by the Congress of the Republic. According to that law, there was no deadline for the suspension of legislative decrees. On 24 March 2009 a permanent dialogue process had been created by decree, bringing together representatives of the Government and the indigenous peoples of the Peruvian Amazon. This demonstrated the great willingness to engage in dialogue with the indigenous communities. On 31 March 2009, a working commission had been established. All this, in addition to the Multisectoral Commission, clearly illustrated the reinforcement of the indigenous institutions, and proved the goodwill of the Government in line with social dialogue.

As for the legislative decrees, these were authorized by law, as the legislature was entitled to delegate the power to the executive. A Constitutional Court existed and could make a finding of nullity if the legal framework was exceeded. Legislative Decree No. 1090 was adopted in order to put into order diverse pieces of legislation. In this regard, it was important to underline that more than 1,250 communities received land through a programme. Some 240 communities did not benefit, however, as their documentation was destroyed in a fire. It was worth noting that forced labour and illegal logging existed in the Amazon: over 10 million hectares had been cleared due to a lack of regulation. In fact, a draft law for the adoption of a legislative framework was before Congress. It was not acceptable to ask for everything to be repealed and then engage in dialogue. Finally, the speaker added that when the Government came to power, the poverty rate exceeded 50 per cent of the population. That rate had fallen to 35.8 per cent and was expected to fall further to 30 per cent by 2010.

The Employer members stated that the present case was a serious case, comprising non-reporting and a lack of implementation of the Convention. Given that indigenous and tribal peoples often would be among the most disadvantaged in society, the Employer members urged the Minister to consider a plan of action to address the problems related to the application of Convention No. 169. They recalled that under Article 34 of Convention No. 169, "the nature and scope of the measures to be taken to give effect to this Convention [should] be determined in a flexible manner, having regard to the conditions characteristic of each country". They also urged the Government to take immediate and positive steps to provide the Committee of Experts with the information it required to properly assess the issues. With reference to the request from the Government for technical legislative

support, they stated that this should be recorded in the conclusions to ensure the provision of constructive support, especially with regard to the correct interpretation of Article 1 of Convention No. 169. A full explanation of the difficulties and concerns at the national level, involving the social partners, would help the Committee of Experts to suggest solutions for the correct application of Convention No. 169, addressing legislative and practical difficulties. The Employer members stated that they expected the conclusions to address the examination of Convention No. 169 and the comments of the Committee of Experts, and added that the Government had been asked by the Committee of Experts to reply in detail to the present comments in 2009.

The Worker members stressed that the statements of the various speakers had demonstrated the existence of a situation of extreme urgency. The murders that had been denounced were related to the subject covered by Convention No. 169. Freedom of expression as well as parliamentary language had to be respected. With regard to Legislative Decree No. 1090, which was suspended for 90 days, the time was limited because the Government had to amend the text in order to bring it into conformity with the requirements of the Convention, in particular, those provisions relating to consultation with indigenous peoples. Article 7 of the Convention established the right of participation of indigenous peoples in the development plans of the territories they inhabited. It also provided that the particular plans for these regions had to, as a matter of priority, improve the conditions of life. Convention No. 169 was not limited to labour law, as had been inaccurately stated. The Convention formed a whole and all its articles were within the competence of this Committee. In accordance with the suggestions made by many Governments and the UN Special Rapporteur, the Worker members requested that a high-level mission should be sent as soon as possible with a view to establishing the political and legal conditions that would guarantee the rights prescribed by the Convention to the indigenous peoples. The report of this mission had to be submitted to the Committee of Experts at its session in 2009, in order for it to determine the steps that had been, or still had to be, taken.

Conclusions

The Committee noted the statement of the Government representative and the discussion that followed. The Committee noted that the Committee of Experts had issued comments over a number of years, expressing concerns over the continuing problems in the application of the Convention in several areas, particularly with regard to the need to establish harmonized criteria for the identification of indigenous peoples (Article 1), the need to develop systematic and coordinated action to protect the rights of these peoples and to guarantee respect for their integrity (Articles 2 and 33), as well as the need to establish adequate mechanisms for consultation and participation, which were provided with the necessary means to carry out their functions, including with regard to the adoption of legislative measures and exploitation of natural resources (Articles 2, 6, 7, 15, 17(2) and 33). The Committee expressed its concern that the Government had repeatedly failed to provide replies to the specific requests for information made by the Committee of Experts.

The Committee noted the Government's indication that a draft framework law on indigenous peoples had been prepared, which, inter alia, defined "indigenous and aboriginal peoples" in terms of Article 1 of the Convention. With regard to Articles 2 and 33, the Government referred to the National Institute of Andean, Amazonian and Afro-Peruvian Peoples (INDEPA), which was established in 2005. With regard to Articles 6 and 17, the Government stated that Legislative Decrees Nos 1015 and 1073, regarding the conditions for the disposal of communal land, had been repealed by Act No. 2926 of 2008. Regarding consultation and participation, the Government had established a Roundtable for Permanent Dialogue between the State of Peru and the Indigenous Peoples of the Peruvian Amazon in March 2009, and in April 2009 the Government had put in place a multi-sectoral commission as another forum for dialogue to address the concerns of the indigenous peoples of the Amazon.

The Committee noted the Government's statement that a number of Legislative Decrees had been issued in 2008 relating to the exploitation of natural resources, including Legislative Decrees Nos 1064 and 1090, and that the divergence of views between the Government and the indigenous peoples concerned regarding these Decrees may not be resolved through the mechanisms of dialogue in place. The Government also informed the Committee of a subsequent mobilization of indigenous peoples and incidents in Bagua on 5 June 2009, which led to numerous deaths and injuries among indigenous peoples and the police.

The Committee expressed its grave concern regarding this violence and the resulting deaths and injuries, and urged all parties to abstain from violence. The Committee called on the Government to make further efforts to guarantee indigenous peoples' human rights and fundamental freedoms without discrimination, in accordance with its obligations under the Convention (Article 3). The Committee noted that the present situation in the country emerged in connection with the enactment of legislative decrees relating to the exploitation of natural resources on lands traditionally occupied by indigenous peoples. The Committee noted that the Committee of Experts, over a number of years, had commented on the enactment of legislation regarding these issues without consultation of the indigenous peoples concerned, which was contrary to the Convention.

The Committee welcomed the stated commitment of the Government to re-establish dialogue, and to put in place a coherent legislative framework addressing the rights and concerns of indigenous peoples. The Committee stressed that genuine dialogue must be based on respect for indigenous peoples' rights and integrity. The Committee welcomed the recent suspension of Legislative Decrees Nos 1064 and 1090 by Congress, and the establishment of a National Coordination Group for the development of indigenous peoples of the Amazon on 10 June 2009, in order to facilitate the search for solutions to the claims of indigenous peoples of the Amazon. The Committee called on the Government to make more efforts to ensure that no legislation regarding the exploration or exploitation of natural resources was being applied or enacted without prior consultation with the indigenous peoples affected by these measures, in full conformity with the requirements of the Convention.

The Committee stressed the Government's obligation to establish appropriate and effective mechanisms for consultation and participation of indigenous peoples, which was the cornerstone of the Convention. Indigenous peoples had the right to decide their own priorities and to participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly, as provided for in Article 7(1) of the Convention. This would remain an issue of concern if the bodies and mechanisms for consultation and participation of indigenous peoples had no real human and financial means, independence or influence on the relevant decision-making processes. In this regard, the Committee urged the Government to immediately establish a dialogue with indigenous peoples' representative institutions in a climate of mutual trust and respect, and called on the Government to establish dialogue mechanisms as required under the Convention, in order to ensure systematic and effective consultation and participation. In addition, the Committee called on the Government to remove the ambiguities in the legislation as to the identification of the peoples covered by it by virtue of Article 1, which was also a key aspect to be addressed in order to achieve sustainable progress in the application of the Convention.

The Committee urged the Government to take the measures necessary to bring national law and practice into line

with the Convention, without delay. The Committee requested the Government to elaborate a plan of action in this regard, in consultation with the representative institutions of indigenous peoples. The Committee welcomed the Government's request for technical assistance and considered that the ILO could make a valuable contribution in this regard, including through the ILO's Programme to Promote ILO Convention No. 169 (PRO169). The Committee requested the Government to provide complete information in its report under article 22 of the ILO Constitution in 2009 replying to all the issues raised in the Committee of Experts' observation, as well as the matters raised in the communications received by the Committee of Experts from the various workers' organizations, which were prepared in collaboration with organizations of indigenous peoples.

Finally, the Committee took note with interest of the information provided by the Government that an invitation had been extended to the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples to visit the country.

The Worker members, considering the seriousness of the case under examination, deeply regretted that the request for a high-level mission had not been accepted, despite the fact that the Government had invited the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples to visit the country.

Convention No. 182: Worst Forms of Child Labour, 1999

DEMOCRATIC REPUBLIC OF THE CONGO
(ratification: 2001)

A Government representative indicated that in the report of the Security Council of 10 November 2008 on children in armed conflict, the United Nations Secretary-General observed a reduction in the number of allegations of serious violence against children during the period of June 2007 to September 2008 in the district of Ituri, the Northern provinces and those of South Kivu and North Katanga. The Government undertook to put an end to the impunity of those responsible for violence against children, as shown by the legal measures adopted against the perpetrators of these crimes before the national, military and civil judicial authorities. It should be noted that the Government collaborated with the International Criminal Court in the framework of the prosecution of individuals for war crimes and in particular for the enlistment and conscription of children of less than 15 years. The Government considered that the agreements recently signed in Goma with the National Congress for the People's Defence (CNDP), the detention of Laurent Nkuda and the joint attacks carried out by the Armed Forces of the Democratic Republic of Congo (FARDC) and the *forces de défenses rwandaises* (FDR) against the Democratic Forces for the Liberation of Rwanda (FDLR) could also have positive consequences on the situation of children in the Democratic Republic of the Congo.

Additionally, informal mining had been considerably developed due to the deterioration of the socioeconomic situation and armed conflict. Many children worked in informal mines in various mining provinces of the Democratic Republic of the Congo (Eastern Kasai, Western Kasai, Katanga, Eastern Province, North and South Kivu). Concerning statistical information, the speaker referred to the information submitted by the Government as reflected in the Committee of Experts' report.

The Government was pleased to indicate the legislative and regulatory measures taken, namely the adoption of Act No. 09/001 of 10 January 2009 concerning the protection of children which reinforced their protection against all forms of violence. This Act was complemented by Decree No. 066 of 9 June 2000 on the demobilisation and reintegration of vulnerable groups present among the fighting forces as well as three Presidential Decrees concerning the creation of institutions in charge of the Disarmament, Demobilisation and Reintegration process (DDR).

At the institutional level, the national Committee on the fight against the worst forms of child labour existed since 2006 in order to elaborate a strategy and National Plan of Action on the fight against the worst forms (PNLP) and ensure the follow-up and evaluation of actions to help exploited children and victims of violence in collaboration with national and international NGOs and agencies of the United Nations system. This illustrated the commitment of the Government with regard to this matter. Provincial Committees on the fight against child labour had also been created.

At the policy level, a national plan of action on the fight against child labour was being elaborated with the support of the ILO. This was also the case with regard to the national employment and vocational training policy aimed at full employment and the improvement of the conditions of lives of parents. The speaker also referred to the elaboration and adoption of a plan of action against violence on children, and the implementation of a national plan of action for youth employment.

At the operational level, the FARDC had put an end to the systematic recruitment of children, in conformity with the army policy and the applicable international law rules. Since 2004, more than 31,000 children had been released from armed groups. Most of them had benefited from family reunification and social reintegration programmes with the support of many international organizations, including the ILO. The Office had in fact implemented two successive projects to prevent the recruitment of children and ensure the reintegration of children released from armed groups. At present, many projects by national and international organizations were being implemented and aimed at the prevention of child labour in mines and the reintegration into the educational system of children taken out of mines.

The speaker concluded by indicating that the two projects undertaken between 2003 and 2009 and which aimed at the prevention and reintegration of children taken out of armed conflict had been developed in the eastern part of the country and had achieved encouraging results. Furthermore, the Government had made a request to the Office to ensure cooperation essentially aimed at social sensitisation and mobilisation at all levels on the detrimental effects of child labour and its consequences, as well as the possible carrying out of investigations in order to obtain reliable statistical information which was currently lacking.

The Employer members stated that every year since 2006, the Committee of Experts had considered the Democratic Republic of the Congo's violations of Convention No. 182, which it had ratified in 2001. In 2007 and 2008, the CEACR had repeated the comments made in 2006. The case of the Democratic Republic of the Congo was marked by the armed hostilities prevailing since 1988 and the continuing civil war in some provinces. In its comments, the Committee of Experts had reported grave violations of all elements of Article 3 of Convention No. 182, including kidnapping of children, sale, slave-like treatment, and sexual exploitation, the forced recruitment of children to participate in armed conflicts; and hazardous child labour in mines.

As confirmed by the Government representative, the majority of the Committee of Experts' conclusions were based on the enquiries and reports of the UN Special Rapporteur and the UN Secretary-General, such as the 2007 report on the use of children in armed conflicts. The reports proved that in the last few years, several tens of thousands of children had been used in armed conflicts. The UN Secretary-General had further found that children, who were not part of the recruited troops and who

had been kidnapped and forcibly recruited, had often ended up between the fronts of government and other military groups and rebel groups. According to information noted by the Committee of Experts and further complementary information provided by the Government representative during this session, the Government had undertaken various efforts to improve the situation. These efforts were related to legislative measures such as the amendment of the Penal Code, an increase of penalties and an improvement in law enforcement. In July 2006, section 174, paragraph (j) had been inserted into the Penal Code. It provided for custodial sentences of between 10 and 20 years for kidnapping and sexual exploitation of children. The adoption of Law No. 06/18 would further pursue the same purpose. In addition, Legislative Decree No. 066 of 9 June 2000 was aimed at improving the reintegration and the demobilisation of child soldiers. Also, a penal provision against the use of children in mining had been inserted into the Labour Code. A ministerial decree of 2008 and the recently adopted 2009 Act for the Protection of Children against All Forms of Dangerous Activities prohibited dangerous activities of children below 18 years of age. The efforts would also concern the establishment of a national commission to combat the worst forms of child labour.

Further, as had been stated by the Government representative, the reports made reference to cooperation with the International Criminal Court in the prosecution of military leaders. Cooperation also existed with different international institutions and child relief organizations, like UNICEF.

It seemed as though an effective practical implementation of the legislative measures was still at least partly lacking, as confirmed by the Government representative. Concrete and recent information was, however, not available. In some areas of the country, in particular, Ituri and North and South Kivu, armed units were still forcibly recruiting children. According to the report of the UN Secretary-General, referred to by the Committee of Experts, children from refugee camps in bordering countries were forcibly recruited by armed groups. In particular, the reintegration of those children in forced labour and those who were forcibly recruited for armed conflicts progressed very slowly. An improvement could probably be seen in the commissions, which were also established on the provincial level, as had been described by the Government representative. It was, however, possible that the legal foundations for those measures were not yet sufficient. Equally it remained difficult to fully appreciate that progress, as up until now the Committee of Experts had not received a copy of the Legislative Decree No. 066 of 2000.

Therefore, urgent measures in all areas, especially for the creation of legal foundations and their implementation, were necessary. For violations of the Convention, effective penalties had to be imposed. Statistical data on the situation of children in the Democratic Republic of the Congo had to be collected, efficient programmes aimed at reintegrating children in the society had to be established and the psychological rehabilitation of children had to be supported. The Government's remark that reintegrating forcibly recruited children, especially young girls, and their registration was difficult, since those children had the wish to return discreetly to their families, might be correct. Nevertheless, the Government was required to remedy this situation through comprehensive awareness training. The education programme mentioned by the Government representative could be seen as one step in this direction.

Due to the country's partly still dramatic situation, it was apparent that it could not solve problems solely by itself. Comprehensive assistance of the international institutions, of the UN and the ILO, as mentioned in the report, was necessary. Since steps in the direction of a normalisation of children's lives in the country were indispensable for easing the general situation and for the process of democratization, this assistance had to be rendered expeditiously. The Employer members supported any urgent enquiries and requests the Committee of Experts would direct towards the Government and, especially in light of its statements in this session, asked the Government to increase its efforts to combat child labour and to provide comprehensive information on actual developments.

The Worker members stated that, in the Democratic Republic of the Congo, child labour did unfortunately exist, in almost all of its worst possible forms. Those practices were the consequence, both directly and indirectly, of the economic war waged by warlords and certain States in order to exploit the country's natural resources. In the context of a war that had been destroying the country for several years, as well as the additional financial crisis, no less than 80 per cent of the working population was currently unemployed, with the majority not in a position to send their children to school. Those factors provided the backdrop to the worst forms of child labour in the Democratic Republic of the Congo.

With regard to the forced recruitment of children to the armed forces or armed groups, the various reports of the United Nations Secretary-General on that issue indicated that the number of children recruited had fallen after 2006, owing to a number of factors. However, it should be noted that the number of children who were victims of those practices still remained very high, and recruitment had actually increased in some regions of the country or in neighbouring countries such as Rwanda and Uganda. The Government had taken some measures to end the impunity of the perpetrators of forced recruitment through pursuing some warlords, but many children were still forced to join armed groups and even the regular armed forces. Forced recruitment also led to other violations of the rights of children, including abductions and the selling and trafficking of children for sexual exploitation. The Committee of Experts considered that the Penal Code of the Democratic Republic of the Congo did not sufficiently penalize such practices. In its response, the Government made reference to new legislative provisions, but failed to provide copies of those provisions. The Government also failed to communicate statistics on the number of offences as well as the number of convictions.

Another worst form of child labour concerned children being forced by armed groups or rebels to work in artisanal mines in the regions of Katanga, East Kasai and South Kivu, primarily for the extraction of precious natural resources such as coltan and gold. The Government confirmed the observations made by the Confederation of Trade Unions of the Democratic Republic of the Congo and the United Nations Special Rapporteur. The problem did not exist at the level of legislation, which did, on that occasion, conform to the Convention; the primary concern was the ineffective implementation of the legislation. Programmes had been established to remove children from military or sexual exploitation, with the participation of several ministries, NGOs and international organizations such as UNICEF, the UNDP and the ILO. The programmes allowed around 30,000 children, between 2003 and 2006, to be released from the armed forces and armed groups. Half of those received assistance with reintegration, either through returning to school or through professional training programmes. The National Institute for Vocational Training, established by the ILO in Katanga, allowed 2,800 children, every six months, to learn a trade, such as construction, woodworking, or electricity. However, around 50,000 children still remained "under arms" and the reintegration of girls proved an even more sensitive issue, as they feared social exclusion following their association, even though it was forced, with soldiers or armed groups. Furthermore, economic reintegration was

hindered by limited economic possibilities, which were further diminished by the crisis, as well as by the lack of sufficient money available for longer-term reintegration programmes. Consequently, children risked being re-enlisted in the armed forces or groups.

To conclude, the Worker members stated that this human drama, together with the violence against women and young people, affected a large number of children and itself formed part of the wider backdrop of economic war and widespread unemployment.

The Worker member of the Democratic Republic of the Congo indicated that the Democratic Republic of the Congo was a country in Central Africa with a surface area of 2,345,000 km^2 and an estimated population of 60 million. This country was rich in mineral resources and contained 50 per cent of the equatorial rain forest, with wood resources in high demand. Besides the systematic looting which had been destroying the economic fabric since 1991, wars had plagued the regions of Ituri, and South and North Kivu. Due to the safety plan, the situation had started to improve but the drop in metal prices had resulted in an increase of unemployment reaching 80 per cent of the active population. These factors provided an insight into the context in which the violations of Convention No. 182, which had been ratified by the Democratic Republic of the Congo in 2001, were committed. Information existed on the fact that young children, within the country or stemming from the country and directed to foreign countries, were sold, exchanged and kidnapped for sexual exploitation. Children were also forcibly recruited for service in the armed forces. Others were employed in the mineral mines in the provinces of Katanga, East Kasai, North and South Kivu and Ituri. The reported violations of the Convention were real and gave reason for concern. The Government had adopted laws of which several needed to be reinforced and adapted the actual situation. Nevertheless, it had to be noted that the situation had been improving. In view of the scale of the phenomenon, the means provided on the ground by the international community remained insufficient. In the majority of cases, the culprits of those practices were warlords and criminal prosecutions against them were hardly ever initiated. Those warlords came very often from the countries bordering the Democratic Republic of the Congo. The end of the war and the fight against poverty would contribute to an expeditious solution of the problem of recruitment of child soldiers and the sale, trafficking and enslavement of children.

The National Institute for Professional Training (INPP), COMADER, UNICEF, UNDP and NGOs provided assistance to child victims of exploitation, in particular concerning measures for their social and economic rehabilitation and reintegration. Due to the high number of child abuse victims, the Government had to increase its efforts. It was recommended that the international community and especially the ILO rendered assistance. The employment of children in mines was one reason for the drop of mineral and diamond prices which had led to the fall into poverty of many heads of families. Children, which could no longer be educated were obliged to work and were the object of artisanal exploitation. The labour inspection was not efficient and there existed a problem of manpower and means. Following a request of the workers, the ILO had established an office in Katanga to take care of the work in the artisanal mines.

The speaker concluded that the Office had to render assistance to the Government in order to increase the activities of the INPP, to reinforce the legislation and thus bring it into conformity with Convention No. 182, to end the impunity of warlords, to reinforce the efficiency of labour inspections and the fight against poverty, to create a climate of safety on the ground by putting an end to the systematic pillaging of natural resources and the suffering of children, and to improve social dialogue in the fight against the worst forms of child labour.

The Government member of Canada stated that his Government was acutely aware of and was concerned with the situation of children in conflict in the Democratic Republic of Congo. It was a tragic example of a situation where children faced direct and indirect recruitment as soldiers and into forced labour, as well as injury, death, displacement and sexual and gender based violence – a list of consequences that sadly enough was not exhaustive. Canada recognized the recent successful efforts of the Government to disarm and demobilize child soldiers. Attention had, however, to be given to the reintegration of these children, to avoid them being recruited again. Preventing the recruitment and use of children as soldiers was key, and he urged the Government to improve efforts to stop such practices and hold violators of the rights of children accountable. Canada welcomed in this respect the steps taken by the Government in cooperation with the International Criminal Court. Canada expressed its grave concern regarding the recruitment of children into forced labour, in particular for the extraction of natural resources. Tens of thousands of children worked in the mining sector, most often in extremely dangerous conditions. Despite legislation in force, serious concerns remained regarding the rights of children and their protection. The Government needed to intensify its efforts rapidly to put in place effective measures to stop the recruitment of children under the age of 18 for use as mine workers, sex slaves and soldiers.

The Worker member of Senegal stressed that the Government of the Democratic Republic of the Congo was under consideration by the Committee to respond to serious violations of the provisions of Convention No. 182 and the continued failure of its application. The Conference Committee had to adopt conclusions which were proportional to the seriousness of the acts described by the Committee of Experts in its report, namely the sale, trafficking, kidnapping and exploitation for pornographic purposes of young girls and boys, inside the country or in foreign countries. These events also included hazardous work in mines and the forced recruitment of children by armed forces of the country for use in armed conflict. Reintegration and rehabilitation of child soldiers in their community was necessary. According to the report of the UN Secretary-General on children and armed conflict of 9 February 2005, which confirmed the comments of the Committee of Experts, thousands of children remained in the armed forces and groups in the Democratic Republic of the Congo, and recruitment was ongoing. Although some regional military leaders had released children, no mass release had been recorded to date. These recruitments constituted one of the worst forms of child labour within the meaning of Article 3 of the Convention.

In addition, according to the report of the Committee of Experts, the provisions of the Penal Code prohibiting the sale and trafficking of children for sexual exploitation were inadequate and had to be improved to stop impunity. Much remained to be done concerning child labour, which was largely caused by poverty and high unemployment. The provisions of the Convention must be transposed into national legislation and the Government had to make a firm commitment to work twice as hard to implement the commitments undertaken in this area. In this respect, the speaker recalled that the Government had ratified the two Optional Protocols to the UN Convention on the Rights of the Child.

The Conference Committee had to adopt firm conclusions if the Government provided no assurances as to its commitment to the fight against child labour. The group of experts responsible for the investigation of the illegal exploitation of the Democratic Republic of the Congo's natural resources had repeatedly stressed the link between the plundering of resources and the continuing recruit-

ment by the military groups of children into forced labour for extraction of natural resources. Ten years after the adoption of Convention No. 182, it was time to promote real progress towards eradicating the worst forms of child labour and the Government should make substansive efforts to stop abuses.

The Worker member of Comoros indicated that the information provided by the Government concerning noncompliance with Convention No. 182, as well as the information reported by the trade union representatives of the Democratic Republic of the Congo, showed a wide disparity between the law on the rights of the child and its effective application in the Democratic Republic of the Congo. In fact, the figures contained in the information provided by the Government was much less than the number of children actually affected by this phenomenon, which exceeded 50,000 children, ranging from those involved in armed conflict to those working in mines.

The speaker welcomed the willingness of the Government to eradicate child labour in the Democratic Republic of the Congo, especially in its worst forms, but he considered it necessary and urgent that the Government took action in the form of a programme that would match the scale of the problem, focusing on: the strengthening of legislation for the protection of children; the construction of sufficient infrastructure to accommodate all children affected; the expansion of vocational training and learning centres in order to accommodate more children; good cooperation with the international organizations present in the Democratic Republic of the Congo, and with the social partners; the strengthening of the capacity of the labour inspectorate for operational purposes; bringing the perpetrators of these crimes to justice in order to put an end to this unacceptable evil.

Finally, the speaker also urged the international community to assist the Government in this task, so as to give effect in practice to the provisions of Convention No. 182, which had been ratified in 2001.

The Government representative of the Democratic Republic of the Congo thanked all the speakers and recalled that his country had been at war since 1998. At present, some areas remained under the control of warlords. The Government had always sought the support of the international community, as evidenced by the presence of the United Nations Organization Mission in the Democratic Republic of the Congo (MONUC). The law existed, courts applied it and the culprits were convicted. It was true that statistics were not available, but the Government agreed to make efforts so as to be able to transmit the data in question. He expressed the hope that criminal law would be strengthened in order to consider the recruitment of children for use in armed conflict a war crime, making these acts imprescriptible. He also indicated that it would be desirable for the international community to take measures against products marketed in the neighbouring countries of the Democratic Republic of the Congo and produced by the exploitation of the worst forms of child labour.

The Employer members considered that the statements made by the Government representative, the Committee of Experts' comments and the UN Secretary-General's report, had shown that the situation in the country as regards the implementation of Convention No. 182 was still grave.

While the Government had made promising endeavours to improve the situation, these efforts had to be considerably and expeditiously intensified. First and foremost, it was necessary to penalize violations against the Convention by exhausting all means under the penal provisions. Furthermore, information had to be provided concerning the current situation, including the recently adopted Act for the Protection of Children against All Forms of Dangerous Activities. The provision of up to date figures concerning the development of child labour and the liberation of children from the hands of armed troops was also important. This information should also include information on the situation in the border areas and in the refugee camps. Comprehensive awareness raising was necessary for the reintegration of children in the society and contributing to achieving a sustainable peace process.

The Employer members encouraged the Government to continue cooperating closely with the international organizations and child relief organizations and to further national programmes to combat the worst forms of child labour. In this regard, the mentioned education programme was very important. The Office was asked to offer its technical assistance together with the UN.

The Worker members once more regretted the multiple forms of child labour in the Democratic Republic of the Congo. They urged the Government to take the following measures: to optimise the penal arsenal to combat the worst forms of child labour; to reinforce the effectiveness of its labour inspection system; to ensure that the commanders of the national armed forces did not recruit children; to severely penalize all infringements; to provide without delay information on the number and nature of infringements, the prosecutory sanctions induced and the penal sanctions imposed as well as on the demobilisation and social reintegration programmes; to increase its efforts for the rehabilitation and the reintegration of released children, paying particular attention to girls; to increase the cooperation with neighbouring countries affected by the same problems.

Furthermore, the Worker members asked the international organizations and institutions to continue their efforts to develop programmes aimed at: restoring order and peace in the country; creating more jobs and reducing the massive unemployment in the affected regions; guaranteeing a primary education for every child.

With regard to the actions the Office had to undertake, the Worker members asked the Office to multiply job training centres for released children in light of the highly appreciated contribution by the centre in Katanga and the still high number of children needing support.

Conclusions

The Committee took note of the oral information provided by the Government representative and the discussion that followed. The Committee noted the information contained in the report of the Committee of Experts relating to the sale and trafficking of children under 18 for sexual exploitation, both within the country and across its borders, the forced recruitment of children for use in armed conflict and the use of children in hazardous work in mines.

The Committee took note of the information provided by the Government outlining laws and policies put in place to combat the forced recruitment of children in armed conflict, as well as action programmes established with ILO assistance to provide for the removal, rehabilitation and social integration of former child soldiers. The Committee also noted the statement by the Government representative that due to the deterioration of the socio-economic situation and the persistence of armed conflict in the country, an important number of children continued to work in mines and quarries in the various provinces of East and West Kasai, Katanga, and North and South Kivu. In this regard, several national and international action programmes were under way to prevent children from working in mines, and to provide for the social integration of children removed from mines through education. The Government representative also called on the international community to combat the use of children in the extraction of mineral resources in mines resulting from the illegal exploitation and trade of the natural resources of the country involving neighbouring countries. Finally, the Government representative expressed his country's willingness to continue its efforts to eradicate violations of Convention No. 182 with ILO technical assistance and cooperation.

The Committee noted that recently enacted legislation expressly prohibited the sale and trafficking of children for sexual exploitation and introduced criminal sanctions for violations of this prohibition. It noted, however, that although the law prohibited the trafficking of children for labour or sexual exploitation, it remained an issue of serious concern in practice. The Committee accordingly called on the Government to redouble its efforts and take, without delay, immediate and effective measures to eliminate the trafficking of children under 18 in practice. The Committee requested the Government to provide detailed information in its report when it was next due to the Committee of Experts on the measures taken to ensure the effective implementation of the legislation, including the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied.

Concerning the issue of child soldiers, the Committee noted the concern expressed by several speakers about the situation of children under 18 being recruited and forced to join armed groups or the armed forces. While noting certain efforts made by the Government to address this problem, the Committee deplored the persistence of this practice, especially since it led to other violations of the rights of children, in the form of abductions, murders and sexual violence. The Committee emphasized the seriousness of such violations of Convention No. 182 and urged the Government to take immediate and effective measures, as a matter of urgency, to put a stop in practice to the forced recruitment of children under 18 years by armed groups and the armed forces and to ensure that the perpetrators of these egregious crimes were prosecuted and that sufficiently effective and dissuasive penalties were imposed. The Committee also requested the Government to continue to take effective and time-bound measures for the removal, rehabilitation and social integration of children involved in armed conflict. It requested the Government to provide information on progress made in this regard in its next report when it was due to the Committee of Experts.

Concerning the issue of the employment of children in hazardous work in mines, the Committee noted the Government's statement acknowledging the continued exploitation of young persons under 18 in mines and quarries in the provinces of Katanga, East and West Kasai, and North and South Kivu. The Committee noted with concern that the number of children undertaking hazardous work in this sector remained high. In this regard, the Committee requested the Government to expand the authority of the labour inspectorate in enforcing the law and to ensure that regular unannounced visits were carried out by labour inspectors so as to ensure that persons who infringed the Convention were prosecuted and faced sufficiently effective and dissuasive sanctions. The Committee also requested the Government to provide information on the impact of the national and international action programmes mentioned by the Government representative on withdrawing children under 18 working in hazardous conditions in mines and quarries and providing for their rehabilitation and social integration. It finally requested the Government to provide information in its report, when it was next due, to the Committee of Experts on the results achieved in the effective application of the legislation prohibiting the employment of children in underground work.

Moreover, the Committee called on ILO member States to provide assistance to the Government of the Democratic Republic of the Congo in line with Article 8 of the Convention, with special priority on facilitating free basic education and vocational training. In this regard, the Committee encouraged the Government to make every effort to ensure the sustainability of the Vocational Training Institute which had been established with ILO technical assistance. Furthermore, the Committee requested the Government to undertake a national study on child labour to assess the extent of the worst forms of child labour in the country.

Finally, international cooperation could also be extended to combating the use of children in the extraction of mineral resources in mines, resulting from the illegal exploitation and trade of the natural resources of the country.

RUSSIAN FEDERATION (ratification: 2003)

A Government representative stated that his Government devoted much attention to combating the worst forms of child labour. Guaranteeing the rights and freedoms of minors was one of the priority tasks of the State and the civil society. Speaking about the effective measures for preventing the worst forms of child labour, the speaker referred to the following: prevention of child neglect and delinquency of minors; provision of the maximum possible coverage of children and juveniles with the basic secondary education, which was compulsory; organization of children's leisure time; health protection and health improvement measures; development of the network of social institutions responsible for the rehabilitation of children involved in the worst forms of child labour, etc. The above measures were put into practice within the framework of the Federal Programme "Children of the Russian Federation" which included various subprogrammes implementing such measures. There were also special committees on minors at the federal, regional and local levels, which provided monitoring and coordination of activities of the state bodies, social organizations and institutions.

As regards the draft Law on Combating Trafficking in Human Beings, which was referred to in the Committee of Experts' report, it was currently under examination in the State Duma Committee on the issues of family, women and children. During the elaboration of the draft Law, a series of substantial amendments had been introduced into the Criminal Code with a view to reinforcing penal sanctions for the offence of trafficking in persons and related crimes. In the course of their preparation, recommendations of various international bodies, (Organization for Security and Cooperation in Europe (OSCE), European Union) had been taken into account, such as the Ministerial Declaration of the OSCE of 28 November 2000. The speaker highlighted the importance of international cooperation in the field of combating human trafficking, including regional cooperation, and referred in this connection to the Target Group on Trafficking of the Council of the Baltic Sea States, to the Working Group on Transnational Organized Crime of the Organization for the Economic Co-operation of the Black Sea States and to the cooperation of the Ministry of Interior with EUROPOL.

In conclusion, the speaker informed the Committee that the Government was preparing a more detailed report on this subject for the examination by the Committee of Experts.

The Worker members recalled that Convention No. 182 had been unanimously adopted by the International Labour Conference ten years ago, that more than 90 per cent out of 182 ILO member States had already ratified it and that many of them had adopted national legislation with the view to eradicating the practices of child labour in situations of slavery, forced labour or servitude, pornography, prostitution, and in any other situation which was likely to harm the health, safety or morals of children.

The Worker members observed, however, that it would be premature to rejoice at this and that, as it had been emphasized by IPEC, major challenges persisted; the world economic and financial crisis did not help to improve the situation. They recalled that the Russian Federation had ratified Convention No. 182 in 2003 and that it had adopted amendments in its Criminal Code expressly prohibiting human trafficking, and increasing penal sanctions in the case of minors, and punishing the transfer of persons abroad for the purposes of prostitution, along with the increase of sanctions in case of minors. Nevertheless,

a draft Law against human trafficking appeared to have been frozen since 2006. In substance, it was not a problem of legislation, but rather a problem of application, as well as the lack of transparency existing in the country. The Committee of Experts, referring also to the UN Committee on the Rights of the Child, described the situation as a widespread negligence, with a considerable number of children in various types of precarious situations. At the same time, legal provisions were not being applied by the public authorities. An obvious inaction of the Government in this field might lead to a conclusion that it did not realize the urgency of its obligations under the Convention, whereas this "urgency" was expressly referred to in Article 1 of this instrument. The Committee of Experts had also regretted that the Government had not furnished any information allowing the assessment of the application of Articles 4, 5 and 6 of the Convention. The Worker members therefore considered that the Government should demonstrate a real political will to make energetic efforts with a view to eradicating the worst forms of child labour, and by taking urgently effective measures, in collaboration with the social partners and on the basis of effective international cooperation.

The Employer members stated that this year was the tenth anniversary of the adoption of Convention No. 182 and recalled the importance of this instrument. In adopting this Convention, the ILO had recognized this was a priority issue not only at national but also at international level. The Convention tried to address a situation which was totally unacceptable in the twenty-first century, and for this reason, it had been adopted rapidly and unanimously.

They indicated that the case currently being examined was aberrant, as much for its nature as for the growing tendency of utilizing children for purposes of economic and sexual exploitation who were trafficked from the Russian Federation to other countries, most of which were developed countries. They added that it was the first time that this case was being examined by the Conference Committee. Apparently, the dialogue between the Government and the Committee of Experts had been brought to a halt and had slowed down between 2006–07. For this reason, the case was the subject of a footnote in the report of the Committee of Experts requesting the Government to supply full information to this Committee. At the basis of this case lay not only a trade union observation but also a report of the UN Committee on the Rights of the Child.

The Employer members highlighted the points on which the Committee of Experts had insisted in its report and appreciated receiving information that would allow them to know the degree of the Government's commitment to eradicate the problem and to assess its willingness to maintain, as a matter of priority, the indispensable dialogue with the Committee of Experts. In conclusion, they said that this was a phenomenon that required coordinated responses from the various Government members and international organizations.

The Worker member of the Russian Federation expressed the firm conviction that the Committee should support the recommendations made by the Committee of Experts in its report. The facts given in the Committee of Experts' conclusions appeared to be entirely accurate. This had been confirmed by various studies undertaken in the Russian Federation that had revealed instances of the use of child labour in construction, agriculture and trade and the involvement of children and adolescents in unlawful activities, such as theft, handling stolen goods, drug dealing, providing sexual services and the production of pornographic materials. This was a matter of concern not just to trade unions but to the Russian society in general, as could be seen from the increased attention devoted to the issue by the forces of law and order, the media and public organizations in recent times.

Despite this positive development, the Russian Federation's trade unions were particularly concerned about the lack of effective measures to punish those who involved children in the worst forms of child labour, particularly prostitution and pornography. Under sections 134 and 135 of the Criminal Code of the Russian Federation, acts of a sexual nature and other depraved acts with children under the age of 16 were a criminal offence. The fact that the two sections applied only to those under 16, however, meant that the same acts committed against persons between 16–18 years of age, who were considered children under section 1 of the Federal Act "On fundamental guarantees for the rights of the child in the Russian Federation", did not constitute criminal offences. Rectifying this problem in legislation would aid in reducing the number of children working in the Russian Federation, including in unlawful activities. Given its importance, the Federation of Independent Trade Unions of Russia had begun actively addressing the issue of eradicating child labour and, in 2008, had organized a meeting on the subject attended by various state and government bodies, together with interested public organizations.

Legislative change alone, however, would not solve the problem, particularly given that children very often became involved in unlawful activities for economic reasons. The Russian Federation's current guaranteed minimum wage did not take into account whether families included under-age children, and yet the amount required for a child to live in the Russian Federation was the same as for an adult. In many cases, parents were forced to send their children to work simply to earn enough for the whole family to live on. Furthermore, the Russian Federation's population included a relatively high number of orphans, who, with no home or parents, had to earn money and could only do so through the informal sector, which was mostly unregulated. With the global financial crisis affecting the Russian Federation's labour market and resulting in many thousands of redundancies, there was a real risk of the situation becoming significantly worse, both in the Russian Federation and elsewhere. Eradicating poverty, promoting decent work, pursuing real anti-crisis policies, and guaranteeing rights arising from international labour standards and national legislation were the real ways of fighting the worst forms of child labour in all countries of the world.

It was impossible to take appropriate action to solve any problem without the necessary information and without being able to monitor the development of a situation in response to various influences. In the Russian Federation, finding solutions to problems was hampered by the lack of such an important body as a ministry of labour. The trade unions had been lobbying for some five years for the creation of a labour ministry, which could serve as a centre to coordinate the activities of other departments involved in tackling such problems as eradicating the worst forms of child labour. Creating a labour ministry would require a significant increase in compliance with ILO obligations in general, including in terms of timely and full reporting on the implementation of ILO Conventions. The Federation of Independent Trade Unions of Russia had reminded the Government of its responsibilities in that regard at a meeting held in April 2009, attended by the Minister of Health and Social Development, members of Parliament and several other high-level government representatives. For various reasons, however, the Ministry was currently unable to fulfil its role to the full.

The Worker member of Sweden, speaking on behalf of the Nordic workers' organizations, highlighted the tenth anniversary of Convention No. 182. The Convention had been adopted unanimously in 1999 and showed the way through action plans and technical assistance on how to eliminate the worst forms of child labour. It was always hard to discuss the cases on the list of the Committee. However, when it came to cases relating to the application

of Convention No. 182, it did really hurt because this was about children being treated as commodities.

Turning to the issue of the sale and trafficking and sexual exploitation of children in the Russian Federation, she stated that even though the Government had introduced provisions in the Criminal Code prohibiting human trafficking, it was not doing enough to ensure the effective implementation of those provisions. The Government should do its utmost to ensure that the provisions in the Criminal Code concerning the sale and trafficking of children were effectively enforced. In conclusion, she underlined that everybody had to assume responsibility and to work actively to eliminate this phenomenon. Child labour had no place in a dignified world.

The Worker member of India indicated that this case concerned grave violations of the Convention despite the necessary and relevant laws in place. A great number of persons were trafficked from the Russian Federation to other countries and from those countries into the Russian Federation. Women were forced into prostitution and children were trafficked for sexual exploitation. According to the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, the Russian Federation was also a destination country for boys and girls between 13–18 years of age being trafficked from Ukraine. Fifty per cent of the trafficked children from Ukraine went to neighbouring countries, including the Russian Federation, and were exploited in street vending, domestic work, agriculture and dancing, or they were employed as waiters to provide sexual services.

From the above, it was evident that the Russian Federation, in the absence of political will and in spite of the laws in place, failed or neglected to prohibit the sale and purchase of children who were trafficked in and from the country. This was not only a clear violation of Convention No. 182, but also of the ILO Declaration of Philadelphia of 1944, which stated that workers should not be used as commodity. He emphasized that both sending and receiving countries were equally responsible for this phenomenon.

On behalf of the Indian workers, he recalled the period of the former USSR, which, as early as 1932, was able to declare secure employment for all women and men, free and compulsory education for all children, no child labour or child prostitution, and a free health-care system for all. Unfortunately, today's Russian Federation and its people, due to a reversal of its economic order, were witnessing growing unemployment, a high incidence of child labour, and women entering prostitution. The Russian Federation's economy was a terminal illness of capitalism and the worst forms of child labour were the concomitant evil of this dying system. He appealed to the ILO to advise on the ways and means to eradicate the worst forms of child labour once and for all.

The Worker member of Hungary underlined that the present case was before the Committee because the Government of the Russian Federation had repeatedly failed to provide information to the Committee of Experts on the impact of measures on preventing the sale and trafficking of children; on effective and time-bound measures to assist child victims of trafficking; as well as on any steps to assist member States or to receive assistance in the implementation of the Convention through international or regional cooperation. The communication of relevant information by Governments not only was essential for the functioning of the ILO supervisory mechanism but also provided a sound basis for tackling a problem such as child trafficking, which affected the most vulnerable category of workers. Given that the submission of reports was a constitutional obligation, breaches of the reporting obligation were unacceptable, especially with regard to fundamental Conventions. The speaker called on the Government to explore all available technical, human and financial capacities of the labour administration to meet its reporting obligations. He strongly supported the conclusions of the Committee of Experts and urged the Government to supply, without further delay, full and comprehensive information on the points raised.

The Government member of Nigeria observed that the problems concerning the worst forms of child labour would not be resolved only by the ratification of Convention No. 182 or by bringing the domestic law into conformity with the Convention, but also required adequate measures to apply the Convention in practice. People engaging in criminal activities such as child labour in its worst forms had to face legal consequences. It was clear that the Government had put control measures in place, but their enforcement was important. It should be emphasized that children had to leave their country due to economic problems, and laws to protect children did not exist in either home or recipient countries. There was a need for cooperation between member States to prevent the trafficking of children. The Government had to continue to do everything within its power to enforce the control measures that had been put in place.

The Government representative of the Russian Federation thanked the speakers for expressing their concerns with respect to the worst forms of child labour. This matter was and would continue to be examined by the Government, on a priority basis. The Government had put into place a special mechanism towards this end, and would take into account in its next report the remarks made by the Committee concerning the question of transparency.

The Worker members stressed, as President Clinton had done at the International Labour Conference in 1999, that eradicating the worst forms of exploitation of children was a common cause that should unite everyone. They were convinced that the Russian Federation was capable of implementing all the measures necessary in that common struggle, as a priority for national and international action and "as a matter of urgency", as prescribed in Article 1 of Convention No. 182.

The necessary measures should be taken in order to finalize the adoption and implementation of the Law on Combating Trafficking in Human Beings, which was inspired by the Palermo Protocol. On the basis of that legislation, a national plan of action should be drawn up, in consultation with social partners, and should contain the following key elements: a determination of hazardous work, as defined in Article 3(d) of the Convention; measures to improve monitoring the implementation of the legislation; coordinated action aimed at eliminating the worst forms of child labour; the bringing of charges against the perpetrators of child exploitation, with sufficiently dissuasive sanctions; monitoring of the situation; and a strengthening of international collaboration.

The Worker members supported the request by the Committee of Experts to provide all the information necessary for monitoring the implementation of the Convention by the Russian Federation, with a view to a further evaluation during the next session of the Conference. They also requested that more detailed information should be provided on consultations with social partners as provided for by the Convention.

The Employer members requested the Government to intensify measures aimed at materializing regulatory changes, creating legislation for victims, preventing cases related to orphan children and families without resources, as well as to take measures relating to raising awareness, rehabilitation and international cooperation with the Government of Ukraine. The Government also had to communicate, in a timely manner, adequate information on the measures taken. They called on the Committee and the international community to put an end to this situation.

Conclusions

The Committee took note of the oral information provided by the Government representative and the discussion that followed. The Committee noted that the report of the Committee of Experts referred to comments from the International Trade Union Confederation relating to the sale and trafficking of children for purposes of labour and sexual exploitation, both within the country and across its borders.

The Committee noted the information provided by the Government outlining the comprehensive measures taken to prohibit and combat the trafficking of children. These measures included strengthening penalties in the Penal Code against trafficking in persons, the adoption of various measures within the framework of the Federal programme "Children of Russia" targeting the worst forms of child labour, the establishment of social rehabilitation centres for minors, as well as collaboration with several other countries from the Baltic Sea States and the Black Sea States to combat trafficking in children. The Government also indicated that the draft Law on Combating Trafficking in Human Beings was pending before the State Duma.

The Committee welcomed the recent policies and action programmes put in place by the Government, as well as the progress achieved by it to combat the commercial sexual exploitation of children and the trafficking of children for labour or sexual exploitation. It nevertheless noted that, although the law prohibited the trafficking of children for labour or sexual exploitation, it remained an issue of concern in practice. The Committee therefore called on the Government to strengthen the legislative framework on trafficking by ensuring that the draft Law on Combating Trafficking in Human Beings was adopted. The Committee also called on the Government to redouble its efforts and take, without delay, immediate and effective measures, in collaboration with the social partners, to eliminate the trafficking of children under 18 in practice. In this regard, the Committee urged the Government to take the necessary measures to ensure that regular unannounced visits were carried out by the labour inspectorate and that the perpetrators were prosecuted and that sufficiently effective and dissuasive penalties were imposed. The Committee requested the Government to provide in its report when it was next due, detailed information to the Committee of Experts on the measures taken to ensure the effective implementation of the legislation, including the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied. The Committee also requested the Government to supply detailed information on effective and time-bound measures taken to provide for the rehabilitation and social integration of former child victims of trafficking, in conformity with Article 7(2) of the Convention. These measures should include the repatriation, family reunification and support for former child victims.

In addition, the Committee requested the Government to deepen its collaboration with other countries involved in the trafficking of children to and from the Russian Federation. Finally, the Committee requested the Government to supply detailed information about the involvement of the social partners in issues relating to the worst forms of child labour, in conformity with the Convention.

Appendix I. Table of Reports received on ratified Conventions

(articles 22 and 35 of the Constitution)

Reports received as of 19 June 2009

The table published in the Report of the Committee of Experts, page 707, should be brought up to date in the following manner:

Note: First reports are indicated in parentheses.
Paragraph numbers indicate a modification in the lists of countries mentioned in Part One (General Report) of the Report of the Committee of Experts.

Angola

14 reports requested

· 13 reports received: Conventions Nos. 1, 14, 17, 27, 29, 88, 89, 105, 106, 107, 111, 138, 182
· 1 report not received: Convention No. 81

Armenia

16 reports requested

· 4 reports received: Conventions Nos. (26), (111), (132), (176)
· 12 reports not received: Conventions Nos. (14), 29, 81, (87), (97), 105, (138), (143), (150), (160), (173), (182)

Barbados

27 reports requested

(Paragraph 36)

· 24 reports received: Conventions Nos. 11, 12, 17, 19, 26, 29, 42, 81, 87, 90, 94, 95, 97, 100, 101, 102, 105, 118, 122, 128, 138, 144, 172, 182
· 3 reports not received: Conventions Nos. 98, 111, 147

Belize

24 reports requested

(Paragraph 36)

· 14 reports received: Conventions Nos. 81, 94, 95, 97, 98, 101, 138, 141, 144, 150, 151, 154, 182, 183
· 10 reports not received: Conventions Nos. 14, 29, 89, 100, 105, 111, 115, 140, 155, 156

Botswana

9 reports requested

(Paragraph 36)

· 8 reports received: Conventions Nos. 14, 29, 98, 105, 111, 138, 144, 182
· 1 report not received: Convention No. 19

Brazil

27 reports requested

· 25 reports received: Conventions Nos. 14, 29, 81, 89, 100, 103, 105, 106, 117, 122, 132, 136, 138, 139, 142, 148, 155, 160, (167), 168, 169, 170, 171, (176), 182
· 2 reports not received: Conventions Nos. 94, 140

Cameroon

15 reports requested

· 14 reports received: Conventions Nos. 3, 14, 29, 81, 89, 95, 105, 106, 122, 131, 132, 138, 158, 182
· 1 report not received: Convention No. 94

Chad

13 reports requested

(Paragraphs 32 and 36)

· 12 reports received: Conventions Nos. 14, 29, 41, 81, 87, 98, 100, 105, 111, 132, (138), 182
· 1 report not received: Convention No. 144

Côte d'Ivoire — 11 reports requested

(Paragraph 36)

· All reports received: Conventions Nos. 3, 14, 29, 41, 52, 81, 105, 110, 129, 138, 182

Denmark — 15 reports requested

· 12 reports received: Conventions Nos. 14, 29, 52, 81, 105, 106, 129, 138, 142, 149, 152, 182
· 3 reports not received: Conventions Nos. 27, (162), 169

Denmark - Faeroe Islands — 15 reports requested

(Paragraphs 27 and 36)

· 14 reports received: Conventions Nos. 5, 6, 11, 14, 18, 19, 27, 29, 52, 87, 98, 105, 106, 126
· 1 report not received: Convention No. 12

Denmark - Greenland — 4 reports requested

(Paragraph 36)

· All reports received: Conventions Nos. 14, 29, 105, 106

Dominica — 15 reports requested

· 9 reports received: Conventions Nos. 12, 14, 19, 81, 105, (135), (144), (150), (182)
· 6 reports not received: Conventions Nos. 26, 29, 95, 138, (147), (169)

France — 27 reports requested

· 23 reports received: Conventions Nos. 3, 14, 29, 52, 81, 87, 88, 94, 96, 97, 98, 101, 102, 105, 106, 122, 129, 138, 140, 142, 152, 158, 182
· 4 reports not received: Conventions Nos. 27, 82, 137, 149

France - French Guiana — 33 reports requested

· 29 reports received: Conventions Nos. 3, 5, 6, 12, 14, 17, 19, 24, 29, 35, 36, 37, 38, 42, 52, 81, 87, 89, 95, 98, 100, 101, 105, 106, 111, 123, 124, 142, 144
· 4 reports not received: Conventions Nos. 27, 32, 129, 149

France - French Southern and Antarctic Territories — 2 reports requested

(Paragraph 36)

· All reports received: Conventions Nos. 98, 111

France - Guadeloupe — 25 reports requested

· 20 reports received: Conventions Nos. 3, 12, 14, 17, 19, 24, 29, 42, 52, 81, 87, 89, 98, 100, 105, 106, 111, 115, 142, 144
· 5 reports not received: Conventions Nos. 27, 32, 101, 129, 149

France - Martinique — 36 reports requested

· 31 reports received: Conventions Nos. 3, 5, 6, 10, 12, 17, 19, 24, 29, 35, 36, 37, 38, 42, 52, 81, 87, 89, 94, 95, 98, 100, 101, 105, 111, 123, 124, 129, 131, 142, 144
· 5 reports not received: Conventions Nos. 14, 27, 32, 106, 149

France - Réunion — 28 reports requested

· 25 reports received: Conventions Nos. 3, 12, 14, 17, 19, 24, 29, 35, 36, 37, 38, 42, 52, 81, 87, 89, 98, 100, 101, 105, 106, 111, 129, 142, 144
· 3 reports not received: Conventions Nos. 27, 32, 149

France - St Pierre and Miquelon

24 reports requested

(Paragraph 36)

- 22 reports received: Conventions Nos. 3, 12, 14, 17, 19, 24, 29, 42, 52, 81, 87, 89, 98, 100, 101, 105, 106, 111, 122, 129, 142, 144
- 2 reports not received: Conventions Nos. 82, 149

Gabon

11 reports requested

- All reports received: Conventions Nos. 3, 14, 29, 41, 52, 81, 101, 105, 106, 158, 182

Gambia

8 reports requested

(Paragraph 32)

- 4 reports received: Conventions Nos. (29), (105), (138), (182)
- 4 reports not received: Conventions Nos. 87, 98, 100, 111

Hungary

13 reports requested

(Paragraph 36)

- All reports received: Conventions Nos. 3, 14, 24, 29, 81, 105, 129, 132, 138, 140, 142, 182, 183

Iceland

5 reports requested

- All reports received: Conventions Nos. 29, 102, 105, 138, 182

Italy

16 reports requested

- All reports received: Conventions Nos. 3, 14, 29, 81, 105, 106, 117, 118, 129, 132, 138, 142, 149, 175, 182, 183

Kenya

16 reports requested

- 12 reports received: Conventions Nos. 17, 89, 98, 100, 111, 129, 132, 138, 140, 142, 144, 182
- 4 reports not received: Conventions Nos. 14, 27, 94, 149

Lao People's Democratic Republic

5 reports requested

(Paragraphs 27 and 32)

- 2 reports received: Conventions Nos. (138), (182)
- 3 reports not received: Conventions Nos. 4, 6, 29

Liberia

21 reports requested

- 17 reports received: Conventions Nos. 22, 23, 29, 53, 55, 58, (81), 87, 92, 98, 105, 111, 112, (144), 147, (150), (182)
- 4 reports not received: Conventions Nos. 108, 113, 114, (133)

Malawi

17 reports requested

- All reports received: Conventions Nos. 26, 29, 81, 87, 89, 97, 98, 99, 100, 105, 107, 111, 129, 138, 144, 149, 182

Malaysia

9 reports requested

- All reports received: Conventions Nos. 29, 81, 95, 98, 100, 123, 138, 144, 182

Malta

16 reports requested

(Paragraph 36)

- All reports received: Conventions Nos. 1, 14, 32, 77, 78, 87, 95, 98, 100, 106, 111, 117, 124, 131, 132, 149

Mongolia

12 reports requested

- All reports received: Conventions Nos. (29), 87, 98, 100, 103, (105), 111, 122, 123, 138, 144, 182

Nicaragua — 15 reports requested

(Paragraph 36)

· All reports received: Conventions Nos. 1, 3, 4, 14, 30, 87, 98, 100, 110, 111, 117, 122, 140, 142, 144

Norway — 15 reports requested

(Paragraph 36)

· All reports received: Conventions Nos. 14, 30, 47, 87, 94, 98, 100, 111, 122, 132, 142, 144, 149, 168, 169

Pakistan — 18 reports requested

· 13 reports received: Conventions Nos. 1, 14, 27, 32, 87, 89, 98, 100, 106, 107, 111, (138), 144
· 5 reports not received: Conventions Nos. 11, 29, 96, 105, 182

Panama — 15 reports requested

(Paragraph 36)

· All reports received: Conventions Nos. 3, 17, 30, 52, 81, 87, 89, 94, 98, 100, 107, 110, 111, 117, 122

Papua New Guinea — 14 reports requested

(Paragraph 36)

· 11 reports received: Conventions Nos. 26, 27, 29, 87, 99, 103, 105, 111, 138, 158, 182
· 3 reports not received: Conventions Nos. 98, 100, 122

Philippines — 11 reports requested

· 10 reports received: Conventions Nos. 87, 89, 94, 98, 100, 110, 111, 122, (143), 149
· 1 report not received: Convention No. 144

Rwanda — 10 reports requested

(Paragraph 36)

· All reports received: Conventions Nos. 12, 14, 17, 87, 89, 94, 98, 100, 111, 132

Slovenia — 29 reports requested

· All reports received: Conventions Nos. 14, 27, 29, 32, 81, 87, 89, 90, 97, 98, 100, 103, 105, 106, 111, 121, 122, 129, 131, 132, 138, 140, 142, 143, 149, (154), 173, 175, 182

Sudan — 13 reports requested

· All reports received: Conventions Nos. 19, 26, 29, 81, 95, 98, 100, 105, 111, 117, 122, 138, 182

Sweden — 15 reports requested

· All reports received: Conventions Nos. 14, 47, 87, 98, 100, 111, 122, 132, 140, 142, 144, 149, 168, 175, 180

Ukraine — 20 reports requested

· 19 reports received: Conventions Nos. 14, 47, 87, 95, 98, 100, 103, 106, 108, 111, 119, 122, (131), 132, 140, 142, 144, 149, (173)
· 1 report not received: Convention No. 147

United Arab Emirates — 5 reports requested

· All reports received: Conventions Nos. 1, 81, 89, 100, 111

United Kingdom - Anguilla — 24 reports requested

(Paragraphs 27 and 36)

· All reports received: Conventions Nos. 8, 11, 12, 14, 17, 19, 22, 23, 26, 29, 42, 58, 59, 82, 85, 87, 94, 97, 98, 99, 101, 105, 108, 140

United Kingdom - Isle of Man

7 reports requested

· All reports received: Conventions Nos. 87, 98, 101, 122, 147, 178, 180

Grand Total

A total of 2,517 reports (article 22) were requested,
of which 1,962 reports (77.95 per cent) were received.

A total of 351 reports (article 35) were requested,
of which 282 reports (80.34 per cent) were received.

Appendix II. Statistical table of reports received on ratified Conventions
as of 19 June 2009
(article 22 of the Constitution)

Conference year	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee of Experts		Reports received in time for the session of the Conference	
1932	447	-		406	90.8%	423	94.6%
1933	522	-		435	83.3%	453	86.7%
1934	601	-		508	84.5%	544	90.5%
1935	630	-		584	92.7%	620	98.4%
1936	662	-		577	87.2%	604	91.2%
1937	702	-		580	82.6%	634	90.3%
1938	748	-		616	82.4%	635	84.9%
1939	766	-		588	76.8%	-	
1944	583	-		251	43.1%	314	53.9%
1945	725	-		351	48.4%	523	72.2%
1946	731	-		370	50.6%	578	79.1%
1947	763	-		581	76.1%	666	87.3%
1948	799	-		521	65.2%	648	81.1%
1949	806	134	16.6%	666	82.6%	695	86.2%
1950	831	253	30.4%	597	71.8%	666	80.1%
1951	907	288	31.7%	507	77.7%	761	83.9%
1952	981	268	27.3%	743	75.7%	826	84.2%
1953	1026	212	20.6%	840	75.7%	917	89.3%
1954	1175	268	22.8%	1077	91.7%	1119	95.2%
1955	1234	283	22.9%	1063	86.1%	1170	94.8%
1956	1333	332	24.9%	1234	92.5%	1283	96.2%
1957	1418	210	14.7%	1295	91.3%	1349	95.1%
1958	1558	340	21.8%	1484	95.2%	1509	96.8%
As a result of a decision by the Governing Body, detailed reports were requested as from 1959 until 1976 only on certain Conventions.							
1959	995	200	20.4%	864	86.8%	902	90.6%
1960	1100	256	23.2%	838	76.1%	963	87.4%
1961	1362	243	18.1%	1090	80.0%	1142	83.8%
1962	1309	200	15.5%	1059	80.9%	1121	85.6%
1963	1624	280	17.2%	1314	80.9%	1430	88.0%
1964	1495	213	14.2%	1268	84.8%	1356	90.7%
1965	1700	282	16.6%	1444	84.9%	1527	89.8%
1966	1562	245	16.3%	1330	85.1%	1395	89.3%
1967	1883	323	17.4%	1551	84.5%	1643	89.6%
1968	1647	281	17.1%	1409	85.5%	1470	89.1%
1969	1821	249	13.4%	1501	82.4%	1601	87.9%
1970	1894	360	18.9%	1463	77.0%	1549	81.6%
1971	1992	237	11.8%	1504	75.5%	1707	85.6%
1972	2025	297	14.6%	1572	77.6%	1753	86.5%
1973	2048	300	14.6%	1521	74.3%	1691	82.5%
1974	2189	370	16.5%	1854	84.6%	1958	89.4%
1975	2034	301	14.8%	1663	81.7%	1764	86.7%
1976	2200	292	13.2%	1831	83.0%	1914	87.0%

Conference year	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee of Experts		Reports received in time for the session of the Conference	
As a result of a decision by the Governing Body (November 1976), detailed reports were requested as from 1977 until 1994, according to certain criteria, at yearly, two-yearly or four-yearly intervals.							
1977	1529	215	14.0%	1120	73.2%	1328	87.0%
1978	1701	251	14.7%	1289	75.7%	1391	81.7%
1979	1593	234	14.7%	1270	79.8%	1376	86.4%
1980	1581	168	10.6%	1302	82.2%	1437	90.8%
1981	1543	127	8.1%	1210	78.4%	1340	86.7%
1982	1695	332	19.4%	1382	81.4%	1493	88.0%
1983	1737	236	13.5%	1388	79.9%	1558	89.6%
1984	1669	189	11.3%	1286	77.0%	1412	84.6%
1985	1666	189	11.3%	1312	78.7%	1471	88.2%
1986	1752	207	11.8%	1388	79.2%	1529	87.3%
1987	1793	171	9.5%	1408	78.4%	1542	86.0%
1988	1636	149	9.0%	1230	75.9%	1384	84.4%
1989	1719	196	11.4%	1256	73.0%	1409	81.9%
1990	1958	192	9.8%	1409	71.9%	1639	83.7%
1991	2010	271	13.4%	1411	69.9%	1544	76.8%
1992	1824	313	17.1%	1194	65.4%	1384	75.8%
1993	1906	471	24.7%	1233	64.6%	1473	77.2%
1994	2290	370	16.1%	1573	68.7%	1879	82.0%
As a result of a decision by the Governing Body (November 1993), detailed reports on only five Conventions were exceptionally requested in 1995.							
1995	1252	479	38.2%	824	65.8%	988	78.9%
As a result of a decision by the Governing Body (November 1993), reports are henceforth requested, according to certain criteria, at yearly, two-yearly or five-yearly intervals.							
1996	1806	362	20.5%	1145	63.3%	1413	78.2%
1997	1927	553	28.7%	1211	62.8%	1438	74.6%
1998	2036	463	22.7%	1264	62.1%	1455	71.4%
1999	2288	520	22.7%	1406	61.4%	1641	71.7%
2000	2550	740	29.0%	1798	70.5%	1952	76.6%
2001	2313	598	25.9%	1513	65.4%	1672	72.2%
2002	2368	600	25.3%	1529	64.5%	1701	71.8%
2003	2344	568	24.2%	1544	65.9%	1701	72.6%
2004	2569	659	25.6%	1645	64.0%	1852	72.1%
2005	2638	696	26.4%	1820	69.0%	2065	78.3%
2006	2586	745	28.8%	1719	66.5%	1949	75.4%
2007	2478	845	34.1%	1611	65.0%	1812	73.2%
2008	2517	811	32.2%	1768	70.2%	1962	78.0%

II. Submission to the competent authorities of the Conventions and Recommendations adopted by the International Labour Conference (article 19 of the Constitution)

Observations and information

(a) Failure to submit instruments to the competent authorities

A Government representative of Bahrain expressed regret at the delay in providing information on the submission of the instruments adopted by the Conference to the competent authorities. He indicated that in his country Conventions were usually submitted to the Council of Ministers for examination with a view to their ratification and for the formulation of proposals, which would be submitted to the National Assembly. The Work in Fishing Convention, 2007 (No. 188), and the Maternity Protection Convention, 2000 (No. 183), had been submitted to the competent authorities. He reaffirmed his Government's commitment to providing information to the ILO, submitting all the relevant instruments to the competent authorities in the near future, and informing the ILO of the steps taken in that regard. He added that his country had recently ratified the Occupational Safety and Health Convention, 1981 (No. 155), and expressed the commitment to make good any gaps in the information provided to the Office.

A Government representative of Bangladesh described the system for the submission of international instruments to the competent authorities in his country. Such instruments could be approved either by the Executive, namely the Cabinet, or by Parliament. Before submission, the respective instruments were first forwarded for review to the relevant ministries and government agencies, and then to the Ministry of Law, Justice and Parliamentary Affairs. The Conventions and Recommendations referred to in the report of the Committee of Experts had passed through the various stages of this process, and some had been duly submitted to the Cabinet, which might have sought further information from the respective ministry. It was the role of the Ministry of Labour and Employment to remain in contact with these agencies to expedite the process of submission and also to report on a regular basis to the relevant parliamentary standing committee. The reported failure to submit the instruments to the competent authorities might have resulted from certain shortcomings in communication and reporting to the ILO and it was hoped that the situation would be rectified in future reports. In keeping with his country's commitment to fundamental principles and rights at work, all ILO instruments would continue to be submitted to Parliament and the Cabinet for their consideration and decision.

A Government representative of Cambodia indicated that preparatory measures had been taken for the submission of instruments to the competent authorities and, following the 2008 session of the Conference, his country had requested and received ILO technical assistance for this purpose, as a result of which the necessary documents were being prepared for the submission of the respective instruments to the competent authorities. He expressed the firm hope that the first step of the process of submission, which concerned the instruments adopted by the Conference from 2000 to 2006, would soon be completed.

A Government representative of the Central African Republic explained that until recently the competent authorities had considered that once a period of 18 months established in article 19 of the Constitution had elapsed after the respective session of the Conference, submission to the competent authorities was no longer possible. It was only in 2008, during a consultation with the Standards Department, that they had been informed that the time limit could be exceeded. The Government had always been more concerned with the ratification of Conventions rather than with submission. The political situation in the country, and the urgent matters confronting the National Assembly, did not facilitate ratification. Moreover, the economic and structural characteristics of the country were not conducive to effect being given to certain instruments, such as those relating to seafarers, as the country had no access to the sea and had no hope, even in the medium term, of acquiring a maritime fleet. There was, nevertheless, currently a debate on the merits of ratifying the Indigenous and Tribal Peoples Convention, 1989 (No. 169). Instructions had been given to the Ministry responsible for labour so as to expedite the process of the submission of the relevant instruments, although since the beginning of 2009 the Department responsible for standards had been confronted by the departure of a number of officials responsible for those matters. The strengthening of capacities was therefore needed, as lack of capacity explained the various difficulties encountered in the preparation of reports in due time. A tripartite plus committee would therefore be established in the next few months to examine the instruments, follow up the submission and ratification procedures and prepare reports. Several documents on standards had been submitted to the members of the National Assembly, the President of the Bar, and the Ministry of Justice. The Government had the political will to take all the necessary measures to comply with its obligations.

A Government representative of Côte d'Ivoire indicated that every effort was now being made by his Government to ensure the submission of all the respective instruments to the National Assembly.

A Government representative of Djibouti indicated that his Government had ratified over 60 Conventions, most of which did not correspond to the geographical, economic and social characteristics of the country, which was not an agricultural, mining or industrial country. The Government had therefore decided to review all the ratified Conventions in order to gradually denounce those not adapted to the real situation in the country. Conventions Nos 6 and 45 had been denounced in 2008. Once this process had been completed, the Government would refer the issue of submissions to Parliament so as to find a definitive solution.

A Government representative of Spain expressed regret at the delay in the submission to Parliament of several ILO Conventions that Spain had approved. She assured the Conference Committee that the necessary measures had been taken to resolve this failure of submission. However, she indicated at the outset that Spain was currently one of the countries that had ratified the largest number of Conventions. Secondly, labour legislation in Spain in the various areas of labour relations, employment, freedom of association, occupational safety and health, social security, equality of opportunities and treatment at work and in employment between men and women far exceeded the levels set out in ILO standards. Finally, she indicated that this consisted of a formal failure of compliance, which she regretted, although it hardly constituted a serious failure of compliance.

A Government representative of Comoros indicated that, over the past three years, the Labour Department had been transferred from one ministry to another on several occasions and that there were real dysfunctions and difficulties at both the institutional level and in terms of human and

material resources. In its awareness of these shortcomings, the Government had prepared a programme in partnership with the ILO in relation to labour inspection and the preparation of laws, and was committed to complying in the future with the time limits for the provision of reports.

A Government representative of Haiti apologized for the fact that her Government had not been able to submit the instruments adopted by the Conference within the time limits. The reasons, however, were unrelated to the will of her Government, and arose out of the political and social crisis, the natural cataclysms and the unrest that had affected the country. Nevertheless, the Government had not remained inactive as in March 2009 all the necessary submissions had been carried out with ILO technical assistance.

A Government representative of Kenya thanked the Committee of Experts for its report, but regretted that his country was listed in paragraph 87. He recalled that the submission of instruments to the competent authorities was a constitutional requirement and that timely submission would always remain the surest means of helping the ILO to achieve its objectives. Nevertheless, the reported occurrence had not been deliberate and had largely been caused by the very dynamic political situation in the country since 2002. The lengthy process of reviewing labour law following the last two general elections and the 2005 referendum had affected the process of submitting the pending instruments. He was pleased to inform the Committee that, following the enactment of the new labour laws, a National Labour Board had finally been established in November 2008 and inaugurated in April 2009. The instruments in question, the 1995 and 1996 Protocols and all the instruments adopted between 2000 and 2007, had been included among the priority agenda items for consideration by the Board and submission to the competent authorities. The progress made would be reported to the Committee of Experts during the next reporting cycle.

A Government representative of Kiribati explained that the Cabinet in her country preferred to review the instruments concerned individually rather than dealing with all of them at once. Such a review would therefore be the next step before the instruments could be submitted to Parliament through the Cabinet. However, at present, her Government was giving greater priority to ratifying the remaining fundamental Conventions, namely Conventions Nos 100, 111, 138 and 182, which had been approved for ratification by the Cabinet.

A Government representative of Mozambique apologized for the failure to submit to the competent authorities the Conventions and Recommendations adopted by the Conference. His Government had started to review all the outstanding Conventions and Recommendations, which would be submitted to the assembly. A process of legal reform had been undertaken to which the Government was committed and to which it was giving priority. Delays were occurring in the process of the submission of Conventions and Recommendations because they had to be translated into Portuguese. He welcomed the attention paid to the issue of submission and requested ILO assistance for the translation of the respective instruments into Portuguese.

A Government representative of Nepal expressed full commitment to the principles set out in the ILO Constitution and in its Conventions and attached great importance to the work of the Conference Committee, as illustrated by his Government's ratification of a number of Conventions, including the Indigenous and Tribal Peoples Convention, 1989 (No. 169). He indicated that measures had already been taken for submission to Parliament of the instruments adopted by the Conference in 2005 and 2006.

A Government representative of Papua New Guinea explained that the prolonged delay in the submission of the instruments adopted between 2000 and 2007 had been due to administrative difficulties. The Department of Labour and Industrial Relations was now engaged in preparing a single comprehensive policy submission to Cabinet which would include all the instruments adopted by the Conference since 2000. He gave an undertaking that, over the next six months, a new approach would be pursued of submitting the instruments adopted by the Conference directly through the Cabinet, with the National Tripartite Consultative Council (NTCC) being advised. This was a modification of the previous practice under which labour-related matters went to the NTCC before the National Executive Council. He indicated that before the next session of the Conference the Office would be informed of the decisions made on all the outstanding instruments that were to be submitted to the Cabinet.

A Government representative of Sudan indicated that Sudan had discharged its obligations by submitting 13 reports requested by the Committee of Experts, for which the Committee had expressed its satisfaction. Despite the difficulties and the exceptional situation that it was currently facing, Sudan undertook to supply all the reports due by the end of the year to achieve its common objectives so that the respective Conventions and Recommendations were submitted to the National Assembly. The Committee of Experts had noted the reasons for the delay relating to the 20-year civil war. A peace treaty had been signed in 2005 which foresaw the adoption of a transitional Constitution and the distribution of resources and power between the central and regional authorities. Great efforts were currently being made and would require time and consultations with the social partners and the relevant technical committees. International labour standards required certain practical capacities for their implementation. Sudan was going through an exceptional situation, in view of which the ILO's Subregional Office in Cairo had been requested in 2008 to provide technical assistance concerning international labour standards and, particularly to provide assistance for the preparation of reports, which had made it possible to send 13 reports. In conclusion, he reaffirmed his Government's commitment to standards and hoped to receive technical support in relation to training and national capacity building.

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

The Committee took note of the specific difficulties mentioned by different speakers in complying with this obligation, as well as the promises to submit shortly to the competent authorities the instruments adopted by the Conference. The Committee highlighted the increase in the number of Governments which had been invited to provide explanations at this session of the Conference concerning the major delay in fulfilling the constitutional obligations concerning submission. As have been done by the Committee of Experts, the Committee expressed great concern at the non-respecting of the obligation to submit Conventions, Recommendations and Protocols to the competent authorities. To fulfil the obligation to submit means the submission of the instruments adopted by the Conference to national parliaments and represent a requirement of the highest importance in order to ensure effectiveness of standards-related activities of the Organization. The Committee recalled in this regard that the Office could provide technical assistance to contribute to compliance with this obligation.

The Committee expressed the firm hope that the 46 countries mentioned, namely Antigua and Barbuda, Bahrain, Bangladesh, Bosnia and Herzegovina, Cambodia, Cameroon, Cape Verde, Central African Republic, Chile, Comoros, Congo, Côte d'Ivoire, Croatia, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, The former Yugoslav Republic of Macedonia, Gambia, Georgia, Ghana, Guinea, Haiti, Ireland, Kazakhstan, Kenya, Kiribati, Lao People's Democratic Republic, Libyan Arab Jamahiriya,

Mozambique, Nepal, Papua New Guinea, Paraguay, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sierra Leone, Solomon Islands, Somalia, Sudan, Tajikistan, Turkmenistan, Uganda, Uzbekistan and Zambia, would transmit in the near future information on the submission of Conventions, Recommendations and Protocols to the competent authorities. The Committee decided to mention all these cases in the corresponding paragraph of the General Report.

(b) Information received

Burkina Faso. Since the meeting of the Committee of Experts, the Government has submitted to the National Assembly Conventions Nos 183, 184 and 187 in May 2009.

Chad. Since the meeting of the Committee of Experts, the Government has submitted to the National Assembly on 20 May 2009 the instruments adopted by the International Labour Conference between the 80th Session (June 1993) and the 96th Session (June 2007).

Senegal. Since the meeting of the Committee of Experts, the Government has submitted to Parliament on 6 April 2009 the instruments adopted by the International Labour Conference between the 79th Session (June 1992) and the 96th Session (June 2007).

Spain. Since the meeting of the Committee of Experts, the Government has ratified the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) on 5 May 2009.

III. Reports on unratified Conventions and Recommendations (article 19 of the Constitution)

(a) Failure to supply reports for the past five years on unratified Conventions and Recommendations

A Government representative of the Russian Federation indicated that his Government was aware of the problem concerning reports on unratified Conventions and Recommendations and indicated that the necessary efforts to remedy the situation would be made in cooperation with the Lower House of Parliament. The respective information would be provided in the next report to the ILO.

A Government representative of Timor-Leste recalled that her country had become a Member of the ILO in 2003. It was aware of its full responsibilities under the ILO Constitution and its main objective was the ratification of ILO Conventions. She indicated that, since the adoption of the Labour Law in 2002 (named UNTAET Regulation No. 5/2002), the national legislation reflected all the fundamental principles and rights. A review had now been commenced of the labour legislation based on social dialogue. In the context of this important opportunity, she urged the ILO to provide technical assistance, especially on tripartite issues. The majority of assistance provided by the ILO in the past had concerned employment, self-employment and vocational training. She added that the reasons for the failure to submit the necessary reports included the unavailability of information and the political crisis affecting the country, including the changes in government structures. She recalled that her country had ratified four fundamental Conventions, namely Conventions Nos 27, 89, 98 and 182, and it was hoped in the near future to ratify Conventions Nos 100 and 111.

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

The Committee stressed the importance it attached to the constitutional obligation to transmit reports on non-ratified Conventions and Recommendations. In effect, these reports permitted a better evaluation of the situation in the context of the General Survey of the Committee of Experts. In this respect, the Committee recalled that the ILO could provide technical assistance to help in complying with this obligation.

The Committee insisted that all member States should fulfil their obligations in this respect and expressed the firm hope that the Governments of Cape Verde, Democratic Republic of the Congo, Gambia, Guinea, Kyrgyzstan, Liberia, Russian Federation, Saint Kitts and Nevis, Sao Tome and Principe, Seychelles, Sierra Leone, Somalia, Tajikistan, Timor-Leste, Togo, Turkmenistan, The former Yugoslav Republic of Macedonia, Uganda, Uzbekistan and Vanuatu would comply with their future obligations under article 19 of the Constitution. The Committee decided to mention these cases in the corresponding paragraph of the General Report.

The Worker members concluded by emphasizing that these serious failures by member States to fulfil their obligations impeded the proper functioning of the supervisory system and allowed the countries concerned to take unfair advantage of this non-compliance with their obligations, as it was impossible to review national law and practice. He noted that the individual cases that would soon be discussed were of a different nature, but that the failures considered so far were very serious, and even much more serious. Member States should take all possible steps to meet their obligations by having recourse, if necessary, to the technical assistance of the ILO.

The Employer members recalled that the obligation to submit reports constituted a fundamental element of the ILO supervisory system. These obligations were intended to prevent governments that had neglected their reporting duties from obtaining an undue advantage. Compliance with reporting obligations was essential for dialogue between the ILO supervisory system and member States on the implementation of ratified Conventions. Any form of failure to comply with these obligations therefore constituted a serious failure in the supervisory system. They noted with interest that the report of the Committee of Experts offered a better understanding of some of the reasons for the failure by member States to fulfil their reporting and other standards-related obligations. It was also to be welcomed that a number of African countries had explained their difficulties during the discussion. The Employer members suggested that an approach should be adopted under which less emphasis was placed on the outdated Conventions, as identified by the Governing Body. Finally, they strongly encouraged member States to request technical assistance from the Office where issues of capacity arose in relation to compliance with reporting and related obligations.

(b) Information received

Since the meeting of the Committee of Experts, reports on unratified Conventions and Recommendations have subsequently been received from **San Marino**.

(c) Reports received on unratified Convention No. 155, Recommendation No. 164 and Protocol of 2002 to Convention No. 155

In addition to the reports listed in Appendix II on page 107 of the Report of the Committee of Experts (Report III, Part 1B), reports have subsequently been received from the following countries: **Barbados, Denmark, Slovakia** and **Viet Nam**.

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